

MEMBERS OF THE BOARD

Mark Morodomi, JD, President
Glenn Kawaguchi, OD, Vice President
Debra McIntyre, OD, Secretary
Cyd Brandvein
Madhu Chawla, OD
Martha Garcia, CLD, SLD
Rachel Michelin
Maria Salazar Sperber, JD
David Turetsky, OD
Lillian Wang, OD
Vacant, Public Member



QUARTERLY BOARD MEETING AGENDA

Friday, October 25, 2019
Time: 9:00 a.m. – 5:00 p.m.
(or until conclusion of business)

Location:
Department of Consumer Affairs, HQ 2
Hearing Room
1747 North Market Blvd
Sacramento, CA 95834

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations of resources. Action may be taken on any item on the agenda.

FULL BOARD OPEN SESSION

- 1. Call to Order / Roll Call and Establishment of a Quorum**
- 2. Public Comment for Items Not on the Agenda**
Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections [11125](#), [11125.7\(a\)](#)]
- 3. Update by Representatives of the Department of Consumer Affairs, Which May Include Updates, Discussion and Possible Action Pertaining to the Department's Administrative Services, Budgetary, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters**
 - A. Chris Schultz, Acting Director of the Department of Consumer Affairs
 - B. Marie Reyes, DCA Budget Office
- 4. President's Report**
 - A. Discussion on Board Member Handbook
- 5. Petition for Early Termination of Probation – Rebecca Savage – CLD #1994 / SLD #6065**
This hearing is tentatively scheduled to begin at 10 a.m.

FULL BOARD CLOSED SESSION

6. Pursuant to Government Code Section [11126\(c\)\(3\)](#), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters

FULL BOARD OPEN SESSION

7. Update, Discussion and Possible Action on Proposed Board Meeting Dates for Calendar Year 2020
8. Discussion and Possible Action on Board Meeting Minutes for August 2, 2019
9. Update, Discussion and Possible Action on Implementing Regulations for Assembly Bill 443 (Salas, Chapter 549, Statutes of 2017)
10. Update, Discussion and Possible Action on Changes to California Code of Regulations §1575 and Optometry Disciplinary Guidelines Incorporated by Reference
11. Update, Discussion and Possible Action on Potential 2020 Legislation
- A. Temporary License for Instructors at Accredited Schools of Optometry
 - B. Endorsement Fee
12. Executive Officer's Report
- A. Enforcement Program
 - B. Examination and Licensing Programs
 - C. Legislative and Regulatory Update
 - D. Staff Update
13. Update, Discussion and Possible Action Regarding Board Committee Reports
- A. Dispensing Optician Committee
 - B. Legislation and Regulation Committee
 - C. Practice and Education Committee
 - D. Consumer Protection Committee
14. Future Agenda Items
15. Adjournment

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

NOTICE: *The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Jessica Swan at 916-575-7170, email Jessica.swan@dca.ca.gov or mailing a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, President
SUBJECT	Agenda Item #1 – Call to Order/Roll Call and Establishment of a Quorum

Board President, Mark Morodomi, will call the meeting to order. Please note the date, time and physical location of the meeting for the record.

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

Mark Morodomi

Glenn Kawaguchi O.D.

Cyd Brandvein

David Turetsky OD

Madhu Chawla OD

Martha “Ruby” Garcia CLD/SLD

Debra McIntyre OD

Maria Salazar-Sperber

Lillian Wang OD

Rachel Michelin



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, President
SUBJECT	Agenda Item #2: Public Comment for Items Not on the Agenda

The Board welcomes public comment addressing items not listed on the agenda.

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]

Received in Optometry@dca.ca.gov on 10/18/19 from Anthony Bullum, O.D.

Online CE Should be Available for All Required Renewal Credits

Education Online: The Future of Education

Continuing Education Online Is The Evolution Of Society

The Advantages of Continuing Education Online

Continuing Education Online: The Future of Education

One might argue that taking CE online is a negative because it's "easier." In reality, classes are now not only within more optometrists reach, but because of the retention exams included in online courses, they represent future of optometric education.

Continuing Education Online Is the Evolution Of Society

From the moment Silicon Valley started putting out mass access to computers, our world began to entirely change. As years passed, people started to worry that the advent of hand-written communication, as well as paper entirely, will soon go by the wayside. And, while it's been a slow process, it's been a continued practice. School children now have district-provided laptops that are assigned to them for the sole purpose of turning them into capable employees as they enter the workforce. Suddenly, industries are moving away from using office products in the formation of documents and they're leaning toward online word processors. The students are following suit, with project submissions being through Google Docs and other online sources. e Books are on the rise because of their lower price points and faster readability. With all of this technological prosperity, one could turn an eye to the institution of online courses.

Advantages of Continuing Education Online

Modern life is complicated, and if the majority of optometrists are maintaining a busy practice, they probably have other responsibilities besides showing up for a class, and sitting through it. In a recent live class I attended, I could not help but notice the sheer number of attendees cramped into the room, getting up to take frequent breaks, looking at their I phones, and otherwise not engaging with the class or material being presented. Due to the economy and other factors, most employers no longer provide benefits - especially for CE participation. This means taking the time off work and

loosing income. It also means no patients can be seen that day. This puts an undue burden on both optometrist and patient. This makes the option to take online classes, and study on the optometrist's time extremely important. In fact, quite a few venues, including one I recently participated in were having trouble accommodating the number of students who were required to participate in person. Many now turn to online courses as the answer. The fact of the matter is: it **IS** the answer.

The state of Oregon, since 2015, has allowed online courses for **ALL** units required for license renewal.

Self-Motivated Individuals Will Prosper

While it can be acknowledged that online learning isn't for everyone, this is certainly not true for professionals. For those who prefer live courses, they will still have the option of taking those as well. If a practitioner has the self-teaching skills, organizational skills and overall time management that have probably pulled from years of experience in an optometric career, then an individual can prosper. The parallel between self-motivation, however, is the exact same. People who can self-motivate can get things done whether it's on their own time or while in class.

The Best Part

It can cost less than in-person classes do. In fact, there are a number of free online courses available, so the emphasis is on education, not collecting revenue. This is another relief of an undue burden on the optometrist. Education course prices have been steadily rising. I'm certain you've heard all of the complaints from various new grads talking about the rate of inflation in relation to the rate of professional school tuition growth. Bearing that in mind, online continuing education courses have come as a breath of fresh air. A live class that wouldn't include the textbook will be considerably less expensive through an online portal. Why? It takes less manpower to run an online class

Since online continuing education institutions offer their services remotely to anyone who can access the site, the many physical costs of sitting in a chair in an uncomfortable surrounding are eliminated.

More Time For the Practitioner

Many folks like to iterate that old adage that “time is money.” In reality, we all know that time is worth far more than monetary equivalence. Just because an OD may make \$50/hour does not mean that their time is worth only that. As a species that ages, time is actually far more valuable than just money. So when time is saved by taking a class that does not require spending time entering a class (and traveling to it), then doing it again sometime later, a person is saving much more than money. Time is the one resource that is completely non-renewable—Instead there is an option to tap into your powerful self-motivation, and go through an online continuing education course that can contribute to preserving a valuable resource.

Self-Discipline Skills

One of the less noted major benefits of an online class is the self-discipline skills it helps you build. On the regular day-to-day routine, we sometimes forget about important psychological health factors, like self-discipline. In truth, it's an incredibly important skill in any workplace and can really make the difference in your morale and overall happiness level as you go through the drudgery of everyday life. By practicing self-discipline by guiding yourself through learning programs, you can easily improve your own motivational strategies that you can then apply to your life and work and adjust how you approach other tasks.

Optimal Environment

Many people forget how difficult it is to go back to school. Not because of the work, but more because of the environment of in-person classes. They can often be somewhat crowded, or hosted in less than favorable rooms. There is a clear advantage to learn in the comfort of your own home. Strictly speaking, you can learn in whatever way you choose, in absolute comfort.

Scheduling Convenience Means Better Focus

While some people are inclined to disagree, choosing your own time to study does improve your productivity and your ability to focus. As a rule, some people work better during the evening hours and others during the morning hours. Having the liberty to dictate when you want to focus something that requires attention to detail, like learning, can greatly increase your output and comprehension. Plus, there's the flexibility to consider, that will make your life much easier. If you're feeling sick and can't focus, you don't have to work on the class. If you're too tired from a long day at work and sleep deprivation, then you don't need to be doing class work. If you can't focus during a certain time of the day, don't fret, try another time window to start doing class work so that you can focus easier. You may take the opportunity to complete online courses to put yourself in the right environment and the right mindset.

What It Means For a Career

In one swift stroke, online courses have started to position themselves as the most efficient way for individuals to enhance their career and remain in compliance.

. As we dig into the convenience of online courses, a clearer picture forms that are irrefutable. Online Continuing Education may become the superior way of learning in the future.

Most responsibilities in life can now be addressed online. Therefore it is time that California follows other states such as Oregon and move into the 21st century by allowing the option for optometrists to choose online continuing education for **all** required hours.



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Representatives of the Department of Consumer Affairs
SUBJECT	Agenda Item #3 - Update by Representatives of the Department of Consumer Affairs, Which May Include Updates, Discussion and Possible Action Pertaining to the Department's Administrative Services, Budgetary, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters

A. Presentation by Chris Schulz, Acting Director of the Department of Consumer Affairs

A written report has been submitted detailing DCA's priorities and outlook for 2020.

B. Presentation by Marie Reyes, DCA Budget Analyst

Ms. Reyes will provide an update on the Optometry Board's current budget and outlook for 2020.

Executive Office

1625 North Market Blvd., Suite S-308, Sacramento, CA 95834
P (916) 574-8200 F (916) 574-8613 | www.dca.ca.gov



October 17, 2019

Shara Murphy
Executive Officer
California State Board of Optometry
2450 Del Paso Road, Ste. 105
Sacramento, CA 95834

Executive Officer Murphy:

Thank you for this opportunity to submit a written update from the Department of Consumer Affairs (DCA) to the California State Board of Optometry. You will find below an update on recent Department activities:

DEPARTMENT OF CONSUMER AFFAIRS DIRECTOR APPOINTMENT

We are pleased to share that, on October 8, 2019, Governor Newsom announced his appointment of Kimberly Kirchmeyer as Director of Department of Consumer Affairs. Ms. Kirchmeyer enters her new role with a wealth of DCA experience. Ms. Kirchmeyer has served as Executive Director of the Medical Board of California since 2013, where she was deputy director from 2011 to 2013. She was deputy director of board and bureau relations at the Department of Consumer Affairs from 2009 to 2011 and deputy director at the Medical Board of California from 2005 to 2009, where she was a staff services manager from 2001 to 2005 and an associate governmental program analyst from 1999 to 2001. Ms. Kirchmeyer is also a member of the International Association of Medical Regulatory Authorities, Federation of State Medical Boards Committees, Administrators in Medicine, and the United States Medical Licensing Examination State Board Advisory Panel.

We look forward to Ms. Kirchmeyer's leadership and working with her to carry out her vision for the Department!

EXECUTIVE TEAM UPDATE

It is bittersweet to report the departure of some of our colleagues in the DCA executive team:

- Chief Deputy Director, Chris Shultz, has been appointed by Governor Newsom to serve as Chief Deputy Commissioner at the California Department of Business Oversight. Mr. Shultz's last day with the Department will be Friday, November 1, 2019.
- Assistant Deputy Director Karen Nelson has accepted a position as Chief Impact Officer with the American Leadership Forum – Mountain Valley Chapter. Ms. Nelson's last day with the Department will be Thursday, October 31, 2019.
- September 6, 2019, was Assistant Deputy Director Patrick Le's last day with the Department. Mr. Le accepted a position as a consultant with the Assembly Business and Professions Committee.

Mr. Shultz, Ms. Nelson, and Mr. Le have been integral members of DCA's executive staff and their contributions to the Department will be dearly missed. We wish them well in the next chapter of each of their careers.

As we undergo this transition, please know that the Office of Board and Bureau Services' priority remains providing the utmost customer service to our boards and bureaus.

NEW PUBLICATION – “DCA – WE'RE LISTENING”

DCA's Communications Division has been working to find ways to improve the interactions of the public with DCA and our boards and bureaus; to help them understand how to bring to you their concerns, comments, accolades, and complaints as effectively as possible.

Toward that effort, the Communications Division created a simple, visual how-to guide for Californians who want to approach us.

It's called “DCA-We're Listening,” and it lays out everything the public needs to know about giving their feedback to DCA, our boards and bureaus. From public comment etiquette to meeting mechanics, this guide is the perfect primer for approaching the podium.

The guide is available in both brochure and poster form. The brochures work great at the welcome table for any public meeting, and anywhere else interested parties may see it. The poster will hang in DCA's two Sacramento hearing rooms, but additional copies are available for purchase, laminated with foam backing, to go in any room where you may hold a public meeting. If you would like more information, please contact the Communications Division.

FUTURE LEADERSHIP DEVELOPMENT PROGRAM

The third cohort had its kick-off meeting on September 24, 2019. Eight individuals were selected to be a part of this year's cohort. We look forward to reporting on the cohort's progress throughout this eight-month leadership program.

Thank you again for your valued partnership. Please let us know if the Department can be of service to your board. If you have any questions, feel free to contact Christopher.Castrillo@DCA.ca.gov.

All the best,



Christopher Castrillo
Deputy Director, Board and Bureau Services
Department of Consumer Affairs



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, Board President
SUBJECT	Agenda Item #4 – President's Report

Board President, Mark Morodomi, will offer the President's Report.

Attachment

1. CSBO Board Member Handbook

State of California
Business, Consumer Services, and Housing Agency
Department of Consumer Affairs



Board Member Handbook



California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
www.optometry.ca.gov

2019 Edition

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1. Introduction

Overview

The [California State Board of Optometry](#) (hereafter Board) was created by the California Legislature in 1913 under the Department of Professional and Vocational Standards to safeguard the public's health, safety, and welfare. In 1923, the Board promulgated the first rules for the practice of optometry and the State Legislature first required all applicants for licensure to be graduates of an accredited school or colleges of optometry. The Board is responsible for accrediting these schools. To assure competent and ethical practitioners and protect the public from harm, no person may engage in the practice of optometry in California unless he or she possesses a valid and unrevoked license from the Board.

The Board is one of the boards, bureaus, commissions, and committees within the [Department of Consumer Affairs](#) (DCA), part of the [Business, Consumer Services and Housing Agency](#) under the aegis of the [Governor](#). DCA is responsible for consumer protection and representation through the regulation of licensed professions and the provision of consumer services. While the DCA provides administrative oversight and support services, the Board has policy autonomy and sets its own policies, procedures, and initiates its own regulations.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (Business and Professions Code (BPC) § [3010.1](#)).

The Board consists of [11 members](#), five of whom shall be public members and one of the nonpublic members shall be an individual registered as a dispensing optician. The registered dispensing optician member shall be registered pursuant to Chapter 5.5. (commencing with Section 2550) and in good standing with the Board. The remaining five members are California licensed optometrists actually engaged in the practice of optometry at the time of appointment or faculty members of a school or college of optometry. No more than two faculty members may be on the Board at any one time and they may not serve as public members. No person except the registered dispensing optician member, including the public members, shall be eligible to membership in the board who is a stockholder in or owner of or a member of the board of trustees of any school of optometry or who shall be financially interested, directly or indirectly, in any concern manufacturing or dealing in optical supplies at wholesale. The public members shall not be licensees or registrants of the Board or of any other Healing Arts Board (BPC § 3011).

The Governor appoints three public members and the six professional members. The [Senate Rules Committee](#) and the [Speaker of the Assembly](#) each appoint one public member. Board Members may serve up to two, four-year terms (BPC § 3013). Board Members are paid \$100 for each day actually spent in the discharge of official duties and are reimbursed travel expenses.

In January 2016, the legislature established a dispensing optician committee under the Board to advise and make recommendations to the Board regarding the regulation of dispensing opticians pursuant to Chapter 5.5 (commencing with Section 2550). The committee shall consist of five members, two of whom shall be registered dispensing opticians, two of whom shall be

public members, and one of whom shall be a member of the board. Initial appointments to the committee shall be made by the board. The board shall stagger the terms of the initial members appointed. The filling of vacancies on the committee shall be made by the board upon recommendations by the committee.

After the initial appointments by the board pursuant to subdivision (a), the Governor shall appoint the registered dispensing optician members and the public members. The committee shall submit a recommendation to the board regarding which board member should be appointed to serve on the committee, and the board shall appoint the member to serve. Committee members shall serve a term of four years except for the initial staggered terms. A member may be reappointed, but no person shall serve as a member of the committee for more than two consecutive terms.

The purpose of this handbook is to provide guidance to Board and Committee Members regarding general processes and procedures involved with their position on the Board and/or Committee. It also serves as a useful source of information for new Board Members as part of the induction process. Board Members are typically asked to create and review policy and administrative changes, make disciplinary decisions, and attend regular and special meetings. This handbook is additive to the Bagley-Keene Open Meeting Act and the Administrative Procedure Act which provide public meeting laws.

Mission Statement

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

Vision Statement

To ensure excellent optometric care for every Californian.

Values Statement

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

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

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

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

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

Board Responsibilities

With approximately 8,800 licensed optometrists, the largest population of optometrists in the United States, 3,000 branch office licenses, statements of licensure, and fictitious name permits, 24,000 practice certifications, and 4,200 registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and non-resident contact lens sellers, the Board is charged with the following duties and responsibilities:

- Accrediting the schools and colleges providing optometric education.
- Establishing educational requirements for admission to the examination for a license to practice optometry in California.
- Establishing examination requirements to ensure the competence of individuals licensed to practice optometry in California and administering the examination.
- Setting and enforcing standards for continued competency of existing licensees.
- Establishing educational and examination requirements for licensed optometrists seeking certification to use and prescribe authorized pharmaceutical agents.
- Issuing certifications to diagnose and treat glaucoma for patients over the age of 18.
- Licensing practice locations and issuing fictitious name permits.

- Effective January 1, 2007, the Board no longer registers Optometric Corporations. However, the Board has maintained the authority to regulate those in existence.
- Promulgating regulations governing:
 - Procedures of the Board
 - Admission of applicants for examination for licensure as optometrists
 - Minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions
- Registering dispensing opticians, contact lens and spectacle lens dispensers, and nonresident contact lens sellers
- Investigating allegations of substance and patient abuse, unprofessional conduct, incompetence, fraudulent action, or unlawful activity.
- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry and dispensing optician when warranted.

This procedures manual is provided to Board Members as a ready reference of important laws, regulations, DCA policies, and Board policies in order to guide the actions of the Board Members and ensure Board effectiveness and efficiency.

Definitions

Term	Acronym	Definition
Administrative Law Judge	ALJ	A judge from the Office of Administrative Hearings (OAH) who presides over license denial and discipline cases (the trier of fact) and makes a Proposed Decision to the Board that includes findings of fact, conclusions of law, and a recommended level of discipline.
Administrative Procedure Act	APA	The law that sets out the procedure for license denial and license discipline, to meet constitutional requirements for due process of law.
Bagley-Keene Open Meeting Act	-	Provisions of the public meetings law governing state agencies
Business and Professions Code	BPC	California Law related to business and professions. The majority of DCA entities fall under this code.
Department of Consumer Affairs	DCA	The DCA protects and serves California consumers while ensuring a competent and fair marketplace. The DCA issues licenses in more than 100 business and 200 professional categories, including doctors, dentists, contractors, cosmetologists and automotive repair facilities. The DCA includes 41 regulatory entities (25 boards, nine bureaus, four committees, two programs,

and one commission). These entities establish minimum qualifications and levels of competency for licensure. They also license, register, or certify practitioners, investigate complaints and discipline violators. The committees, commission and boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. DCA provides them administrative support. DCA's operations are funded exclusively by license fees.

Executive Officer	EO	An individual who serves at the pleasure of, and receives direction from the Board in the areas of program administration, strategic planning, and coordination of meetings. He or she is responsible for the day to day operations of the Board
Office of Administrative Hearings	OAH	The state agency that provides neutral (unaffiliated with either party) judges to preside over administrative cases.
Office of Administrative Law	OAL	The state agency that reviews regulation changes for compliance with the process and standards set out in law and either approves or disapproves those regulation changes.
Regulation	-	A standard that implements, interprets, or makes specific a statute enacted by the legislature. It is enforceable the same way as a statute.
State Administrative Manual	SAM	A reference source for statewide policies, procedures, requirements and information developed and issued by authoring agencies. In order to provide a uniform approach to statewide management policy, the contents have the approval of and are published by the authority of the Department of Finance Director and the Department of General Services Director.
Statute	-	A law passed by the legislature.
Stipulation	STIP	The matter in which a disciplinary or licensing case is settled by negotiated agreement prior to a hearing. The Board's Uniform Standards Related to Substance Abuse and Disciplinary Guidelines are used to guide these negotiated settlements.

Licenses and Certification Issued by the Board

The following chart provides an overview of the various licenses, certifications, and registrations issued by the Board.

TYPE	DESCRIPTION	Authority
Optometric License (OPT)	Required to practice optometry in California.	BPC § 3040 , BPC § 3041
Statement of Licensure (SOL)	Required for each practice location other than the licensee's principal place of practice.	BPC § 3070 CCR § 1506(d) .
Immunization Certification	Certified to administer immunizations for influenza, herpes zoster virus, and pneumococcus in compliance with CDC recommendations for persons 18 years of age or older.	BPC § 3041
Fictitious Name Permit (FNP)	Required if a fictitious name is used in conjunction with the practice of optometry.	BPC § 3078 , CCR § 1518
Diagnostic Pharmaceutical Agents (DPA)	Certified to use diagnostic pharmaceutical agents for examination purposes only. Not certified to treat diseases of the eye or its appendages.	BPC § 3041.2 , CCR § 1561
Therapeutic Pharmaceutical Agents (TPA) Certification	Certified to use therapeutic pharmaceutical agents to treat certain conditions of the human eye or any of its appendages. May also perform certain procedures on the eye as listed in California Business and Professions Code Section 3041. TPA is the minimum certification required in order to obtain licensure in California.	BPC § 3041.3 , CCR § 1568
Lacrimal Irrigation and Dilation Certification	TPA certified with additional certification to perform lacrimal irrigation and dilation procedures for patients over the age of 12 years.	BPC § 3041(e)(6) , BPC § 3041.3
Glaucoma Certification	TPA certified with additional certification to diagnose and treat primary open angle glaucoma in patients over the age of 18 years.	BPC § 3041(f)(5) , CCR § 1571
Registered Dispensing Optician (RDO)	Registered Dispensing Opticians can fill prescriptions for glasses or contacts.	BPC § 2550-2559
Contact Lens Dispenser (CLD)	A person registered as a contact lens dispenser took and passed the Nation Contact Lens Examiners - Contact Lens Exam.	BPC § 2560-2564.6
Spectacle Lens Dispenser (SLD)	A person registered as a contact lens dispenser took and passed the American Board of Opticianry - Spectacle Exam exams.	BPC § 2559.1-2559.6

TYPE	DESCRIPTION	Authority
Non-Resident Contact Lens Seller (NCLS)	The NCLS certificate authorizes a business located outside of California to ship, mail, or deliver in any manner, replacement contact lenses at retail, pursuant to a valid prescription, to a patient at a California address	BPC § 2546-2546.10

General Rules of Conduct

The following rules of conduct detail expectations of Board Members. The Board is comprised of both public and professional members with the intention that, together, the Board can collectively protect the public and regulate the Optometry profession.

- Board Members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- Board Members shall recognize the equal role and responsibilities of all Board Members.
- Board Members shall adequately prepare for Board responsibilities.
- Board Members shall not speak or act for the Board without proper authorization.
- Board Members shall maintain the confidentiality of non-public documents and information.
- Board Members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public.
- Board Members shall treat all applicants and licensees in a fair and impartial manner.
- Board Members shall not use their positions on the Board for personal, familial or financial gain.

Additional Resources:

1. California State Board of Optometry: <http://www.optometry.ca.gov/>
2. Department of Consumer Affairs: <http://www.dca.ca.gov/>
3. Business, Consumer Services and Housing Agency: <http://www.bcsb.ca.gov/>
4. Office of Governor Gavin Newsome: <http://gov.ca.gov>
5. California State Assembly: <http://assembly.ca.gov/>
6. Legislation and Statutes (Business and Professions, Government, Health and Safety, etc.): http://leginfo.ca.gov/faces/codes_displaySection.xhtml
7. Senate Rules Committee: <http://srul.senate.ca.gov/>
8. Assembly Rules Committee: <http://arul.assembly.ca.gov/>
9. Speaker of the Assembly: <http://asmdc.org/speaker/>
10. California State Board Members: <http://www.optometry.ca.gov/about-us/board-memb.shtml>
11. Administrative Law Judge: <http://www.dgs.ca.gov/oah/GeneralJurisdiction/ALJbio.aspx>
12. Office of Administrative Hearings: <http://www.dgs.ca.gov/oah/Home.aspx>
13. Administrative Procedure Act: http://www.oal.ca.gov/Administrative_Procedure_Act.htm
14. Department of General Services: <http://www.dgs.ca.gov/dgs/Home.aspx>

2. Board Meeting Procedures

All Boards, Bureaus and Programs under the Department of Consumer Affairs, including the Board must meet in accordance with the provisions set forth by the [Bagley-Keene Open Meeting Act](#). The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting the meetings.

Open Meetings

The Bagley-Keene Act of 1967, officially known as the Bagley-Keene Open Meeting Act, implements a provision of the [California Constitution](#) which declares that "the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny", and explicitly mandates open meetings for [California](#) State agencies, Boards, and commissions. The act facilitates accountability and transparency of government activities and protects the rights of citizens to participate in State government deliberations. This is similar to California's Brown Act of 1963, which provides open meeting provisions for county and local government agencies. The Bagley-Keene Act requires that the Board is to provide adequate notice of meetings to be held to the public as well as provide an opportunity for public comment. The meeting is to be conducted in an open session, except where closed session is specifically noted.

Closed Session

([GC § 11126 et seq.](#))

The Bagley-Keene Act of 1967 also contains specific exceptions from the open meeting requirements where government has a demonstrated need for confidentiality.

Should a Closed Session be authorized by law, the Board must disclose in the open meeting a general statement about the closed session items (i.e. by mentioning it on the agenda). Additionally, all closed sessions must take place at a regularly scheduled or special meeting.

All matters discussed in Closed Sessions must remain confidential.

All Closed Sessions must be held during a regular or Special Meeting (§ 11128). A staff person shall be designated to attend the closed session and record the votes taken and matters discussed.

Closed Sessions may take place in the following instances:

- Personnel matters (i.e. appointments, employment, performance evaluations, etc.) of the Executive Officer.
- Administrative disciplinary and licensing proceedings.
- Examination matters, such as when the Board administers or approves an exam.
- Pending litigation.
- Confidential audit reports.

- Protection of privacy when matters discussed would be an invasion of privacy if conducted in open session.
- Response to a threat of criminal or terrorist activity against personnel, property, buildings, facilities, or equipment.

All information discussed in the closed session is confidential and must not be disclosed to outside parties.

Special Meetings ([GC § 11125 et seq.](#))

A Special Meeting may be held where compliance with a 10-day meeting notice would impose a hardship or when an immediate action would be required to protect the public interest.

Notice for a Special Meeting must be posted on the Internet at least 48 hours prior to the meeting. Upon commencement, the Board must state the specific facts that necessitate special meeting as a finding. This finding must be adopted by a two-thirds vote; failure to adopt the finding terminates the meeting.

The purpose and instructions for Special Meetings are detailed in [GC § 11125.4](#). The notice needs to specify the time, place and purpose of the Special Meeting.

Emergency Meetings ([GC § 11125.5](#))

An Emergency Meeting may be held for an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities. An emergency situation is where work stoppage, crippling disaster, or other activity severely impairs the public health or safety. A determination of an emergency situation must be made by a majority of the board members.

Media outlets on the board's interested parties list must be given at least one hour's notice of the emergency meeting by telephone, if telephone services are functioning. The minutes of a meeting called pursuant to this section, a list of persons who the president or designee notified or attempted to notify, a copy of the roll call vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

Committee Meeting Requirements

Committee Meetings consist of less than a quorum of the members of the full Board. Subcommittee and Task Force Meetings are variations of Committee Meetings.

Board Meetings have historically been required to be noticed and open to the public, except where a Closed Session is authorized. Committee and Subcommittee Meetings, where less than a quorum of the Board is present, are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons and does not

exercise any authority of a state body delegated to it by that state body. (Note: It is the number of persons on the committee [not the number of Board Members] that is determinative.)

Where a committee of fewer than three persons is to meet, and the meeting is not noticed, other members of the Board should not attend the meeting, as such attendance would clearly be perceived as a Bagley-Keene Open Meeting Act violation. Board staff is not precluded from attending such a meeting.

The law allows attendance by a majority of members at an open and noticed meeting of a standing committee of the Board provided the members of the Board who are not members of the committee attend only as observers. ([GC §11122.5\(c\)\(6\)](#)) The Office of the Attorney General has addressed in a formal opinion a provision in the Brown Act relating to the attendance of "observers" at a Committee Meeting. The Attorney General concluded that "[m]embers of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body as observers." The opinion further concluded that such members of the legislative body may not sit in special chairs on the dais with the committee. (81 Ops.Cal.Atty.Gen. 156)

Thus, under the provisions of [GC §11122.5\(c\)\(6\)](#), and the opinion of the California Attorney General, if a majority of members of the full Board are present at a Committee Meeting, members who are not members of the committee that is meeting may attend that meeting only as observers. The Board Members who are not Committee Members may not sit on the dais with the committee, and may not participate in the meeting by making statements or asking questions.

If a Board schedules its Committee Meetings seriatim, and other Board Members are typically present to ultimately be available for their own Committee Meeting, the notice of the Committee Meeting should contain a statement to the effect that "Members of the board who are not members of this committee may be attending the meeting only as observers."

Subcommittees may be appointed to study and report back to a committee or the board on a particular issue or issues. If the subcommittee consists of three or more persons, the same provisions apply to its meetings as apply to meetings of committees.

Board chairpersons may occasionally appoint a task force to study and report on a particular issue. One or two board members typically serve as task force members, along with a number of other non-board members. When this is the case, the same Open Meeting Act rules that apply to committee meetings apply to task force meetings. Such a formally appointed task force falls under the definition of "state body" in [Section 11121\(c\)](#).

Making a Motion at Meetings

When a decision or action is to be considered, a Board Member should make a motion to propose a decision or course of action.

Upon making a motion, Board Members must speak slowly and clearly as the motion is being voice and/or video recorded. Members who opt to second a motion must remember to repeat the motion in question. Additionally, it is important to remember that once a motion has been made and seconded, it is inappropriate to make a second motion until the initial one has been resolved.

The basic process of a motion is as follows:

- An agenda item has been thoroughly discussed and reviewed.
- The Board President opens a forum for a Member to make a motion to adopt or reject the discussed item.
- A Member makes a motion before the Board.
- Another Member seconds this motion.
- The Board President solicits additional comment from the Board and then the public.
- The Board President puts forth the motion to a vote.
- The vote of each Board Member shall be recorded via roll call vote.
- Upon completion of the voting, the President will announce the result of the vote (e.g. “the ayes have it and the motion is adopted” or “the no’s have it and the motion fails”).

Meeting Frequency

([BPC § 3017](#))

The Board shall hold regular meetings every calendar quarter. Notice of each meeting and the time and place thereof shall be given to each member in the manner provided by the [Bagley-Keene Open Meeting Act](#).

Board Member Attendance at Board Meetings

(Board Policy)

Board Members shall attend each Board Meeting. If a member is unable to attend a meeting, it is the responsibility of the Board Member to contact the President and the Executive Officer prior to the Board Meeting.

Quorum

([BPC § 3010.1](#))

Six Board Members constitute a quorum of the Board for the transaction of business. Either having members in attendance or by teleconference, with proper notice, can meet the requirement for a quorum. The concurrence of a majority of those members of the Board present and voting at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items

(Board Policy and [GC § 11125 et seq.](#))

Agenda items are to align with the Board's mandate to protect the health and safety of California consumers. Any Board Member may submit items for a Board Meeting agenda to the Board President with a copy to the Executive Officer 30 days prior to the meeting, where possible. Members may also recommend agenda items during the meeting under Suggestions for Future Agenda Items. A motion and vote may be taken but is not necessary. The Board President will confer with the Executive Officer and Legal Counsel regarding the future agenda items. It will be a standing item to review the status of future agenda items that have been recommended by Board Members that may not have made the current Board Meeting agenda. An item may be placed on the Board's agenda by the President, the Executive Officer, or by a vote of a majority of the members of the Board

Staff maintains a list of items to research and bring back to a future Board Meeting. Staff may recommend the issue be referred to a Committee first to be vetted. Prior to items being placed on the agenda, staff conducts research to determine if an item is appropriate for Board discussion. This research starts with identifying how the item meets our mandate to protect the health and safety of California consumers. In addition, staff researches potential benefits to the State, identifies the current professional trends and what other states are doing. For items requiring legislative and/or regulatory changes, staff identifies potential concerns by anticipating who would be in support of or in opposition to the bill/rulemaking.

No item shall be added to the agenda subsequent to the provision of the meeting notice. However, an agenda item may be amended and then posted on the Internet at least 10 calendar days prior to the meeting.

If the agenda contains matters that are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Items not included on the agenda may not be discussed.

Notice of Meeting

([GC § 11120 et seq.](#))

Regularly scheduled quarterly meeting generally occur throughout the year and address the usual business of the Board. There are no restrictions on the purposes for which a regularly scheduled meeting may be held.

Per the Bagley-Keene Open Meeting Act, the Board is required to give at least ten (10) calendar days for written notice of each Board Meeting to be held.

The meeting notice must include the agenda with a brief description of the item. No changes can be made to the agenda unless the notice is amended accordingly. If this occurs, it must be posted for ten (10) calendar days prior to the meeting.

Notice of Meetings to be posted on the Internet

([GC § 11125 et seq.](#))

Notice shall be given and also made available on the Internet at least ten (10) calendar days in advance of the meeting and shall include the name, address, and telephone number of any person who can provide information prior to the meeting. However, it need not include a list of witnesses expected to appear at the meeting.

Written notices shall include the address of the Internet site where notices required by this article are available.

Record of Meetings

(Board Policy)

Board action, public comment, and any presenters are recorded by Action Minutes unless the meeting is not audio recorded or webcast. If no recording is available, detailed summary minutes will be recorded. The minutes shall be prepared by Board staff and submitted for review by Board Members before the next Board Meeting. Board Minutes shall be approved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording

(Board Policy)

The meetings may be tape-recorded if determined necessary for staff purposes. Tape recordings will be maintained with the meeting minutes and kept according to the Board's retention schedule.

Meeting by Teleconference

([GC § 11123 et seq.](#))

Board Meetings held by a teleconference must comply with requirements applicable to all meetings.

The portion of the meeting that is open session must be made audible to the public present at the location specified in the meeting notice. Each teleconference meeting location must be identified in the meeting agenda. The authorized location must be open to the public and ADA accessible. Additionally, each Board Member participating via teleconference must post appropriate signage for the public and ensure public materials are available to the public, either printed or electronic.

Board Policy does not allow Board Members to participate in petition hearings via teleconference. Thus, Board Members would not be able to participate in the petition deliberations and voting during closed session. However, after petition proceedings are final, the Board Member should be contacted to participate in all other closed session deliberations.

Unless it is during a petition hearing, if a Board Member is participating via teleconference, and the call is disconnected, an effort should be made to reconnect the call.

All votes taken during a teleconference meeting shall be by roll call.

Use of Electronic Devices During Meetings

Use of electronic devices, including laptops, during the meetings is solely limited to Board Meeting purposes.

Additional Resources:

1. Bagley-Keene Open Meeting Act: http://ag.ca.gov/publications/bagleykeene2004_ada.pdf
2. Office of Administrative Law: <http://www.oal.ca.gov/>
3. State Board of Optometry Regulations (Title 16, Division 15)
Registered Dispensing Opticians Regulations (Title 16, Division 13.5)
[https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=(sc.Default))

3. Travel & Salary Policies & Procedures

Travel Approval

(DCA Memorandum 96-01)

Board Members shall have Board President approval for travel except for regularly scheduled Board and Committee Meetings to which the Board Member is assigned.

Travel Arrangements

(Board Policy)

Board staff will make travel arrangements for each Board Member as required.

Out-of-State Travel

(State Administrative Manual § 700 et seq.)

For out-of-state travel, Board Members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the State of California is controlled and must be approved by the Governor's Office.

Travel Claims

(State Administrative Manual § 700 et seq. and DCA Travel Guidelines)

Rules governing reimbursement of travel expenses for Board Members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. Board Members will be provided with completed travel claim forms submitted on their behalf. The Executive Officer's Assistant maintains these forms and completes them as needed. It is advisable for Board Members to submit their travel expense forms immediately after returning from a trip and not later than two weeks following the trip.

In order for the expenses to be reimbursed, Board Members shall follow the procedures contained in DCA Departmental Memoranda which are periodically disseminated by the DCA Director and are provided to Board Members.

Salary Per Diem

([BPC § 103](#))

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board and Committee Members is regulated by BPC § 103.

In relevant part, this section provides for the payment of salary per diem for Board and Committee Members "for each day actually spent in the discharge of official duties," and provides that the Board and/or Committee Member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

The following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. Board Meetings:

Board Members shall be paid \$100 for each Board meeting attended. In addition, Board Members shall be paid \$100 for all preparation for each Board meeting; provided however, that no meeting preparation salary shall be paid unless the Board Member attends the meeting.

2. Committee Meetings:

Board Policy is to hold all committee meetings quarterly on the same day. Committee Members shall be paid \$100 total for meeting attendance, regardless of the number of meetings attended on the same day. In addition, Committee Members shall be paid \$100 for all preparation for the meeting(s), regardless of the number of meetings attended on the same day. If committee meetings are held outside of the quarterly committee schedule, or if committee meeting preparation and/or attendance is extensive, additional per diems may be approved at the discretion of the Board President.

3. No salary per diem or reimbursement for travel-related expenses shall be paid to Board Members, except for attendance and meeting preparation at official Board or Committee Meetings and unless a substantial official service is performed by the Board Member. Attendance at gatherings, events, hearings, conferences or meetings, other than official Board or Committee Meetings, in which a substantial official service is performed, shall be approved in advance by the Board President. The Executive Officer shall be notified of the event and approval shall be obtained from the Board President prior to the Board Member's attendance.
4. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board Meeting or Committee Meeting to the conclusion of that meeting. Where it is necessary for a Board Member to leave early from a meeting, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.
5. Board Members will be provided with a copy of the salary per diem form submitted on their behalf.

In addition to the above per diems, for Board specified work, Board Members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences, and committee work. Board Members cannot claim salary per diem for time spent traveling to and from a Board or Committee Meeting.

Per Diem Expenses: Meals, lodging, and all appropriate incidental expenses incurred may be claimed when conducting State business while on travel status.

Additional Resources

1. State Administrative Manual: <http://sam.dgs.ca.gov/TOC.aspx>
2. Department of Finance: <http://www.dof.ca.gov/>

3. Selection of Officers and Committees

Officers of the Board

([BPC § 3014](#))

The Board shall elect from its members a President, Vice-President, and a Secretary to hold office for one year or until their successors are duly elected and qualified.

Roles and Responsibilities of Board Officers

(Board Policy)

President

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

Vice President

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

Secretary

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

Election of Officers

(Board Policy)

The Board elects the officers at the last meeting of the fiscal year. Officers serve a term of one-year, beginning July 1 of the next fiscal year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board Member is running per office. An officer may be re-elected and serve for more than one term.

Officer Vacancies

(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice President shall assume the office of the President until the election for President is held. Elected officers shall then serve the remainder of the term.

Committee Appointments

(Board Policy)

Notwithstanding the Dispensing Optician Committee, the President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the Board President in consultation with the Vice President, Secretary and the Executive Officer. In determining the composition of each committee, the president shall solicit interest from the Board Members during a public meeting. The President shall strive to give each Board Member an opportunity to serve on at least one committee. Appointment of non-Board Members to a committee is subject to the approval of the Board.

Attendance of Committee Meetings

([GC § 11122.5](#) (c)(6))

(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Government Code [§ 11123](#), any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by § 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

4. Board Administration and Staff

Board Administration

(DCA Reference Manual)

Board Members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs, operations and staff shall be the responsibility of the Executive Officer. Board Members shall not interfere with day-to-day operations of the Board, which is the responsibility of the Executive Officer.

Board Staff

The Board's essential functions are comprised of ensuring Optometrists, opticians, and dispensers licensed or registered in the State of California meet professional examination requirements and follow legal, legislative and regulatory mandates. The Board is also responsible for enforcement of State of California requirements and regulations as they pertain to the Optometry and Opticianry profession.

- **Licensing:** Staff is responsible for evaluating applications for initial licensure, license renewals, providing certifications, issuing Fictitious Name Permits, monitoring continuing education, and providing license verifications to consumers and customer service to licensees accordingly.
- **Examinations:** Staff assists in the development of the law exam, which is necessary to ensure optometrists understand the California laws and regulations governing their practice. Staff also develops examination procedures.
- **Legislative and Regulatory:** Administrative staff is responsible for monitoring pending legislation impacting the practice of optometry, proposing legislative and regulatory amendments/additions for Board consideration, and assisting in implementing legislative/regulatory changes.
- **Enforcement:** Staff is responsible for ensuring consumer protection predominantly by processing consumer complaints, monitoring probationers, and providing customer service to licensees and consumers by providing information related to Board law.

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Officer. Board Members shall not intervene or become involved in specific day-to-day personnel transactions or matters.

Appointment of Executive Officer

([BPC § 3027](#))

The Board shall employ an Executive Officer and other necessary assistance in the carrying out of the provisions of the [BPC, Chapter 7](#).

The Executive Officer serves at the pleasure of the Board Members who provide policy direction to the Executive Officer in the areas of program administration, legislative and regulatory development, strategic planning, and coordination of meetings. The Executive Officer shall not be a member of the Board. With the approval of the Director of Finance, the Board shall determine the salary of the Executive Officer. The Executive Officer shall be entitled to traveling and other necessary expenses in the performance of his/her duties as approved by the Board.

Executive Officer Evaluation

(Board Policy)

Board Members shall evaluate the performance of the Executive Officer on an annual basis.

Legal Counsel

Generally, the Office of the Attorney General represents the Board for litigation and represents complainant (the Executive Officer) for licensing and discipline cases. The DCA legal counsel assigned to the Board provides “in-house” counsel, assistance on closed session discipline and licensing matters. It is the Board’s policy to have DCA counsel present in closed sessions held pursuant to government code section 11126(c)(3), including deliberations on petition hearings.

Strategic Planning

(Board Policy)

The Executive Committee shall have overall responsibility for the Board’s strategic planning process. The Vice President shall serve as the Board’s strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board. The Board will update the strategic plan every three years, with the option to use a facilitator to conduct the plan update. At the end of the fiscal year, an annual review conducted by the Board will evaluate the progress toward goal achievement as stated in the strategic plan and identify any areas that may require amending.

Board Budget

(Board Policy)

The Vice President shall serve as the Board’s budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Staff will conduct an annual budget briefing with the Board with the assistance of the Vice President.

The Executive Officer or the Executive Officer’s designee will attend and testify at legislative budget hearings and shall communicate all budget issues to the Administration and Legislation.

Press Releases

(Board Policy)

The Executive Officer, in coordination with the DCA's Public Information Office, may issue press releases with the approval of the Board President.

Legislation

(Board Policy)

In the event time constraints preclude Board action, the Board may delegate to the Executive Officer and the Board President and Vice President the authority to take action on legislation that would affect the practice of optometry, opticianry, or responsibilities of the Board. The Board shall be notified of such action as soon as possible.

6. Other Policies and Procedures

Board Member Orientation and Training

([BPC § 453](#))

Newly appointed members shall complete a training and orientation program provided by DCA within one year of assuming office. This one-day class will discuss Board Member obligations and responsibilities.

([GC § 11121.9](#), [GC § 12950.1](#))

All Board Members shall complete all required training and submit compliance documentation, including but not limited to, the documents specified below:

- [Board Member Orientation Training](#) provided by the DCA (complete within one (1) year of assuming office).
- [Ethics Orientation Training](#) (complete within first six (6) months of assuming office) and every two (2) years thereafter.
- [Conflict of Interest, Form 700](#) (submit annually), within 30 days of assuming office, and upon leaving the Board.
- [Sexual Harassment Prevention Training](#) (complete within first six (6) months of assuming office) and every two (2) years thereafter.
- [Defensive Drive Training](#) (if driving state vehicles, vehicles rented by the state or drive personal vehicles for state business) required once every four years

Upon assuming office, members will also receive a copy of the Bagley-Keene Open Meeting Act, which lists public meeting laws that provide the guidelines for Board Meetings. The current version of this Act can also be found at the following:

http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf

Additional Board Member resources can be found at <http://www.dcaboardmembers.ca.gov/>. Business cards will be provided to each Board Member with the Board's name, address, telephone and fax number, and website address. A Board Member's business address, telephone and fax number, and email address may be listed on the card at the member's request.

Board Member Disciplinary Actions

(Board Policy)

The Board may censure a member if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner. The President of the Board shall sit as chair of the hearing unless the censure involves the President's own actions, in which case the Vice President of the Board shall sit as chair. In accordance with the Open Meeting Act, the censure hearing shall be conducted in open session.

Removal of Board Members

(BPC §§ [106](#) and [106.5](#))

The Governor has the power to remove from office at any time any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. The Governor may also remove from office a Board Member who directly or indirectly discloses examination questions to an applicant for examination for licensure.

Resignation of Board Members

([GC § 1750](#))

In the event that it becomes necessary for a Board Member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. State law requires written notification. A copy of this letter shall also be sent to the Director of DCA, the Board President, and the Executive Officer.

Conflict of Interest

([GC § 87100](#))

No Board Member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board Member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision. Any Board Member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Candidates, Applicants and Licensees

(Board Policy)

Board Members shall not intervene on behalf of a candidate or an applicant for licensure for any reason. Nor shall they intervene on behalf of a licensee. All inquiries regarding licenses, applications and enforcement matters should be referred to the Executive Officer.

Communication with Other Organizations and Individuals

(Board Policy)

Any and all representations made on behalf of the Board or Board Policy must be made by the Executive Officer or Board President, unless approved otherwise. All correspondence shall be issued on the Board's standard letterhead and will be created and disseminated by the Executive Officer.

Gifts from Candidates

(Board Policy)

Gifts of any kind to Board Members or the staff from candidates for licensure with the Board shall not be permitted.

Request for Records Access

(Board Policy)

No Board Member may access the file of a licensee or candidate without the Executive Officer's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the Office of the Board.

Ex Parte Communications

([GC § 11430.10 et seq.](#))

The Government Code contains provisions prohibiting *ex parte* communications. An *ex parte* communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of § 11430.10, which states:

"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board Members are prohibited from an *ex parte* communication with Board enforcement staff while a proceeding is pending. Occasionally an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board Members or attend a meeting.

If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board Member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter. If the person insists on discussing the case, he or she should be told that the Board Member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board Member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the Executive Officer promptly.

Additional Resources:

1. Board Member Orientation Training:
<http://www.dcaboardmembers.ca.gov/training/orientation.shtml>
2. Ethics Orientation Training:
http://www.dcaboardmembers.ca.gov/training/ethics_orientation.shtml
3. Conflict of Interest, Form 700:
http://www.dcaboardmembers.ca.gov/member_info/form_700.shtml
4. Sexual Harassment Prevention Training:
http://www.dcaboardmembers.ca.gov/training/harassment_prevention.shtml
5. Defensive Driver Training: <http://www.dgs.ca.gov/orim/Programs/DDTOnlineTraining.aspx>
6. DCA Board Member Resource Center: <http://www.dcaboardmembers.ca.gov/>

7. Complaint and Disciplinary Process

The Board conducts disciplinary proceedings in accordance with the Administrative Procedure Act, [GC § 11500](#), and those sections that follow. The Board conducts investigations and hearings pursuant to [Government Code §§ 11180 through 11191](#). The Board also uses its [Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, in regulation](#), as a guide when determining appropriate levels of discipline.

Typically, the disciplinary process begins with a complaint. Complaints can come to the Board via consumers, optometrists, and other agencies. Under Business and Professions Code 800 et seq., civil judgments or settlement against a licensee that exceeds three thousand dollars (\$3,000) must be reported to the Board by an insurer or licensee. These will result in an enforcement investigation.

To begin an investigation, the Board's enforcement staff determines jurisdiction over a complaint case. If jurisdiction has been established, enforcement staff begins its investigation by requesting permission to review the patient's medical file (if pertinent to the complaint) and notifies the optometrist that a complaint has been made.

Enforcement staff determines if a violation of the [Optometry Practice Act](#) or other applicable statutes and regulations has occurred by verifying facts to validate a complaint allegation. This is generally accomplished by gathering statements, patient records, billings, and insurance claims, etc. The Board may also submit the case to the Division of Investigation (DOI) for further investigation as DOI investigators are given authority of peace officers by the Business and Professions Code while engaged in their duties. Therefore, these investigators are authorized more investigative privileges than Board staff.

The Board may also seek the aid of an expert witness when the enforcement team needs an expert opinion to determine if the licensee in question breached the standard of care.

If it is determined that the subject's acts constitute a violation of law, the completed investigative report is submitted to the California Office of the Attorney General. The assigned Deputy Attorney General will review the case to determine if the evidence supports filing of an accusation against the subject for a violation of the law. If it is determined appropriate, an accusation is prepared and served upon the subject and he or she is given the opportunity to request a hearing to contest the charges.

The following is a list of allegations for which the Board may take action:

- Unprofessional conduct;
- Gross negligence;
- Sexual misconduct;
- Conviction of a substantially related crime;
- Substance abuse; and
- Insurance fraud.

After the Board files an accusation, the case may be resolved by a stipulated settlement: which is a written agreement between parties to which the person is charged admits to certain violations and agrees that a particular disciplinary order may be imposed.

Stipulations are subject to adoption by the Board. If a stipulated settlement cannot be negotiated, or if a settlement is rejected, the case proceeds to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings. The hearing may last anywhere from one day to several months, depending on the complexity of the case and the defense. During the hearing, both sides may call expert witnesses to support their views. After both sides have argued their case, the judge issues a proposed decision, which is then submitted to the Board for consideration.

If the Board rejects the proposed decision, Board Members obtain a transcript of the hearing, review the decision and decide the matter based upon the administrative record. If dissatisfied with the Board's decision, the respondent may petition for reconsideration or he or she may contest it by filing a writ of mandate in the appropriate superior court.

Deciding to Adopt or Reject a Proposed Decision

Upon being presented with a proposed disciplinary or licensing decision from an ALJ, each Board Member is asked to either adopt or Reject the action. Accordingly, the following should be considered when making a decision:

- Factors for consideration when deciding to adopt an ALJ's proposed decision
 - The summary of the evidence supports the findings of fact, and the findings support the conclusions of law.
 - The law and standards of practice are interpreted correctly.
 - In those cases in which witness credibility is crucial to the decision, the findings of fact include a determination based substantially on a witness' credibility, and the determination identifies specific evidence of the observed demeanor, manner, or attitude of the witness that supports the credibility determination.
 - The penalty fits within the disciplinary guidelines or any deviation from those guidelines has been adequately explained.
 - If probation is granted, the terms and conditions of probation provide the necessary public protection.
- Factors for consideration when deciding to Reject an ALJ's proposed decision
 - The proposed decision reflects the ALJ clearly abused his/her discretion.
 - The ALJ made an error in applying the relevant standard of practice or burden of proof for the issues in controversy at the hearing.
 - The witness's credibility is crucial to the decision and the findings of fact include a determination based substantially on a witness' credibility; but the determination does not identify specific evidence of the observed demeanor, manner, or attitude, of the witness that supports the credibility determination.
 - The ALJ made an error in interpreting the licensing law and/or regulations.

- The ALJ made correct conclusions of law and properly applied the standards of practice but the level of discipline proposed is substantially less than is appropriate to protect the public.

Note: The Board may not increase a cost recovery reward.

Reviewing the Record and Preparing to Discuss and Render a Decision after Rejection

Should the Board reject a proposed decision by the ALJ must review the factual and legal findings to render a determination. The following guidance is provided to Board Members when reviewing the case record:

- Reviewing the Administrative Record
 - The Accusation
 - Make note of the code §§ charged and brief description of the §§ (e.g. B&P 3110(b) – gross negligence; B&P 3110 (d) – incompetence).
 - Read the facts that are alleged as they stand to prove or disprove the code violations. The burden to prove the violations by “clear and convincing evidence to a reasonable certainty” rests on the Board.
 - The Proposed Decision
 - Factual Findings. Review the factual findings and determine if they and/or testimony prove violations. Note that expert testimony may be necessary to prove the violations.
 - Legal conclusions (determination of issues). Determine if any proven facts constitute a violation of the code §.
 - Order. Review the order and determine if the penalty is appropriate per the violations found and if it is consistent with the Disciplinary Guidelines. If not, determine if there is a basis for which the record deviated from the guidelines.
 - The Transcript
 - Sufficiency of the Evidence. Determine if the evidence introduced is clear and convincing to a reasonable certainty to prove *each* factual allegation.
 - Lay Witnesses. Determine if the testimony provided by witnesses prove factual allegations. Refer back to the ALJ’s credibility findings.
 - Expert Witnesses. Which expert’s testimony was given the most weight by the ALJ? If a Board Member does not agree with the ALJ’s findings, the Board Member must determine which evidence in the record supports their conclusion.
 - Written Arguments received from parties after rejection of a proposed decision.
 - Is the written argument from each party persuasive?

- Do the parties cite to the administrative record/transcript? This is not required, but may bear on the persuasiveness of a party's argument.

Additional Resources

1. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines:
http://www.optometry.ca.gov/formspubs/uniform_standards.pdf

8. California's Legislative Process

The California State Legislature consists of two houses: the Senate and the Assembly. The Senate has 40 members and the Assembly has 80 members.

All legislation begins as an idea or concept. Should the Board take an idea to legislation, it will act as its sponsor.

In order to move an idea or concept toward legislation the Board must attain a Senator or Assembly Member to author it as a bill. Once a legislator has been identified as an author, the legislation will proceed to the Legislative Counsel where a bill is drafted. The legislator will introduce the bill in a house (if a Senator authors a bill, it will be introduced to the Senate; if an Assembly Member authors a bill, it will be introduced to the Assembly). This house is called the House of Origin.

Once a bill is introduced on the floor of its house, it is sent to the Office of State Printing. At this time, it may not be acted upon until 30 days after the date that it was introduced. After the allotted time has lapsed, the bill moves to the Rules Committee of its house to be assigned to a corresponding Policy Committee for hearing.

During committee hearing, the author presents the bill to the committee and witnesses provide testimony in support or opposition of the bill. At this time, amendments may be proposed and/or taken. Bills can be amended multiple times. Additionally, during these hearings, a Board representative (Board Chair, Executive Officer, and/or staffer) may be called upon to testify in favor of (or in opposition to) the bill.

Following these proceedings, the committee votes to pass the bill, pass it as amended, or defeat it. The bill may also be held in the committee without a vote, if it appears likely that it will not pass. In the case of the Appropriations (or "Fiscal") Committee, the bill may be held in the "Suspense File" if the committee members determine that the bill's fiscal impact is too great, as weighed against the priorities of other bills that also impact the state's finances. A bill is passed in committee by a majority vote.

If the bill is passed by committee, it returns to the floor of its House of Origin and is read a second time. Next, the bill is placed on third reading and is eligible for consideration by the full house in a floor vote. Bill analyses are prepared prior to this reading. During the third reading, the author explains the bill and members discuss and cast their vote. Bills that raise taxes, take effect immediately or place a proposition on the ballot require a 2/3 vote, which would require 27 votes in the Senate and 54 votes (two-thirds vote) in the Assembly to be passed. Other bills require majority vote. If a bill is defeated, its author may seek reconsiderations and another vote.

Once a bill has been approved by the House of Origin, it is submitted to the second house where the aforementioned process is repeated. Here, if an agreement is not reached, the bill dies or is sent to a two-house committee where members can come to a compromise. However, if an agreement is made, the bill is returned to both houses as a conference report to be voted upon.

Should both houses approve a bill, it proceeds to the Governor who can either sign the bill to law, allow it to become law without signature, or veto it. If the legislation is passed during the course of the regular session, the Governor must act within 12 days. However, the Governor has 30 days to sign bills that are passed during the final days of the legislative year, usually in August or early September. A two-thirds vote from both houses can override the Governor's decision to veto a bill.

Bills that are passed by the legislature and approved by the Governor are assigned a chapter number by the Secretary of State. Chaptered bills typically become part of the California Codes and the Board may enforce it as statute once it becomes effective. Most bills are effective on the first day of January the following year; however, matters of urgency take effect immediately.

For a graphic overview of California's legislative process, see the attached diagram at the end of this section.

Positions on Legislation

As a regulatory body, the Board can propose its own legislative proposals or take a position on a current piece of legislation.

At Board Meetings, staff may present current legislation that is of potential interest to the Board and/or which may directly impact the Board and the practice of optometry. When the Board attains research on legislation, it can take a position on the matter.

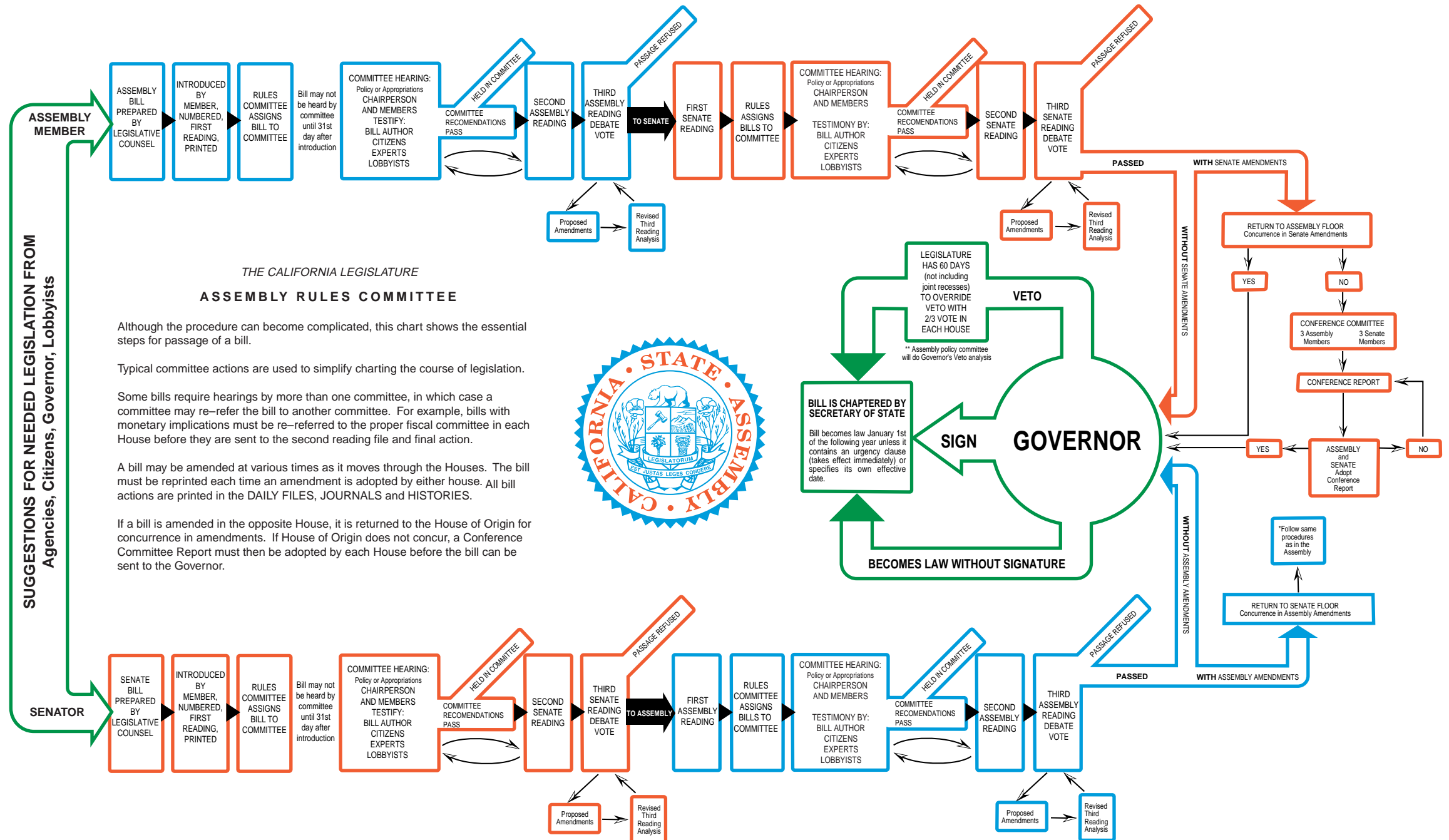
Possible positions include:

- **No Position:** The Board may decide that the bill is outside the Board's jurisdiction or that it has other reasons to not have any position on the bill. The Board would not generally testify on such a bill.
- **Neutral:** If a bill poses no problems or concerns to the Board, the Board may choose to adopt a neutral position.
- **Neutral if Amended:** The Board may take this position if there are minor problems with the bill but, providing they are amended, the intent of the legislation does not impede with Board processes.
- **Support:** This position may be taken if the Board supports the legislation and has no recommended changes.
- **Support if Amended:** This position may be taken if the Board has amendments and if accepted, the Board will support the legislation.
- **Oppose:** The Board may opt to oppose a bill if it negatively impacts consumers or is against the Board's own objectives.
- **Oppose Unless Amended:** The Board may take this position unless the objectionable language is removed. This is a more common and substantive stance than Neutral if Amended.

Board Members can access bill language, analyses, and vote history at <http://leginfo.legislature.ca.gov/> and watch all legislative hearings online at www.calchannel.com.

THE LIFE CYCLE OF LEGISLATION

From Idea into Law



9. Regulations

Regulations and statutes govern the Board. Regulations interpret or make specific laws that are enforced or administered by the Board.

In order to prepare a rulemaking action, the Board is required to: (1) express terms of proposed regulation (the proposed text), (2) determine fiscal impact, (3) create a statement of reasons for that regulation, and (4) post notice of proposed rulemaking.

The issuance of a notice of proposed regulation initiates a rule making action. To do this, the Board creates a notice to be published in the California Regulatory Notice Register and mailed to interested parties. It must also post the notice, proposed text, and statement of reasons for the rulemaking action on its website.

Once the notice has been posted, the Administrative Procedure Act (APA) requires a 45-day comment period from interested parties before the Board may proceed further with the proposed regulation. During this time the Board can also decide if it wants to hold a public hearing to discuss the proposed rulemaking action. However, if it opts against this, but an interested person requests a hearing at least 15 days prior to the end of the written comment period, the Board must offer notice of and hold a public hearing to satisfy public request.

Following the initial comment period, the Board will often decide to revise its proposal. If it chooses to do so, APA procedures require that the agency assess each change and categorize them as (a) non-substantial, (b) substantial and sufficiently related, or (c) substantial and not sufficiently related. Any change that has been categorized as substantial and sufficiently related must be available for public comment for at least 15 days before the change is adopted in the proposal. All comments must then be considered by the Board.

Additionally, if the Board cites new material that has not been available to the public while revising the proposal, these new references must be presented to the public for 15 days.

The Board is also responsible for summarizing and responding on record to public comments submitted during each allotted period. These are to be included as part of the final statement of reasons. By doing so, the agency demonstrates that it has understood and considered all relevant material presented to it before adopting, amending, or repealing a regulation.

After the Board has fulfilled this process, it must adopt a final version of the proposed rulemaking decision. Once this has been accomplished, the rulemaking action must be submitted to the Office of Administrative Law (OAL) for review within a year from the date the notice was published. OAL has 30 days to review the action.

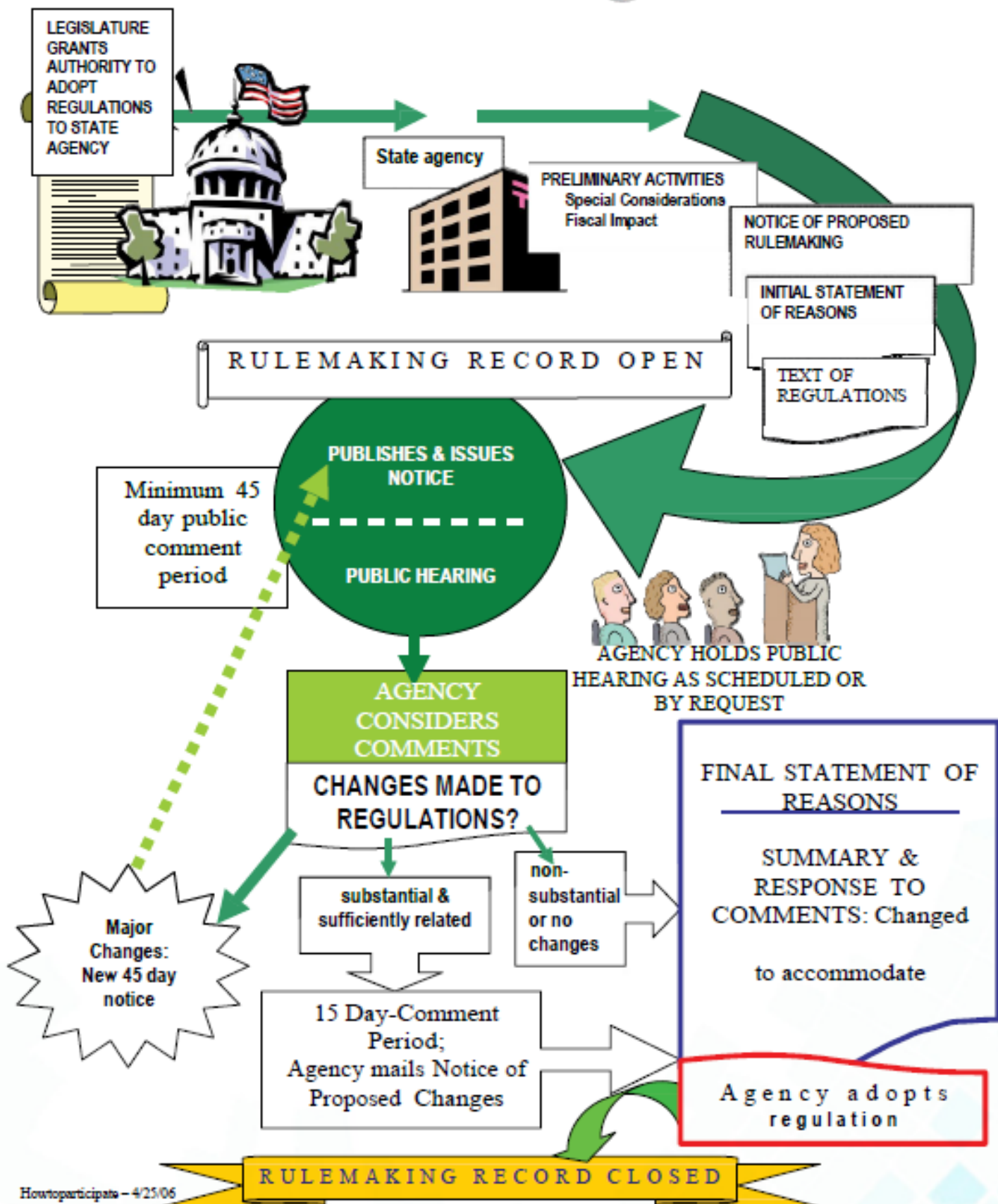
During its review, OAL must determine if the rulemaking action satisfies the standards set forth by APA. These standards are: necessity, authority, consistency, clarity, non-duplication, and reference. It must also have satisfied all procedural requirements governed by the APA.

If OAL deems that the rulemaking action satisfies the aforementioned standards, it files the regulation with the Secretary of State and it is generally effective within 30 days. The regulation is also printed in the California Code of Regulations.

If OAL, however, determines that the action does not satisfy these standards, it returns the regulation to the Board which can revise the text, post notice of change for another comment period, and, finally, resubmit the proposed regulation to OAL for review; or, the Board may appeal to the governor.

Diagrams on the next two pages provide a graphical overview of the rulemaking process.

The Rulemaking Process



Howtoparticipate - 4/25/06



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer <i>prepared by Cheree Kimball, Lead Enforcement Analyst</i>
SUBJECT	Agenda Item #5 – Petition for Early Termination of Probation – Rebecca Savage – CLD1994/ SLD6065

The Board will consider the petition for early termination of probation for Rebecca Savage.

2450 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members

Date: October 25, 2019

From: Cheree Kimball
Enforcement Analyst

Telephone: (916) 575-7173

Subject: Agenda Item 5 – Petition for Early Termination of Probation

Petition for Reduction of Penalty or Early Termination of Probation

- **Rebecca Janine Savage, SLD 6065, CLD 1994**

Rebecca Janine Savage (Petitioner) was issued Spectacle Lens Dispenser Registration No. 6065 and Contact Lens Dispenser Registration No. 1994 on September 9, 2009. On July 18, 2017, the Board filed Accusation No. 800 2018 018224 against Petitioner charging her with violations of laws and regulations based on the conviction of a crime substantially related to the qualifications, functions, or duties of a Spectacle Lens Dispenser and Contact Lens Dispenser. Effective April 20, 2018, Petitioner's registrations were revoked, the revocations were stayed, and Petitioner's registrations were placed on three (3) years' probation, subject to certain terms and conditions.

The Petitioner is requesting the Board to grant her Petition for Reduction of Penalty or Early Termination of Probation.

Attached are the following documents submitted for the Board's consideration in the above referenced matter:

1. Petition for Reduction of Penalty and Early Termination of Probation
2. Stipulated Settlement and Disciplinary Order, Accusation



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Michael Santiago, DCA Legal Counsel (assigned to CSBO) <i>prepared by Cheree Kimball, Lead Enforcement Analyst</i>
SUBJECT	Agenda Item #6 – Full Board Closed Session

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer <i>Prepared by Jessica Swan, Administrative Analyst</i>
SUBJECT	Agenda Item #7 – Update, Discussion and Possible Action Regarding 2020 Calendar

Needed Action: Board discussion and motion to approve the proposed 2020 calendar for board and committee meetings schedule.

Summary: At the August 2 Board meeting, staff recommended that the Board move meeting days to Wednesdays instead of Fridays in order to reduce travel costs and maintain the number of staff attending deemed necessary by the Executive Officer. As mentioned in the memo regarding the calendar in the August meeting materials, the budget allotment for many boards only allows for 1 staff member per 10 board members to travel to board meetings.

During the August board meeting, members expressed the necessity of board staff attendance at board and committee meetings to facilitate the proceedings. Additionally, several board members expressed concern regarding the disruption that attending a board meeting mid-week would cause.

Staff discussed the budget concerns regarding the need for staff members to attend the board and committee meetings with the board president as well as staff from Board and Bureau Services. Based on these conversations, it was determined that holding in-person meetings throughout the state was beneficial for stakeholders. Additionally, the concerns of board members were taken in to account when recreating this attached calendar.

Attachment

1. Proposed 2020 Meeting Calendar

January 2020

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

February 2020

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

March 2020

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

April 2020

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

May 2020

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

June 2020

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

July 2020

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

August 2020

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

September 2020

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

October 2020

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

November 2020

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

December 2020

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



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Dr. Debra McIntyre, O.D., Board Secretary
SUBJECT	Agenda Item #8 – Discussion and Possible Action on Board Meeting Minutes for August 2, 2019

The meeting minutes from the Board's August 2, 2019 public meeting are presented for review and possible approval.

MEMBERS OF THE BOARD

Mark Morodomi, JD, President
Glenn Kawaguchi, OD, Vice President
Rachel Michelin, Secretary
Cyd Brandvein
Madhu Chawla, OD
Martha Garcia, CLD, SLD
Debra McIntyre, OD
Maria Salazar Sperber, JD
David Turetsky, OD
Lillian Wang, OD
Vacant, Public Member



DRAFT BOARD MEETING MINUTES

Friday, August 2, 2019
Time: 9:00 a.m. – 5:00 p.m.

Meeting Location:
UC Berkeley School of Optometry
Minor Hall, Room 491
380 Minor Lane
Berkeley, CA 94720-2020

Teleconference Location:
Western University of Health Sciences
Health Education Center, Classroom E
701 E. Second St.
Pomona, CA 91766

Members Present	Staff Present
Mark Morodomi, JD, President	Shara Murphy, Executive Officer
Glenn Kawaguchi, OD, Vice President	Cheree Kimball, Enforcement Coordinator
Cyd Brandvein	Jessica Swan, Board Liaison
Madhu Chawla, OD	Michael Santiago, Legal Counsel
Martha Garcia, CLD, SLD	
Debra McIntyre, OD	
David Turetsky, OD	
Lilian Wang, OD	
Members Absent	Guest List
Rachel Michelin	On File
Maria Salazar Sperber, JD	

Part One - link for the audio of discussions: <https://www.youtube.com/watch?v=-x4nF473a0M>

FULL BOARD OPEN SESSION

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

Audio of Discussion: 0:10 / 3:21:45

Board President Mark Morodomi called the meeting to order and took roll at 9:00 a.m. An 8-2 quorum was established. Dr. Chawla was present via teleconference from Pomona, CA. Ms. Michelin and Ms. Sperber were absent.

Mr. Morodomi opened the floor to Dr. Chawla for an explanation of her presence at Western University College of Health Sciences, teleconferencing for this meeting. Dr. Chawla explained that the Founding Dean of Western University of Health Sciences passed away last month. Dr. Kurtz was

a great professor, influencer, supporter and mentor within the Optometry profession. Dr. Kutz was the driving force behind Dr. Chawla's involvement with the Board. Dr. Chawla recruited Ms. Salazar-Sperber, and in turn Dr. Kutz was responsible for Ms. Sperber's involvement as well. Dr. Chawla requested to represent the Board in honor of his memory and influence in the current composition of the Board.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: 5:06 / 3:21:45

There were no public comments.

3. Discussion and Possible Action on Board Meeting Minutes for April 5, 2019

Audio of Discussion: 7:01 / 3:21:45

There were no changes to the minutes. There were no public comments.

Debra McIntyre moved to approve the April 5, 2019 Draft Meeting Minutes. Glenn Kawaguchi seconded. The Board voted unanimously (8-0-2) and the motion passed.

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

4. President's Report

Audio of Discussion: 10:17 / 3:21:45

Mr. Morodomi noted that 4 years ago the US Supreme Court struck down actions of the Dental Board (regulating practice in a state outside of California) because that board was protecting the interests of its licensees more than that of the consumer. This is far from the case for the California State Board of Optometry. This is the second time in a row that the Board has appointed a non-optometrist as Board President. The dedication of each member is displayed in their priorities which are always patient protection and access to health care.

There were no public comments.

5. Election of Board Secretary

Audio of Discussion: 16:41 / 3:21:45

Ms. Murphy announced that due to a tie for Board Secretary at the April 5, 2019 Board Meeting, an additional round of voting for Secretary is required. For consideration is the nomination of Dr. McIntyre. Her public statement was provided in the Board materials.

There were no public comments.

Mark Morodomi moved to nominate Debra McIntyre as Board Secretary. Cyd Brandvein seconded. The Board voted unanimously (8-0-2) and the motion passed.

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

6. Executive Officer's Report

Audio of Discussion: 18:55 / 3:21:45

A. Enforcement Program

Ms. Murphy explained that enforcement program reports were provided in the Board meeting materials.

B. Examination and Licensing Programs

Ms. Murphy reported that the exam processing time has been reduced by nine days. In FY 18-19 staff was able to process 84 more licenses than in FY 17-18. 198 applications have been processed so far and approximately 160 are remaining.

C. Legislative and Regulatory Update

Ms. Murphy reported that the Board's sponsored bill AB 458 is moving through the Legislature and has received no opposition.

D. Report on June 2019 Association of Regulatory Boards of Optometry Meeting

Ms. Murphy reported on her attendance at the Association of Regulatory Boards in Optometry (ARBO) in St. Louis this past June. She stated it was an excellent opportunity to meet with other boards from all over the nation. There where round table discussion regarding telemedicine, registration of assistants, and a wide variety of other topics. She also announced that the Board of Optometry's budget has been approved for two spots for next year's conference.

There were no questions from Board members concerning the Executive Officer's Report. There were no public comments.

9. (Taken out of order) Discussion and Possible Action on Updates provided by DCA Representatives regarding the Department's Divisions and Programs, including Legislative, Regulatory and Policy updates

Audio of Discussion: 26:24 / 3:21:45

A. DCA Assistant Deputy Director of Board and Bureau Services Patrick Le

Mr. Le provided an update for the Board. He announced that DCA's former Director, Dean Graffilo, left the Department earlier this year. The Governor's office continues to work towards identifying a successor. DCA's Executive Office is preparing to ensure a smooth transition as soon as the new appointment is made. Mr. Le reported that on June 3rd, Chief Deputy Director, Chris Shultz hosted the DCA's quarterly Director Meeting. Mr. Shultz communicated his commitment to performing both roles during this interim period. He encouraged Executive Officers and Board Members to send ideas regarding cross-cutting projects that can be worked on collaboratively and suggestions on which the new leadership and administration can focus.

Mr. Le provided an update on the Executive Officer's Salary Study. study aimed to provide an in-depth analysis of programmatic and operational complexities of DCA boards and bureaus; specifically looking at how the role of Executive Officers has evolved over the years. The study also provided a benchmark salary comparison from other states. The DCA Executive Office hosted a meeting to discuss the findings of the study on July 12, 2019. DCA will be reaching out to its boards to engage in one-on-one meetings with the Executive Officers and Board Presidents to discuss program specific findings. Mr. Le also announced the launch of the DCA Open Data Portal. It is a publicly accessible one-stop-shop, for all licensing and enforcement data, in a larger effort of DCA to make data more transparent and available to the public.

B. Current Occupational Analysis for Contact Lens Dispensers – Dr. Heidi Lincer, Chief, Office of Professional Examination Services

Dr. Lincer's presentation included PowerPoint slides that were provided in the Board materials for the meeting. There were no Board member comments made. There was no public comment.

7. Discussion and Presentation on the Practice of Optometry Via Telemedicine

Audio of Discussion: 31:19 / 3:21:45

Dr. Melissa Bailey, O.D, PhD

Dr. Melissa Bailey presented on telehealth/telemedicine. She shared her motive for getting involved in telemedicine, which is to improve optometric ability in obtaining refractive measurements. She explained that vision does not begin in the eye and vision begins in the Occipital Cortex in the back of the brain. One of the problems is that optometrists are regularly modifying their patients' eyeglass prescriptions to account for what is happening in the back of the brain (what their preferences are, how their brain has developed over time to adapt to effects of magnification etc.). Many optometrists agree an objective auto-refraction can be obtained without a patient's input. In auto-refraction, it is important that measurements are taken while the patient is looking very far away, which is challenging to do without a doctor in the room. She noted that a self-refraction application on a phone is useful to patients in developing countries where eye care is not available. Other examples of

beneficial usage for self-refraction applications are in cases of non-communicative patients, such as those with autism, infants, or those with a language barrier. Dr. Bailey provided a history of auto-refractors (the development and usage).

Dr. Jorge Cuadros, O.D., PhD

Dr. Jorge Cuadros provided his presentation on telehealth/telemedicine. He stated that since telehealth will obviously remain an evolving part of the optometry profession in the future, it is good to know that the other regulatory boards across the country are cognizant of this fact.

Dr. Wang asked what the main cause of blindness was among working-age adults. Dr. Cuadros replied that is diabetic retinopathy which is a complication of uncontrolled diabetes. The reason people are becoming blind is that they are not seeking eye exams on time. This is where telemedicine has taken off. A picture is taken; the image is transmitted via the internet; professionals (optometrists and ophthalmologists) are reading these images and providing a consult back to the primary care provider who can then triage the patient in a timely manner. He reported that over 5 million images have been collected from patients throughout the country and other countries. Telemedicine has been incorporated into the curriculum at UC Berkeley.

Dr. Kawaguchi noted that the core responsibility as a regulatory body is the protection and interests of our consumers. He asked Dr. Cuadros if he has any suggestions regarding how the Board of Optometry, as a regulatory body, can stay abreast to ensure we can balance being reactive yet also pro-active for the benefit of the consumer. Dr. Cuadros responded by noting many of the new telemedicine/ artificial intelligence companies create a board of advisors, and suggested the Board broaden its input to include medical primary care and understanding all facets of the issue. Dr. Kawaguchi believes the Board needs to improve its knowledge base in order to react as quickly as possible. He also commented that some of the current laws that define optometry may require another look to ensure they are more encompassing.

Ms. Garcia inquired about the populations that have already been using telemedicine; has it been widely studied? Dr. Cuadros replied that many satisfaction surveys have been completed, and satisfaction, in general, has been very positive and opticians may be involved in this in the area of data collection.

Ms. Murphy reported that more models are being seen where optometrists remotely interact and use remote-controlled refractors. The refractors are positioned and initially set by technicians, opticians, and assistants. The remote control is used by the licensed professional and the initial prescription is reviewed by another licensed professional. Is there an opportunity for the underserved populations to gain access they previously could not acquire? At some point are we reducing the standard of care and opportunity for optometry professionals to perform the types of accommodations mentioned in Dr. Bailey's presentation? Dr. Bailey responded that she believes these new "other" models need to prove that they are effective models of care. She believes we need to watch and remain open-minded yet also remain cautious and continue monitoring what is being done.

Dr. Cuadros responded to Dr. Bailey's comment stating that a distinction needs to be made between the "perceived" standard of care versus what is occurring in many communities. Live (face-to-face) eye care does not have oversight, and according to the reports coming back from the local health care providers, they are not doing a very good job; and they are the standard of care. Telehealth helps in that there is the ability for oversight; data that can be reviewed post-appointment.

Ms. Brandvein asked what the definition of telemedicine is; a definition/explanation that can be clearly articulated to the patient. She suggested taking this issue back to a committee or working group to

further define it, so the Board knows what it is providing oversight for, on behalf of the public. Ms. Murphy explained that this is one of the reasons staff has brought this before the Board today; to develop some tools and guidelines for defining telehealth and developing standards of care.

Dr. Turetsky noted that in California, for many years now, optometrists have been trying to legislate some type of incentive for children to receive vision care before starting and while attending school. He asked Drs. Bailey and Cuadros if they are aware of any inexpensive and readily available methods of performing mass vision exams whereby a good measure can be obtained of children's refractive and eye health status. Currently, with the methods of eye screenings performed in schools, 40% of children are being missed, having some sort of eye condition. Dr. Bailey responded that her interest is mainly in developing better tools and in other people deciding how to best utilize those tools. She shared that one of the main reasons for her interest in developing better tools is because she embarked on a five-year study in an affluent suburb of an Ohio area and monitored children and whether they became nearsighted. She performed vision screenings for school nurses. She saw several children in an affluent community with vision problems that had been missed. Dr. Bailey believes we need a solution to this problem. She noted that school nurses are not equipped with the training and expertise to detect all vision problems in such volume. Dr. Cuadros added that the question is not about the technology; rather it is about the liability. The liability is closely tied to the cost-effectiveness. The determination of cost-effectiveness lies in the question, is it good enough? Dr. Cuadros stated it is the Board's role to define that.

Dr. Chawla noted Dr. Bailey's dedication to quality tools and technology. She has personally provided vision care to children in underserved areas and noted: "it is challenging." Dr. Chawla explained they had to use older refractive tools in some underserved areas which made it especially challenging, and quality does matter. She agreed that the Board needs to have these discussions.

Dr. McIntyre acknowledged that the applications are not addressing the medical aspect; the health and refractive aspects are not fully integrated. She noted that optometrists have a dual role, and a specific set of standards needs to be established. Dr. Bailey responded that a huge aspect of what any healthcare professional does is in the psychological aspect of care. This is a huge part of patient care. Patients want to know they are being heard and reassured they are going to be okay. Dr. Bailey stated there is not enough literature on telehealth yet to determine whether doctors who are not physically present can derive the same amount of cooperation from their patients. She believes the psychological aspect is just as important as the measurements obtained.

Public Comment: Dr. Arthur Row addressed the use of the auto-refractor, wondering if optometrists provide a pair of glasses or prescription to an individual based on information from an auto-refractor? Dr. Chawla commented that technology is a great tool for optometrist; however, the auto-refractor is a data collector and not the end-user in terms of providing the prescription. She stressed it is a crucial point that oversight from a doctor should always be included. Kristine Shultz representing the California Optometric Association (COA) commented that she would love to participate in the workgroup. Additionally, she believes it is critically important for the Board to hold online exams to the same standard of care as of brick and mortar produced exams.

Lillian Wang moved to establish a workgroup. Debra McIntyre seconded. The Board voted unanimously (8-0-2) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Ms. Brandvein	X				
Dr. Chawla	X				
Ms. Garcia	X				

Dr. Kawaguchi	X				
Dr. McIntyre	X				
Ms. Michelin				X	
Mr. Morodomi	X				
Ms. Sperber				X	
Dr. Turetsky	X				
Dr. Wang	X				

Drs. McIntyre and Chawla volunteered for the workgroup.

8. Update, Discussion and Possible Action Regarding 2020 Legislation

Audio of Discussion: 1:52:38 / 3:21:45

A. Optometrists Employing Opticians

Ms. Murphy reported that Business and Professions Code Section 2559 allows a spectacle lens dispenser (SLD) and a contact lens dispenser (CLD) to work for a Registered Dispensing Optician (RDO); however, it does not specify employment under that license by any other entity. What staff is hearing is that there is a greater reliance for optometrists to want opticians to perform those services within their practices. Staff is unsure whether the law currently allows opticians to work under their licenses when working with an optometrist.

Ms. Garcia commented that all opticians are performing the same job responsibilities. Some of the opticians are demonstrating accountability in becoming licensed and registered in California; however, many of them working under a doctor's license are not. She noted that an optician who has received discipline in another state could easily just obtain a job under a doctor and therefore, never be discovered as having had discipline.

Dr. Kawaguchi commented that he has not interpreted anything in the law that precludes or limits opticians from working under a doctor's license. He is concerned that by attempting to clarify, we may end up complicating matters further. He fears that if we attempt to over-regulate this, we may end up precluding an SLD or CLD from working in this industry.

A discussion commenced on unlicensed personnel working in optometry offices. Dr. Turetsky noted that this issue related to unlicensed personnel is well addressed in B&P Code 2544, which describes what duties an assistant working under the license of a doctor can perform. Ms. Wang clarified that Ms. Garcia is more concerned about background history. Dr. Turetsky replied that everyone hiring anyone should always perform a background criminal history check.

Dr. Turetsky asked if the Board may interpret the statute on its own. Mr. Santiago responded that in reviewing B&P Code 2559, he does not believe any ambiguity exists because it clearly states what duties the license allows and where the duties may be performed.

There was no motion made for this item.

B. Practice Act to Combine Both Programs

Audio of Discussion: 2:22:01 / 3:21:45

Ms. Murphy provided the Board with a recommendation for this item. Ms. Murphy explained that staff is currently engaged in a very detailed review of the statutes of regulations around the RDO licenses. She asked that Board not pursue combining both programs until staff has determined what the Dispensing Optician Committee (DOC) recommends in the way of changes.

Public Comment: Kristine Shultz asked the Board a question related to the previous topic. She asked Enforcement how many enforcement actions are there. Is it a high number or a handful? Ms. Murphy explained that staff is seeing more questions from licensees (Spectacle Lens Dispensers) who desire to accept employment under optometrists, trying to update their employment in the BreEZe system and not finding a path to update their employment record.

There was no motion made for this item.

C. Other Possible Legislation

Dr. Wang commented that the issue of foreign graduates wanting to practice in the United States has been a long-standing issue. She explained there is no way the Board can audit or verify their course work to determine how qualified they are to practice in the United States. To accommodate foreign-trained optometrists and medical doctors, a pathway has been created. There are three colleges, on the East coast, that offer an accelerated two-year program, so foreign graduates can obtain certification to practice in the United States, and the Board can ensure quality of education and consumer protection. Dr. Wang stated that it would be great for an accelerated program to become available west of the Mississippi and perhaps even one in California.

Additionally, Dr. Wang commented that foreign-trained optometrists are currently employed at schools of optometry and noted business and professions code section 3042 allows for a special license to be granted for a specific period of time. Ms. Murphy noted that if a school wants to hire a foreign-trained optometrist, their education and qualifications have already been thoroughly vetted, and chances are the optometrist is very well qualified. Her concern is that the language *“for a specific period of time”* is very vague. She questioned whether the Board should make it more specific and if the Board should require they take the California Law Exam?

Mr. Morodomi asked about how such changes could be implemented. Ms. Murphy assured the Board that their questions and concerns about licensure implementation, continuing education requirements, better clarification of the opportunity for foreign-trained optometrists to teach in the clinics of the academic institutions where they are employed would be addressed via legislation. The issue will be researched by staff and brought to the Legislation and Regulation Committee for review and potential for recommendation to the full Board for legislation.

Public Comment: Dean of UC Berkeley School of Optometry, Dr. John Flanagan, who is himself a foreign-trained optometrist from Ontario, commented that he considers it to be a difficult barrier that he is not able to practice and/or teach under his own authority. He requests that a mechanism for a special type of permit be implemented whereby an expert with an appropriate license from another country can work as a clinician within the school setting.

10. Update, Discussion and Possible Action on Potential Occupational Analysis for Optometric Assistants

Audio of Discussion: 2:35:21 / 3:21:45

Dr. Lincer provided the results of the Board's Contact Lens Occupational Analysis. The objective of the analysis is to make certain the Board licenses competent, qualified individuals; protects the public, and does not keep individuals out of the profession.

Dr. McIntyre asked if, during the analysis, there was any discussion regarding unlicensed practitioners. Dr. Lincer responded that there was concern about the fact that the public does not know the difference between the licensed and unlicensed practitioner, and that licensees are confused about their scope of practice and what they can and cannot do.

Dr. Morodomi asked about the background of the occupational analysis panel. Dr. Lincer provided a description of the background of the experts who developed the analysis and also explained that OPES discussed the amount of education is needed for these professionals. It is ultimately up to the Board to review the knowledge base and the tasks that licensees are performing. Members and Ms. Murphy discussed the next steps needed and whether CLDs should be tested to the full breadth of the scope of practice.

Lillian Wang moved to allow staff to submit an application for a budget change proposal that would allow an occupational analysis to determine how the pieces can come together, how services are delivered in the optometric setting and understand who assists and what happens there. Martha Garcia seconded. The Board voted unanimously (8-0-2) and the motion passed.

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

FULL BOARD CLOSED SESSION

12. Pursuant to Government Code Section [11126\(c\)\(3\)](#), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters

The Board went into closed session.

FULL BOARD OPEN SESSION

The Board resumed Open Session.

Part Two - link for the audio of discussions: <https://www.youtube.com/watch?v=Ay7AOayGt-0>

12. (Taken out of order) Update, Discussion and Possible Action Regarding Board Committee Reports

A. Dispensing Optician Committee

Ms. Murphy reported the DOC would be reviewing the statutes and laws at future committee meetings and would report back to the Board.

B. Legislation and Regulation Committee

Ms. Murphy noted the items from the LRC would be part of the next agenda item.

C. Practice and Education Committee

Dr. Chawla briefly reported on the immunization courses currently being offered by Marshall B Ketchum university. Dr. Wang added that their courses are being taught by the pharmacy school rather than their own college professors. Many of their courses were non-TPA information being blanketed overall.

There were no public comments.

13. Update, Discussion and Possible Action on 2019 Legislation Impacting the Practice of Optometry

Audio of Discussion: 3:21 / 1:20:43

A. Assembly Bill 458 (Nazarian): Optometrists: home residence permit

Ms. Murphy provided a history and update on AB 458. She felt the discussions from the LRC committee were very useful, and staff was able to gain a better understanding of the Board's intent of the bill. She reported the Board was able to enact amendments according to the Committee's requests. This bill is currently on the Senate floor having discussions with the Governor's Office. Senator Glazer has agreed to sponsor the bill on the Senate side. Although the Board is an official sponsor, we have not taken an official, support position. Ms. Murphy explained that staff would like to send a letter to the Governor that clearly states we not only sponsor the bill but also support the way in which the language has been drafted.

Lillian Wong made a motion to take a support position. Glenn Kawaguchi seconded. The Board voted unanimously (8-0-2) and the motion passed.

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

Cyd Brandvein moved for Mark Morodomi to work with the Chair of the Public Relations and Outreach Committee on public relations that will help support the bill. Lillian Wang seconded. The Board voted unanimously (8-0-2) and the motion passed.

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

There were no public comments.

B. Senate Bill 53 (Wilk): Open meetings

Audio of Discussion: 9:44 / 1:20:43

Ms. Murphy reported that SB 53 has run through the Legislature several times. However, this is the first time the bill is coming through with a new Governor on the end. Many of the boards, Board of Optometry staff, and DCA fear that this sort of strict open meeting law that corresponds more with the Brown Act than with the Bagley Keene, would make it very difficult for the Board to do the type of review discussed on this letter, or to conduct workgroups on issues such as telehealth. The meetings would need to be agendized and noticed 10 days in advance. Ms. Murphy emphasized staff fears SB 53 will stymie their ability to perform groundwork and then have productive conversations during publicly noticed meetings.

Mr. Morodomi stated he fears this proposal will hurt consumers. He stated, for example, that as a non-optometrist, public member this bill would prevent him from reaching out to a professional, optometrist member to make intelligent decisions at a public meeting.

Cyd Brandvein moved to take a position of opposition to SB 53. Debra McIntyre seconded. The Board voted unanimously (8-0-2) and the motion passed.

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

There were no public comments.

C. Assembly Bill 1714 (Rubio): Extended Optometric Clinical Facilities

Audio of Discussion: 15:33 / 1:20:43

Ms. Murphy reported that Vision to Learn has been negotiating with the California Optometric Association (COA) and having conversations with the Legislature about an avenue for non-profit and public benefit organizations to perform mobile practice without the current requirements, such as having an agreement with an optometric academic institution.

Mr. Morodomi questioned how the new Legislative counsel language packet substantively differs from the former packet; Ms. Murphy responded the new packet includes the urgency clause. Additionally, it looks for regulations promulgated by 2021. Dr. Wang asked how this bill will affect mobile clinics (as a whole) in the future? Ms. Murphy explained that staff has been informed by Vision to Learn and the COA that the intention is for this to be very narrowly crafted. Ms. Brandvein commented that if for-profit vendors come in stipulating that they are providing services to children just to use as the avenue for getting in, the Board would then have set precedent. Ms. Murphy responded that they are not allowed to accept payment for services except for Medi-Cal payments.

Dr. Turetsky views this as a good first step, and that it should be expanded to a much larger audience than just school kids. Dr. Kawaguchi stated that Vision to Learn (VTL) has been on a similar journey as the Board and the workgroup for children's vision around improving accessibility for those children that are not getting eye care services. He believes we need to take steps forward if not a leap forward. He is very interested to see how this may change and to hear more from a representative from Vision to Learn.

Public Comment: Damian Carroll, National Director of Vision to Learn, clarified a few provisions of the bill as follows:

- The bill is not limited to serving only children.
- It is a charitable enterprise providing services regardless of the ability to pay.
- VTL desires to work with the Board and the COA to narrowly open the door to mobile clinics without "opening the barn door" to other uses.
- The Center for Medicaid and Medicare Services law, which was enforced for years and made it a requirement for a charitable enterprise offering free services to offer free services to everyone (including those with insurance) has changed recently.

Dr. Turetsky asked about implementing regulations; Ms. Murphy clarified that the current language allows the Board to set regulations that would stipulate what follow up care would be involved, but the statute does not speak to this directly. Mr. Morodomi is comfortable with this bill because it gives the Board the power to promulgate regulations to ensure the standard of care is maintained.

Ms. Garcia asked Mr. Carroll to clarify VTL's follow-up care. Mr. Carroll explained that VTL's vision exams are geared towards finding kids who need glasses, performing screenings for eye health, performing full refractions and then prescribing glasses as needed. A referral is provided to approximately 10% of the students VTL sees when they need any type of follow-up care. Recently VTL has entered into an affiliation with Western University College of Optometry. This is a pilot program for students in Pomona whereby through data sharing, VTL can provide more information

directly about the student and their reason for referral. Western can then more effectively reach out to the parents and encourage them to bring their children in for the eye exam.

Dr. Turetsky asked if VTL has reached out to Vision Service Plan (VSP) to determine if VSP will pay for these services; Mr. Carroll said they had. The response was that the existing regulation regarding mobile optometry being limited to programs associated with a school teaching program meant that, in their view, they are not allowed to reimburse for the services. Ms. Murphy commented on the requirement that the Board adopts regulations by January 1, 2021. She stated that there is concern that there will not be enough time for the Board to fully vet this have a regulation packet by January 1, 2021. She foresees that the Board will probably need to undertake a great deal of discussion and that some committee work will need to occur before staff is ready to put together a full regulatory package for consideration by the Office of Administrative Law (OAL).

Mr. Morodomi asked about the regulatory timeline. Ms. Murphy responded that it is possible for staff to have a regulatory package ready to be approved by the end of 2020, but OAL's timeline for reviewing and approving a package is approximately two and a half years. Mr. Santiago clarified that the package will not sit in OAL for two and a half years, because once a regulatory package is submitted, OAL has 30 days to review it. The time lag is within DCA and the agency process. He stated that even if the Board was able to fully vet and submit a regulatory package by the end of this year, one year is still not enough time to have it approved at the OAL.

Mr. Carroll replied by saying VTL is happy to amend the date for regulatory efforts, with the understanding that VTL would want to seek some interim language in the bill that would allow VTL to continue operating while the bill is going through the regulatory process. Ms. Murphy has concerns about how the Board would fulfill its enforcement obligation without a clear regulatory framework with timelines. She is concerned that much more Board discussions need to occur in order to develop a program that would fully oversee this type of operation.

Board Members and Ms. Murphy discussed various timelines for completion and holding an urgent Legislation and Regulation Committee meeting. Ms. Murphy noted that this bill will likely be heard by the Policy Committee in the next week to week and a half.

Public Comment: Kristine Shultz commented that taking an opposing stance to the bill for the sake of gaining more time might make the Legislature think there is something wrong with the bill, and that the Board is opposed to the policy. She strongly recommends taking a watch position or no position.

Ms. Murphy explained that if the Board takes a support position and instructs the timeline for the formation of the regulation package, it will impact the work the Board has already authorized. This work is listed in the regulatory update of the Board meeting materials. Mr. Santiago argued that even if the Board dropped everything else and pushed this to the forefront, the January 1, 2021 deadline is unrealistic. He does not believe this is something the Board can accomplish while dealing with deadlines outside of the Board's control. Mr. Carroll made a recommendation to the Board. He stated that VTL would very much be open to a motion to support if the date is amended and work with the Executive Officer on appropriate language for the transition period that allows VTL to continue to operate as it has been until regulations are in place.

No motion was made on this item.

14. Update, Discussion and Possible Action Regarding 2020 Calendar Review

Audio of Discussion: 1:02:10 / 1:20:43

Board Members and Ms. Murphy discussed the Board's travel budget and how meetings can or cannot remain within budget. Ms. Murphy announced that she is currently working with the budget analyst to identify funds in other places that could potentially be moved around to supplement the travel budget. Members and staff discussed possible meeting dates for 2020.

No motion was made on this agenda item. There were no public comments.

14. Future Agenda Items

Audio of Discussion: 1:18:07 / 1:20:43

Mr. Morodomi requested that a link be placed on the Board's website that directs the user to the Federal Trade Commission's video regarding cosmetic contact lenses. There were no public comments.

15. Adjournment

The meeting was adjourned at 3:50 pm.

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #9 – Update, Discussion and Possible Action of Implementing Regulations For Assembly Bill 443 (Salas, Chapter 549, Statutes of 2017)

Summary/History:

Signed into law in 2017 and effective January 1, 2018, AB 443 (Salas) allows a licensed optometrist to perform immunizations after certain conditions have been met. The Board approved the regulatory text and a required form at the April 5, 2019 meeting and directed staff to begin the rulemaking process to implement AB 443. Staff work has been completed and the rulemaking was submitted to DCA; however, DCA Legal has suggested changes which require Board approval. Once approved, the rulemaking process will continue with the changes made.

Action Requested:

Discuss and potentially approve recommended changes to the text of California Code of Regulations §1572, and discuss and potentially approve recommended changes to the application form.

Suggested motion:

“I move to approve both the form with the edits discussed here today as well as approve the proposed edits to Section 1572 Title 16 of the California Code of Regulations as discussed here today; and direct staff to re-submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review and if no adverse comments are received authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the matter for hearing.”

Changes to the text of Title 16, CCR §1572 (Attachment A):

DCA Legal has recommended the following changes to the previously approved text. Further, staff recommends Board discussion on the italicized items:

1. Subsection (a): Added BPC §3041.3 citation, to better tie into who a licensed optometrist is under the law.
2. Subsection (a): Changed the word “certification” to “certificate” for clarity since the Board is not certifying the immunization training itself.

3. Subsection (a): *Should the following information be removed from the required form, as the optometry license number already ties in the address:*

- Primary address of record
- Telephone number

4. Subsection (a): *Should the form require the TPA certification number to be listed?*

5. Subsection (b): Number three – changed to “documents proving” in order to match statute wording.

6. Subsection (c): Similar to subsection (a), changed the word “certification” to “certificate” for clarity since the Board is not certifying the immunization training itself.

Changes to the Application for Optometrists to Administer Immunization Shots (Attachment B):

Where appropriate, the word “immunization” was added to “certificate” to mirror the text from §1572(a).

Attachments:

1. Revised text of Title 16, CCR §1572
2. Revised Application for Optometrists to Administer Immunization Shots

Implementation of AB 443

Legal Counsel changes are highlighted in yellow.

Add Section 1572 of Division 15 of Title 16 of the California Code of Regulations to read as follows:

16 CCR § 1572. Immunization Certificate Applications

(a) A licensed optometrist, certified pursuant to Section 3041.3 of the Business and Professions Code, seeking to be certified to administer immunizations as defined in section 3041, subdivision (g)(2) of the Code, shall complete and submit to the Board an application for an immunization certificate. The application shall include the following information:

1. First, Middle and Last Name;

2. Primary address of record;

3. Telephone number;

4. Email address;

5. License number; and

6. A declaration by the applicant that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board, under the penalty of perjury.

(b) The application shall be accompanied by the following:

1. The application fee fixed by the Board pursuant to Section 1524 in this Article;

2. A certificate or other document proving completion of an immunization training program endorsed by the federal Centers for Disease Control and Prevention or the Accreditation Council for Pharmacy Education. Proof of completion that meets these requirements and shows completion after September 10, 2018 are acceptable; and

3. Certificate or other documents proving showing certification in basic life support.

(c) In order to be eligible for and maintain an immunization certificate, an optometrist must meet and maintain all requirements set forth in Section 3041, subdivision (g) of the Code.

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

Reference: Section 3041, Business and Professions Code.

Amend Section 1524 of Division 15 of Title 16 of the California Code of Regulations to read as follows:

16 CCR § 1524. Fees

(a) Application fee for certificate of registration as an optometrist by examination \$275

(b) Biennial renewal of a certificate of registration as an optometrist \$425

Commented [JM1]: 1. Change made to better tie in to BPC which defines a licensed optometrist

Commented [JM2]: 2. Changed to "certificate" for clarity, since we are not certifying the immunization training itself.

Commented [JM3]: 3. For board discussion: should we eliminate these requirements? It would streamline the reg process with less to justify, and license number ties to address. If so, would change numbering below the deletion.

Commented [JM4]: 4. For Board discussion: add in TPA certification #, since the statute requires TPA certification?

Commented [JM5]: 5. Changed to "documents proving" to mirror statute wording

Commented [JM6]: 6. Change to 'certificate' as listed above

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

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



Application for Optometrists to Administer Immunization Shots¹

Fee: \$50

Cashiering and Board Use Only			
Receipt #	Payor ID #	Beneficiary ID #	Amount

Per California Business and Professions Code §3041(g), you must have a current California Optometrist License and have a Therapeutic Pharmaceutical Agents (TPA) license type to be eligible. If eligible, you must also meet and maintain the following requirements for an immunization certificate:

- 1. Complete an immunization training program endorsed by the federal Centers for Disease Control and Prevention (CDC) or the Accreditation Council for Pharmacy Education that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and maintain that training.*
- 2. Be certified in basic life support.*
- 3. Comply with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the immunization branch of the California State Department of Public Health.*
- 4. Apply for an immunization certificate on a board-approved form.*

To apply for an immunization certificate, submit this completed form, and provide documentation for items #1 and #2 above with your application. All documentation must be provided, or the application will be rejected.

Name: _____

Address of Record: _____

Phone #: _____

Email: _____

License #: _____

I declare under penalty of perjury under the laws of the State of California that the information provided on this form and the attached documents or other requested proof of completion is true and accurate. I understand and agree that any misstatements of material facts may be cause for denial of the Application for Optometrists to Administer Shots and disciplinary action by the California State Board of Optometry.

Optometrist Signature: _____

Date: _____

¹ Per California Business and Professions Code §3041(g), "immunization" means the administration of immunizations for influenza, herpes zoster virus, and pneumococcus in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the CDC for persons 18 years of age or older.

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Cheree Kimball, Acting Assistant Executive Officer
SUBJECT	Agenda Item #10 – Update, Discussion and Possible Action on Changes to California Code of Regulations §1575 and Optometry Disciplinary Guidelines Incorporated by Reference

Summary of Requested Action: Staff requests that the Board motion to accept the draft Disciplinary Guidelines and vote to move forward with a rulemaking package.

Disciplinary Guidelines Amendments

As previously reported, the Consumer Protection Committee (CPC) was tasked with implementing the Board's Strategic Plan Objective 4.8:

Analyze the [2012 Disciplinary Guidelines](#) for optometrists and revise where necessary, to promote consistency and fairness with enforcement decisions and enhance consumer protection.

The CPC selected two members (Mark Morodomi and Dr. Debra McIntyre) to assist in reviewing the current guidelines and develop recommendations for CPC consideration. The CPC discussed the recommendations on March 23, 2018 and proposed further amendments focusing on the following areas:

1. Suspension: Under the "Recommended Discipline Based on Violation" [p. 38 of DRAFT guidelines], whenever Suspension is ordered under "Required" or "If Warranted," current language requires a 30-day minimum suspension period. Draft changes delete the 30-day minimum requirement to allow more discretion for the Board to order shorter suspension periods. The CPC requests the Board further discuss the minimum suspension period to determine if there are some violations that should still require a 30-day minimum suspension. Specifically, in cases involving excessive prescribing [p. 38], gross negligence [p. 39], fraud [p. 41], unlawful solicitation [p. 44], unlawful referrals [p. 45], employing cappers or steerers [p. 45], and fraudulently altering medical records [p. 46].
2. Failing Continuing Education Audits: To renew an optometrist license, licensees self-certify they met the continuing education requirements. Those licensees are then subject to random Board audits to ensure compliance. In disciplinary cases involving failing to complete continuing education requirements, the Board typically charges the violations of BPC § 3106, 3110(a), 3110 (e). According to

the current disciplinary guidelines, the required terms would be the following [p. 41 (“Fraud, Misrepresentation or Dishonesty”) or 47 (“False Representation of Fact”)]:

- 1-16.1 Standard Conditions
- 24. Remedial Education
- 32. Audit Required
- 39. Medical Record Keeping Course

However, the CPC requested the Board consider a separate section for those who fail CE audits that rise to the level of discipline, and have more applicable required conditions, as drafted by staff:

CE Audit Failure (B& P Code 3110(1))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 1-3 years probation, actual suspension until CE Compliance verified

Required:

- 1-16 Standard Terms
- 25. Suspension
- 38. Continuing Education

3. Worksite Monitor for Failing to Refer: Current language lists “Worksite Monitor” under the “If Warranted” section for those on probation for failing to properly refer patients [p. 40]. Draft changes move “Worksite Monitor” to required. It is feared, this condition can prove cumbersome to probationers, but staff calls attention to the nature of the “Worksite Monitor” within our Disciplinary Guidelines for Optometry. The “Worksite Monitor” must review the patient records of the probationer, but is not required to practice in concert with the probationer. (Also see CPC Updates, September 13, 2019 on page 4 of this document.)
The CPC requests the Board further discuss if this condition should be required in every case involving failing to refer violations or whether it should remain under “If warranted”.
4. Part III Clinical Skills for Violation of Health and Safety Standards: Recommended changes require every probationer pass the clinic skills portion of the national exam. **However, the Board may want to determine if, based on the Clinical Exam Skills [Candidate Guide](#), this requirement should be required in every case to adequately address the violation.**

The Board also enlisted review by DCA-assigned Legal Counsel, Michael Santiago and the Board’s Deputy Attorney General Liaison, Matthew A. King. The following is a summary of the other amendments to the guidelines:

- Technical/Non-substantive Changes
 - Technical/non-substantive changes were made throughout the document to promote clarity and consistency.

- Employment Limitations
 - The current language prohibits the probationer's ability to work in any health care setting as a supervisor of optometrists and allows discretion for the Board to additionally restrict supervising technicians and/or unlicensed assistive personnel.
 - The recommended change allows probationers to supervise optometrists on a case by case basis.
- Discontinuing Treatment
 - Current language requires probationers to continue treatment until further notice from the Board.
 - Recommended language clarifies treatment can be discontinued after Board notification and upon the recommendation of the treating psychiatrist, psychologist, or other health practitioner.
- Billing Auditor Report
 - Current report language was copied from the worksite monitor report for those monitoring probationers due to substance abuse.
 - Recommended language removes the requirement for a worksite monitor to report changes in behavior and/or personal habits and the assessment of the Respondent's ability to practice safely. A billing auditor (a certified public accountant) reviewing financial records should not be responsible for this assessment.
- Prescription Records
 - Current language applies only to lens prescriptions.
 - Recommended language makes the language applicable to both lens and medication prescriptions.
- Recommended Discipline Based on Violation
 - Current language includes required probation terms that may not relate to the violation. For example, a licensee who was placed on probation for excessively prescribing hydrocodone is currently required to take a Medical Record Keeping course. A Board approved course (e.g., [PACE](#)) is typically two days and costs roughly \$1,300. However, the licensee may not have had any issues with record keeping.
 - Recommended language updates "Required" and "If Warranted" conditions to better fit the violation(s).

The updated Disciplinary Guidelines were scheduled to be presented to the full Board at its August 3, 2018 quarterly meeting. After discussion, it was decided to suspend review of the guidelines pending the update to the Uniform Standards for Substance Abusing Licensees by the Department of Consumer Affairs. Those changes were made to the guidelines, which were then presented at the September 13, 2019 CPC meeting.

CPC Updates, September 13, 2019

The CPC reviewed the updated Disciplinary Guidelines at its September 13, 2019 meeting and made edits that have been included in the draft in **pink** highlight. The following requested changes were not made:

Removal from Practice Pending Clinical Diagnostic Evaluation

This term is part of the Uniform Standards for Substance-Abusing Licensees and includes the mandate that “no licensee shall return to practice until they have at least 20 days of negative drug tests.” During the CPC meeting, there was discussion that the language was ambiguous and could be subject to interpretation. A language change was proposed and approved. However, further staff research revealed that the specific language being used is directly quoted from the Uniform Standards for Substance-Abusing Licensees and, as such, cannot be changed.

Worksite vs Practice Monitor

An earlier version of the updated Disciplinary Guidelines included a change from “Worksite Monitor” to “Practice Monitor”. Staff research revealed that the term “worksite monitor” comes directly from the Uniform Standards for Substance-Abusing Licensees and, as such, cannot be changed.

Pronoun Usage

The California State Assembly last year enacted [ACR 260](#), directing the Legislature and state agencies to engage in a coordinated effort to avoid the use of gendered pronouns in new legislation, existing statutes, policies, regulations, and other guidance. The direction of ACR 260 to use gender neutral pronouns is sufficiently clear and applies to Disciplinary Orders issued by a state agency.

Attachments

1. Proposed Amendment to Section 1575 of Article 12 of Division 15 of Title 16 of the California Code of Regulations
2. Draft Disciplinary Guidelines

Amend Section 1575 of Article 12 of Division 15 of Title 16 of the California Code of Regulations as follows:

§1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall comply with the "Uniform Standards Related to Substance Abuse" (Uniform Standards) and consider the "Disciplinary Guidelines" (~~DG-4, 5-2012~~) (Rev 09-2019) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; Uniform Standards shall apply to a substance-abusing licensee.

- (a) Subject to subdivision (b), deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for substance-abusing licensees shall apply.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 3090, 3091 and 3110, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.



UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

&

**OPTOMETRY PROGRAM
DISCIPLINARY GUIDELINES**

(DG 4, 05-2012)
(Rev 10-2019)

"Protection of the Public Shall be the Highest Priority"
Business and Professions Code, §3010.1

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This text will be removed before rulemaking submission. Yellow highlights: changes made by CPC prior to 2019; blue highlights: changes made by enforcement department; green highlights: changes made by staff in 2019; pink highlights: changes made by CPC at the Sept. 2019 public meeting

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Commented [JM1]: Non substantive change: page numbers will update when text is finalized

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INTRODUCTION

The California State Board of Optometry's (hereafter Board) mission is to serve the public and optometrists by promoting and enforcing laws and regulations, which protect the health and safety of California's consumers and to ensure high quality care.

In keeping with its mandate to protect the consumer of optometric services from the unsafe, incompetent and/or negligent optometrists, the Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Optometry Practice Act.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys from the Office of the Attorney General, licensees, Board staff and others involved in the Board's disciplinary process. The Board's Uniform Standards Related to Substance Abuse & Disciplinary Guidelines are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and specialty probationary terms and conditions.

If, at the time of hearing, the Administrative Law Judge finds that the Respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the Respondent has demonstrated a capacity to practice optometry safely, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the optometrist is suspended in order to correct deficiencies in skills, education, or personal rehabilitation.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued and final decisions will be published as a matter of public record and shall be available on the internet, pursuant to Business and Professions Code, section 27.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including, but not limited to, expert consultant opinions and services, pursuant to Business and Professions Code, section 125.3. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct required investigation and prosecution, not upon the profession as a whole.

PROBATION MONITORING PURPOSE

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The Board will work to:

- 1) Allow for the probationer's rehabilitation if that is his/her their choice;
- 2) Allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences; and
- 3) Allow for education of the individual as to the responsibilities, requirements and professionalism mandated of an optometrist.

Commented [JM2]: Global change: he/her to their/they/themselves complies with SB 179: gender neutrality. Changes made to SACC guidelines, which do not allow for wording deviations, should be considered non-substantive.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Board of Optometry Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. (California Code of Regulations section 1399.380(h)). Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mandate.

DISCIPLINARY GUIDELINES

2012 2019 EDITION

EVIDENCE IN AGGRAVATION/MITIGATION OF DISCIPLINE

The following are examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

EVIDENCE IN AGGRAVATION OF DISCIPLINE

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (e.g., theft, embezzlement, fraud).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. Perjury on official Board forms.
6. Violent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

EVIDENCE IN MITIGATION OF DISCIPLINE

1. Recognition by Respondent of ~~his or her~~ **their** wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction occurred.
4. No prior criminal or disciplinary history.

DISCIPLINARY GUIDELINES SUMMARY FOR USE BY ADMINISTRATIVE LAW JUDGES

To establish consistency in discipline for similar offenses on a statewide basis, the Board of Optometry has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by administrative law judges, attorneys, optometrists and ultimately the Board, shall be revised from time to time following public hearing by the Board and will be disseminated to interested parties upon request.

Additional copies of this document may be obtained by contacting the Board of Optometry at its offices in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and dissemination of copies. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 125.3.

The Board recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include some statement of this in the proposed decision so that the circumstances can be better understood and evaluated by the Board upon review of the proposed decision and before its ultimate action is taken.

These guidelines are incorporated by reference in §1575 of Division 15 of Title 16 of the California Code of Regulations.

§1575. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

§1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall comply with the "Uniform Standards Related to Substance Abuse" (Uniform Standards) and consider the "Disciplinary Guidelines" ~~(DC-4, 5-2012)~~ (Rev 09-2019) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; Uniform Standards **shall** apply to a substance-abusing licensee.

- (a) Subject to subdivision (b), deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for substance-abusing licensees shall apply.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, 3090, 3091 and 3110, Business and Professions Code; and Sections 11400.20, and 11425.50(e), Government Code.

UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES

Pursuant to Business and Professions Code §315, the following standards shall be adhered to in all cases in which an optometrist's license is placed on probation because the optometrist is a substance-abusing licensee. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

1. CLINICAL DIAGNOSTIC EVALUATION

If a clinical diagnostic evaluation is ordered, the following applies:

The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

- holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
- has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
- is approved by the Board.

The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The clinical diagnostic evaluation report shall:

- set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
- set forth, in the evaluator's opinion, whether the licensee is a threat to ~~himself/herself~~ **themselves** or others; and,
- set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to ~~himself/herself~~ **themselves** or others, the evaluator shall notify the Board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

2. REMOVAL FROM PRACTICE PENDING CLINICAL DIAGNOSTIC EVALUATION

The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by Board staff.

While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a probation manager shall determine, whether or not the licensee is safe to return to either part-time or full-time practice. However, no licensee shall return to practice until _____ at least 30 days of negative drug tests.

- the license type;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope, pattern of use, and history of drug/alcohol use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to **himself/herself** or the public.

Commented [KC3]: CPC requested edit to "30 consecutive days" has not been made because this language mirrors the language required by the SACC Uniform Standards

3. BOARD COMMUNICATION WITH PROBATIONER'S EMPLOYER

The licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

4. DRUG TESTING STANDARDS

The following standards shall govern all aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation due to substance use:

Testing Frequency Schedule

A Board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segment of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II is for the second year of probation and each year thereafter.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or suspects that a licensee has committed a violation of the Board's testing program or committed a Major Violation, as identified in Uniform Standard 10, the Board may reestablish the testing cycle by placing that licensee at the beginning of level I in addition to any other disciplinary action that may be pursued.

Exception to Testing Frequency Schedule

I. PREVIOUS TESTING/SOBRIETY

In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, a licensee shall notify and secure the approval of the Board. Prior to returning to any healthcare employment, the licensee shall be subject to Level I testing frequency for at least 60 days. At such time the person returns to employment, if the licensee has not previously met the standard, the licensee shall be subject to completing a full year at Level I of the testing frequency schedule, otherwise Level II testing shall be in effect.

IV. TOLLING

A Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the standard, the licensee shall be subject to completing a full year at Level I of the testing frequency schedule, otherwise Level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but no less than 24 times per year.

VI. LICENSED SUPERVISION DURING PRACTICE

A board may reduce testing frequency to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor approved by the board.

Commented [KC4]: This addition was made by the SACC

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when ~~he/she~~ they

will be tested again. The Board should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact with the Board to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the Board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation. Specimen collectors must adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, any alternative to the licensee's drug testing location(s) requirements (including frequency) must be approved by the Board.

Commented [KC5]: These changes were made by the SACC

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

The Board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

5. PARTICIPATION IN GROUP SUPPORT MEETINGS

When determining the frequency of required group meeting attendance, the Board shall give consideration to the following:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

6. DETERMINING WHAT TREATMENT IS NECESSARY

In determining whether inpatient, outpatient, or other type of treatment is necessary, the Board shall consider the following criteria:

- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, severity of substance abuse, and
- threat to self or the public.

7. WORKSITE MONITOR REQUIREMENTS

If the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the Board.

1. The worksite monitor shall not have any financial, personal, or a familial relationship with the licensee, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.
3. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that ~~he or she has~~ **they have** reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the Board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:

Commented [JM6]: CPC requested edit from "worksite monitor" to "practice monitor". This change has not been made as existing "worksite monitor" language mirrors the language required by the SACC Uniform Standards

- a. Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.
- b. Interview other staff in the office regarding the licensee's behavior, if applicable.
- c. Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

8. PROCEDURE FOR POSITIVE TESTING

When a licensee tests positive for a banned substance:

1. The Board shall order the licensee to cease practice;
2. The Board shall contact the licensee and instruct the licensee to leave work; and
3. The Board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not practice.

Thereafter, the Board will determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the Board shall immediately lift the cease practice order. In determining whether the positive test is evidence of prohibited use, the Board will engage in the following, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator(s).

9-10. MAJOR/MINOR VIOLATIONS & CONSEQUENCES

Major violations include, but are not limited to the following:

1. Failure to complete a Board-ordered program or evaluation;
2. Committing two or more minor violations of probation;

3. Treating a patient while under the influence of drugs or alcohol;
4. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
5. Failure to appear or provide a sample in accordance with the "biological fluid testing" term and condition;
6. Testing positive for a banned substance;
7. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.
8. Failure to adhere to any suspension or restriction in practice.

Consequences of a major violations include, but are not limited to the following:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation (if applicable);
 - b) the licensee must test *negative* for a least a month of continuous drug testing before being allowed to practice.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the Board.

Minor violations include, but are not limited to the following:

1. Failure to submit complete and required documentation in a timely manner;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.
5. Any other violation that does not present a threat to the licensee or public.

Consequences of minor violations include, but are not limited to the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

11. PETITION FOR RETURN TO PRACTICE

"Petition" as used in this standard is an informal request as opposed to a "Petition for Modification" under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Sustained compliance with current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse; and

3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

12. PETITION FOR REINSTATEMENT

"Petition for Reinstatement" as used in this standard is an informal request as opposed to a "Petition for Reinstatement" under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Sustained compliance with the terms of the disciplinary order, if applicable;
2. Successful completion of recovery program, if required;
3. A consistent and sustained participation in activities that promote and support recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Ability to practice safely; and
5. Continuous sobriety for three (3) to five (5) years.

PROBATIONARY TERMS AND CONDITIONS

MODEL DISCIPLINARY ORDERS

The following introductory language is to be included in decisions that include Disciplinary Orders:

Commented [JM7]: Added for clarity

Revocation-Single Cause

Certificate No. (Ex.: 12345) issued to Respondent (Ex: John Smith. O.D.) is revoked. Cost Recovery in the amount of (Ex: 5,000) is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

Revocation - Multiple Causes

Certificate No. _____ issued to Respondent _____ is revoked pursuant to Determination of Issues (Ex: II. and III) separately and for all of them. Cost Recovery (if any) in the amount of (Ex: 5,000) is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

Suspension - Single Cause

Certificate No. ___ issued to Respondent _____ is suspended for a period of (Ex: 30 calendar days/one year).

Suspension - Multiple Causes (run concurrently)

Certificate No. issued to Respondent _____ is suspended pursuant to Determination of Issues _____, separately and for all of them. All suspensions shall run concurrently.

Suspension - Multiple Causes (run consecutively)

Certificate No. issued to Respondent _____ is suspended (Ex: 30 calendar days) pursuant to Determination of Issues. These suspensions shall run consecutively, for a total period of (Ex: 90 calendar days).

Standard Stay Order

However (revocation/suspension) is stayed and Respondent is placed on probation for (Ex: three) years upon the following terms and conditions:

MODEL LICENSEE PROBATIONARY ORDERS

The following introductory language is to be included in decisions that place the Respondent's license on probation.

IT IS HEREBY ORDERED that (INSERT APPROPRIATE LICENSE CATEGORY) Number (INSERT LICENSE NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT LICENSE CATEGORY) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

ORDERS

Commented [JM8]: Added header for clarity of purpose of the section

~~In order to provide clarity and consistency in its decisions, the~~ The following language should be used in proposed decisions or stipulated agreements for applicants, and for who are issued a license that is placed on probation.

Commented [JM9]: Removal clarifies purpose of section

~~Applicants who are placed on probation:~~

Commented [JM10]: Removed to be consistent with header

The application of Respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the application, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent's license placed on probation for a period of _____ years on the following conditions:

MODEL REINSTATEMENT PROBATIONARY ORDERS **Reinstatement of licensure with conditions of probation:**

Commented [JM11]: Added header for clarity of purpose of section

The following introductory language is to be included in decisions that ~~reinstates~~ Respondent's license on probation.

Commented [JM12]: Added for clarity

The application of Respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent's license placed on probation for a period of _____ years on the following conditions:

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by a petitioner, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.

STANDARD TERMS AND CONDITIONS

A probationary term is generally issued for a period between three (3) and five (5) years, dependent upon whether any aggravating or mitigating factors exist. Standard conditions are imposed on each and every probationer regardless of cause for discipline. For applicants, Condition 8, Cost Recovery, does not apply.

1. Obey all laws
2. Submit Quarterly Reports
3. Cooperate With Probation Monitoring Program
4. Probation Monitoring Costs
5. Function as an Optometrist
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Take and Pass California Laws and Regulations Examination
10. Community Service

11. Valid License Status
12. Tolling for Out-Of-State Residence or Practice
13. License Surrender
14. Violation of Probation
15. Completion of Probation
16. Sale or Closure of an Office and/or Practice

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in ~~his/her~~ their arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as determined by the Board or its designee, as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

~~For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

Commented [KC13]: Provides more discretion for due dates

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program representative at any time ~~he/she they~~ **have** has a question or concern regarding ~~his/her~~ **their** terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, ~~he/she they~~ shall be required, instead, to submit an explanation of why ~~he/she they are~~ is unable to submit the costs, and the date(s) ~~he/she they~~ will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his/her their probation period.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her their employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her their supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she they are is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her their probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her their physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she they shall be required instead to submit an explanation of why he/she they are is unable to submit these costs in part or in entirety, and the date(s) he/she they will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of _____ (Ex: 20) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to ~~his/her~~ their license expiration date shall constitute a violation of probation.

12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon ~~his/her~~ their return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. LICENSE SURRENDER

During Respondent's term of probation, if **he/she they** ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender **his/her their** license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the Board.

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes **his or her their** office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

STANDARD ALCOHOL/DRUG CONDITIONS

The following standards are in addition to standards 1-16 and apply to every licensee who is on probation for substance abuse, pursuant to Business and Professions Code §315 Uniform Standards.

- 17. Abstinence from Use of Controlled Substances/Alcohol
- 18. Biological Fluid Testing

17. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL

Respondent shall abstain completely from the use or possession of alcohol, any and all other mood altering drugs or substances, and their associated paraphernalia. Respondent shall identify for the Board, a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length of probation as determined by the Board or its designee, as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Commented [KC14]: Provide Board discretion as to due dates

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. physician, nurse practitioner, or physician assistant's name and signature;
4. physician, nurse practitioner, or physician assistant's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with physician, nurse practitioner, or physician assistant;
6. the Respondent's compliance with this condition;
7. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
8. any change in behavior and/or personal habits;
9. assessment of the Respondent's ability to practice safely;
10. recommendation **dependant dependent** on Respondent's progress and compliance with this condition on whether to continue with current prescription plan and/or treatment, modify plan and/or treatment, or require Respondent to cease practice;
11. other relevant information deemed necessary by the physician, nurse practitioner, physician, or the Board.

Respondent is ultimately responsible for ensuring ~~his/her~~ ~~their~~ physician, nurse practitioner or physician assistant submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require ~~a-the~~ single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that ~~he/she~~ ~~they~~ is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometric license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cut off level shall be reported to each of Respondent's employers.

18. BIOLOGICAL FLUID TESTING

Respondent, at ~~his/her~~ ~~their~~ expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at the frequency outlined in Uniform Standards for Substance Abuse #4.

Respondent shall make daily contact to determine if ~~he/she~~ ~~they~~ ~~are~~ ~~is~~ required to submit a specimen for testing, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, Respondent understands that, while at the work site, any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his/her/their probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her/their employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reinstate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license.

OPTIONAL CONDITIONS

The conditions imposed are dependent upon the violation(s) committed.

19. Participate in Group Support Meeting
20. Notice to Patients
21. Alcohol and Drug Treatment
22. Worksite Monitor
23. Direct Supervision
24. Remedial Education
25. Suspension
26. Employment Limitations
27. Psychotherapy or Counseling Program
28. Mental Health Evaluation
29. Medical Health Evaluation
30. Medical Treatment
31. Restitution
32. Audit Required
33. ~~Lens~~ Prescriptions – Maintain Records
34. Restricted Practice
35. Restrictions as to ~~Branch~~ Offices
36. Restrictions as to Advertisement
37. Take and Pass NBEO Exams
38. Continuing Education
39. Medical Record Keeping Course

19. PARTICIPATE IN GROUP SUPPORT MEETING

Respondent shall attend at least one (1), 12-step recovery meeting or equivalent during each week of probation, as approved or directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

20. NOTICE TO PATIENTS

During the period of probation, Respondent shall post a notice in a prominent place in ~~his/her their~~ office that is conspicuous and readable to the public. The notice shall state the Respondent's Optometric license is on probation and shall contain the telephone number of the State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to ~~his/her their~~ practice of Optometry. The notice described above shall be submitted to the Board for approval approved by the Board within 30 calendar days of the effective date of this decision and shall be approved by the Board prior to posting.

OPTIONAL: Respondent shall provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation.

Commented [JM15]: ck – language changed for clarity

Commented [JM16]: Added by CPC as a note - language borrowed from BPC 2228.5

Respondent shall obtain from the patient, the patient's guardian or health care surrogate a separate, signed copy of that disclosure, which shall be maintained in the patient's file.

21. ALCOHOL AND DRUG TREATMENT

Respondent, at his/her/their expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist, or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she/they believe the Respondent cannot safely practice. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her/their probationary status with the Board and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing.

Positive results shall be reported immediately to the Board and may be used in administrative discipline.

22. WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. The worksite monitor shall be contracted by the Board as an Expert Witness. Any cost for such monitoring shall be paid by Respondent added to the total Probation Monitoring Reimbursement costs paid by Respondent.

Commented [KC17]: Board will contract with monitor as an expert witness, will add costs to probation monitoring reimbursement

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has/they have reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a worksite monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.
- d) Immediately report any significant departure from the standard of care or violation of the Optometry Practice Act

Commented [JM18]: Added for additional consumer protection with oversight by board and allows for immediate response if violated

The Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as determined by the Board or its designee, as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);

6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation ~~dependant~~ **dependent** on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring ~~his/her~~ **their** worksite monitor submits complete and timely reports. Failure to ensure ~~his/her~~ **their** worksite monitor submits complete and timely reports shall constitute a violation of probation.

If the worksite monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the worksite monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement worksite monitor is approved and assumes monitoring responsibility.

23. DIRECT SUPERVISION

During the period of probation, Respondent shall be under the direct supervision of an optometrist or ophthalmologist holding a current and valid un-restricted license issued by their respective Board. "Direct supervision" means assigned to an optometrist who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while ~~he/she they are~~ **is** functioning as a licensed optometrist. The appropriate level of supervision must be approved by the Board prior to engaging in practice.

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer **as determined by the Board or its designee, as follows:**

- ~~For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.~~
- ~~For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~
- ~~For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~
- ~~For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. direct supervisor's name and signature;
4. direct supervisor's license number;
5. practice location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with direct supervisor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation ~~dependant~~ **dependent** on Respondent's performance on whether to continue with current direct supervisor plan or modify the plan;
12. other relevant information deemed necessary by the direct supervisor or the Board.

Respondent is ultimately responsible for ensuring ~~his/her~~ **their** supervisor submits complete and timely reports. Failure to ensure each supervisor submits complete and timely reports shall constitute a violation of probation.

24. REMEDIAL EDUCATION

Respondent shall take and successfully complete the equivalency of (Ex:____) semester units in each of the following areas **pertaining to the practice of Optometry**: (Ex: eye disease, when to refer, contact lenses). All course work shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as an optometrist, or through a course approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this decision. Successful completion is a grade of "C" or "70%" or better for any completed course.

Within 90 calendar days of the effective date of the decision Respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the Respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

25. SUSPENSION

As part of probation, Respondent shall be suspended from the practice of optometry for a period of _____ (Ex: 90 calendar days) beginning the effective date of this decision. If not employed as an optometrist or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

26. EMPLOYMENT LIMITATIONS

Respondent shall not work in any health care setting as a supervisor of optometrists. ~~The Board may additionally restrict Respondent from supervising technicians, and/or unlicensed assistive personnel on a case-by-case basis.~~

Commented [JM19]: ck – language changed for consistency in limiting probationer's ability to supervise others during probation

Respondent shall not work as a faculty member in an approved school of optometry or as an instructor in a Board-approved continuing education program.

Respondent shall work only in a regularly assigned, identified and predetermined worksite (s) and shall not work in a "float" capacity.

27. PSYCHOTHERAPY OR COUNSELING PROGRAM

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a **duly licensed psychotherapist** or counselor of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until such time as the Board releases him/her from this requirement and only upon the recommendation of the treating psychotherapist or counselor.

Commented [JM20]: clarity

The treating psychotherapist or counselor must submit quarterly reports. Reports are due each year of probation and the entire length of probation from the treating psychotherapist or counselor **as determined by the Board or its designee. as follows:**

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. psychotherapist or counselor's name and signature;
4. psychotherapist or counselor's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with psychotherapist or counselor;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation **dependant dependent** on Respondent's progress and compliance with this condition on whether to continue with current treatment plan, modify plan treatment plan, or require Respondent to cease practice;
12. other relevant information deemed necessary by the psychotherapist, counselor or the Board.

Respondent is ultimately responsible for ensuring ~~his/her~~ their treating psychotherapist or counselor submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo psychiatric or psychological evaluations by a Board- approved psychiatrist or psychologist.

NOTE: This condition is for those cases where the evidence demonstrates that the Respondent has had impairment (mental illness, alcohol abuse and drug abuse) related to the violations but is not at present a danger to patients.

28. MENTAL HEALTH EVALUATION

Respondent shall, within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, to submit to a mental health evaluation, including psychological testing as appropriate, to determine ~~his/her~~ their capability to perform the duties of an optometrist. The evaluation will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. An immediate suspension may be imposed by the Board until further notification if the results from the mental health evaluation prove the Respondent is unsafe to practice.

If Respondent fails to have the above evaluation submitted to the Board within the 30 calendar day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the evaluation, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluator within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo treatment, Respondent shall, within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a licensed psychiatrist, psychologist or other licensed mental health practitioner of Respondent's choice. Upon approval of the treating psychiatrist, psychologist or other licensed health practitioner, Respondent shall within 15 calendar days undergo treatment and shall continue such treatment until further notice from the Board or its designee and only upon the recommendation of the treating psychiatrist, psychologist or other licensed health practitioner.

Commented [JM21]: ck – language added for clarity and consistency with similar terms.

The treating psychiatrist psychologist or other licensed mental health practitioner shall consider the information provided by the Board or its designee or any other information the treating psychiatrist, psychologist or other mental health practitioner may deem pertinent prior to the commencement of treatment. Respondent shall have the psychiatrist, psychologist or other health practitioner submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing optometry safely. The quarterly reports are due each year of probation and the entire

length of probation from the psychiatrist, psychologist or other licensed mental health practitioner as determined by the Board or its designee. ~~as follows:~~

- ~~For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.~~
- ~~For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~
- ~~For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~
- ~~For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. treating psychiatrist, psychologist or other licensed mental health practitioner's name and signature;
4. treating psychiatrist, psychologist or other licensed mental health practitioner's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with treating psychiatrist, psychologist or other licensed mental health practitioner;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation ~~dependant~~ dependent on Respondent's evaluation, progress and compliance with this condition on whether to continue with current treatment plan, modify treatment plan, or require Respondent to cease practice;
12. other relevant information deemed necessary by the treating psychiatrist, psychologist, other licensed mental health practitioner, or the Board.

Respondent is ultimately responsible for ensuring his/her their psychiatrist, psychologist or other licensed mental health practitioner submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment deemed necessary by the Board or its designee.

If, prior to the completion of probation, Respondent is found to be mentally incapable of resuming the practice of optometry without restrictions, the Board shall retain continuing jurisdiction of Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally capable of resuming practice of

optometry without restrictions. Respondents shall pay the cost of the evaluation(s) and treatment.

(OPTIONAL): Respondent shall not engage in the practice of optometry until notified by the Board of its determination that Respondent is mentally fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.

29. MEDICAL HEALTH EVALUATION

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation, at Respondent's cost, by a Board- appointed physician who shall furnish a medical report to the Board or its designee. Based on the medical evaluation, the Board may require Respondent to undergo medical treatment.

If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice submit to the Board for its prior approval the name and qualification of a physician of Respondent's choice. Upon approval of the treating physician, Respondent shall undergo and continue medical treatment, at Respondent's cost, until further notice from the Board **and upon recommendation from the treating physician.** Respondent shall have the treating physician submit quarterly reports to the Board. Quarterly reports are due each year of probation and the entire length of probation from the treating physician **as determined by the Board or its designee, as follows:**

Commented [JM22]: CK - Language added for clarity and consistency

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. treating physician's name and signature;
4. treating physician's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with treating physician;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time- limited use of any substances;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;

11. recommendation ~~dependant~~ **dependent** on Respondent's evaluation results, progress and compliance with this condition on whether to continue with current treatment plan or modify the treatment plan;
12. other relevant information deemed necessary by the treating physician, or the Board.

Respondent is ultimately responsible for ensuring ~~his/her~~ **their** physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

(OPTIONAL): Respondent shall not engage in the practice of optometry until notified by the Board of its determination that Respondent is medically fit to practice safely.

NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

30. MEDICAL TREATMENT

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a physician of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until the Board deems that no further medical treatment is necessary **and upon the recommendation of the treating physician.** Respondent shall have the treating physician submit quarterly status reports to the Board. Quarterly status reports are due each year of probation and the entire length of probation from the treating physician **as determined by the Board or its designee. as follows:**

Commented [JM23]: CK – language added for clarity and consistency

- ~~For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.~~
- ~~For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~
- ~~For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~
- ~~For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. treating physician's name and signature;
4. treating physician's license number;
5. dates Respondent had face-to-face contact or correspondence (written and verbal) with treating physician;
6. the Respondent's compliance with this condition;
7. the Respondent's diagnosis, prognosis, and progress;
8. if any substances have been prescribed, identification of a program for the time-limited use of any substances;
9. any change in behavior and/or personal habits;

10. assessment of the Respondent's ability to practice safely;
11. recommendation ~~dependent~~ **dependent** on Respondent's progress and compliance with this condition on whether to continue with current treatment plan or modify the treatment plan;
12. other relevant information deemed necessary by the treating physician, or the Board.

Respondent is ultimately responsible for ensuring ~~his/her~~ **their** physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo periodic medical evaluations by a Board-approved physician.

31. RESTITUTION

Within 90 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee proof of restitution in the amount of \$_____ paid to _____.

32. AUDIT REQUIRED

The Board shall require quarterly audits of patient visits, billings, and payments as a condition of probation.

Within 30 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee the names and qualifications of three third party auditors. The Board or its designee shall select one of the three auditors to audit Respondent's billings. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices.

The Board or its designee shall provide the approved auditor with copies of the decision(s) and accusation(s), and a proposed auditing plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the auditor shall sign an affirmation that ~~he or she~~ **he or she has they have** reviewed the terms and conditions of the Respondent's disciplinary order, fully understands the role of auditor, and agrees or disagrees with the proposed auditing plan set forth by the Board. If the auditor disagrees with the proposed auditing plan, the auditor shall submit a revised auditing plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's patient visits, billings and payments shall be audited by the approved auditor. Respondent shall make all records available for immediate inspection and copying on the premises by the auditor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of an auditor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until an auditor is approved to provide auditing responsibility.

The Board shall be advised of the results of the audit, and may obtain any and all copies of any documents audited or the results of the audit. The cost of the audits shall be borne by Respondent. Failure to pay for the audits in a timely fashion within ten (10) calendar days from audit completion shall constitute a violation of probation.

Quarterly reports of the audit results are due each year of probation and the entire length of probation from the auditor as determined by the Board or its designee as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

- 1- the Respondent's name;
- 2- license number;
- 3- auditor's name and signature;
- 4- auditor's license number;
- 5- dates Respondent had face-to-face contact or correspondence (written and verbal) with auditor;
- 6- the Respondent's compliance with this condition;
- 7- the Respondent's compliance with accepted auditing/accounting standards and practices;
- 8- any change in behavior and/or personal habits;
- 9- assessment of the Respondent's ability to practice safely;
- 10- 8. recommendation dependant dependent on Respondent's audit results and compliance with this condition on whether to continue with current audit plan or modify the plan;
- 11- 9. other relevant information deemed necessary by the auditor, or the Board.

Commented [JM25]: CK – inappropriate use of a billing monitor

Respondent is ultimately responsible for ensuring his/her their auditor submits complete and timely reports. Failure to ensure each auditor submits complete and timely reports shall constitute a violation of probation.

If the auditor resigns or is no longer available, Respondent shall, within five (5) days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the names and qualifications of a replacement third party auditor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement auditor within 60 calendar days of the resignation or unavailability of the auditor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified,

Respondent shall cease practice until a replacement auditor is approved and assumes auditing responsibility.

33. LENS PRESCRIPTIONS - MAINTAIN RECORDS

Respondent shall maintain patient records of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following:

1. name and address of the patient;
2. date;

3. lens or drug prescribed, including dose and duration, as applicable

3.4. price of the services and goods involved in the prescription;

4. 5. visual impairment or medical condition identified for which the prescription was furnished.

Commented [JM26]: CK – term updated so that it can be used for both lens and medication prescriptions

Commented [JM27]: Allows more oversight by the Board

Respondent shall keep these patient records in a separate file, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

34. RESTRICTED PRACTICE

During probation, Respondent is prohibited from providing the following procedures or courses of treatment: practicing (Ex. Specified optometric procedures).

Commented [KC28]: For clarity of purpose

35. RESTRICTION ON BRANCH OFFICES

During the period of probation, Respondent shall be restricted as to the number and location of branch offices that the Respondent may operate or in which the Respondent may have any proprietary interest as designated and approved in writing by the Board.

36. RESTRICTIONS ON ADVERTISEMENTS

During the entire period of probation, the Respondent shall, prior to any publication or public dissemination, submit any and all advertisement of professional services in the field of optometry to the Board for its prior approval. Such advertisement may be published or disseminated to the public only after written approval by the Board.

37. TAKE AND PASS NBEO EXAM

Respondent shall take and pass part(s) ____ of the National Board of Examiners of Optometry (NBEO). Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

38. CONTINUING EDUCATION

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval an educational program or course to be in areas of (E.g., practice management, retinal disease, drug/alcohol addiction). The education program or course(s) shall consist of a minimum of four (4) hours for each practice area.

This program or course shall be in addition to the Continuing Optometric Education requirements for renewal, and shall be obtained with all costs being paid by the Respondent. Following completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent

shall provide written proof of attendance in such course or courses approved by the Board.

39. MEDICAL RECORD KEEPING COURSE

Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the continuing optometric education requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after the effective date of the decision, whichever is later.

RECOMMENDED DISCIPLINE BASED ON VIOLATION

The following is an attempt to provide information regarding violations of statutes and regulations under the jurisdiction of the California State Board of Optometry and the appropriate range of penalties for each violation. Each discipline listed corresponds with a number under the chapters:

- Probationary Terms and Condition – Standard Terms and Conditions;
- Standard Alcohol/Drug Conditions; and
- Optional Conditions

Examples are given for illustrative purposes, but no attempt is made to list all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation.

Commented [KC29]: Add a table of contents, styled like the conditions sections, give each violation a letter designation

A. Excessive Prescribing or Treatment (B&P Code sec. 725, 3100(n); 3110(o)).
B. Violation of Prescription Standards: Information Required (B&P Code sec. 3025.5; 3041; Title 16 CCR sec. 1565)
C. Sexual Misconduct (B&P Code sec. 726)
D. Mental or Physical Fitness (B&P Code sec. 820)
E. Gross Negligence (B&P Code sec. 3110 (b); Title 16 CCR sec. 1510)
F. Failure to Refer Patient (B&P Code sec. 3110(y); 3041)
G. Violation of Quality Standards for Prescription Ophthalmic Devices (B&P Code sec. 2541.3; Title 16 CCR sec. 1519)
H. Violation of Health and Safety Standards (B&P Code sec. 3025.5; Title 16 CCR sec. 1520)
I. Failure to Follow Infection Control Guidelines (B&P Code sec. 3110(w); Title 16 CCR sec. 1520)
J. Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec. 1560; 1561; 1562; 1563)
K. Fraud, Misrepresentation or Dishonesty (B&P Code sec. 810; 3101; 3110 (e))
L. Procuring a License by Fraud (B&P Code sec. 123; 496; 3110(i))
M. Practicing without Valid License (B&P Code sec. 3110(s); 3110(i))
N. Using Controlled Substances or Alcohol (B&P Code sec. 3110 (l))
O. Employing Suspended or Unlicensed Optometrist (B&P Code sec. 3110 (t); 3106)
P. Permitting Another to Use License (B&P Code sec. 3110 (u); 3106)
Q. Accepting Employment By Unlicensed Person (B&P Code sec. 3109)
R. Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)
S. Deceptive Advertising (B&P Code sec 651; 651.3; 3099 ; 3100; 3102; 3103; 3110(g); 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)
T. Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)
U. Advertising While Not Holding Valid License (B&P Code sec. 3101)
V. Misuse of Professional Titles or Abbreviations (B&P Code sec. 3098; Title 16 CCR sec. 1512)
W. Unlawful Solicitation (B&P Code sec. 3097)
X. Unlawful Referrals (B&P Code sec. 650; 650.01)
Y. Employing Cappers or Steerers (B&P Code sec. 3104)
Z. Criminal Conviction (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)

AA. Fictitious Name Violation (B&P Code sec. 3078; Title 16 CCR sec. 1513; 1518)
BB. Violation of Probation
CC. Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162;
3163; 3164; 3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)
DD. Fraudulently Altering Medical Records (B&P Code sec. 3105)
EE. False Representation of Fact (B&P Code sec. 3106)
FF. Violating or abetting violation of any section of Optometry Practice Act (B&P
Code sec. 3110 and/or sec. 3110(a))
GG. Repeated Negligent Acts (B&P Code sec. 3110 (c))
HH. Incompetence (B&P Code sec. 3110 (d))
II. Conduct Warranting License Denial (B&P Code sec. 3110 (f))
JJ. License Discipline by Other State or Agency (B&P Code sec. 3110 (h))
KK. Making False Statement on Application (B&P Code sec. 3110 (i))

Commented [JM30]: Ck – changed to mirror false representation of fact as the violations are similar and frequently charged together

(r))

Excessive Prescribing (B&P Code sec. 725)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 33. ~~Lens~~ Prescriptions - Maintain Records
- 39. ~~Medical Record Keeping Course~~
- 38. Continuing Education

Commented [JM31]: Ck -Updated to reflect new term language

Commented [JM32]: CK – not directly related to violation

If Warranted:

- 25. ~~Suspension of 30 days or more~~
- 20. Notice to Patients
- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension
- 38. Continuing Education
- 31. Restitution
- 39. Medical Record Keeping Course

Commented [JM33]: CK – provides opportunity for increased knowledge base

Commented [JM34]: CK – removed the 30 day minimum for more discretion

Commented [JM35]: Moved to “if warranted” for discretion, not always related to violation

B. Violation of Prescription Standards: Information Required (B&P Code sec. 3025.5; 3041; Title 16 CCR sec. 1565)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 33. Prescriptions - Maintain Records
- 38. Continuing Education
- 39. Medical Record Keeping Course

Commented [JM36]: CK – updated to reflect new language

Commented [JM37]: CK – provides opportunity for increased knowledge base

If Warranted:

~~25. Suspension of 30 days or more~~

~~22. Worksite Monitor~~

~~24. Remedial Education~~

~~25. Suspension~~

~~38. Continuing Education~~

~~39. Medical Record Keeping Course~~

Commented [JM38]: CK – removed 30-day minimum for more discretion

Commented [JM39]: CK - Moved to if warranted for discretion. Not always related to the violation.

Excessive Prescribing or Treatment (B&P Code sec. 725; 3110(n); 3110 (e))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

~~1-16. Standard Conditions~~

~~33. Lens Prescriptions – Maintain Records~~

~~38. Continuing Education~~

~~39. Medical Record Keeping Course~~

If Warranted:

~~24. Remedial Education~~

~~25. Suspension of 30 days or more~~

~~22. Worksite Monitor~~

~~34. Restricted Practice~~

C. Sexual Misconduct (B&P Code sec. 726, 3110(m))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Revocation

D. Mental or Physical Fitness (B&P Code sec. 820)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

~~1-16. Standard Conditions~~

~~23. Direct Supervision~~

~~25. Suspension~~

~~27. Psychotherapy or Counseling Program~~

~~30. Medical Treatment~~

~~28. Mental Health Evaluation~~

Commented [JM40]: Ck – helps ensure practice on daily basis

Commented [JM41]: Ck Provides time to ensure safe practice

Commented [JM42]: Ck Directly related to the charge

Commented [JM43]: Ck Directly related to the charge

Commented [JM44]: Ck - In most cases, Respondent will have already completed a mental health evaluation

If Warranted:

~~25. Suspension~~

~~20. Notice to Patients~~

~~34. Restricted Practice~~

~~22. Worksite Monitor~~

~~27. Psychotherapy or Counseling Program~~

~~28. Mental Health Evaluation~~

~~29. Medical Evaluation~~

~~30. Medical Treatment~~

Commented [JM45]: CK -May be appropriate in some cases for consumer protection

Commented [JM46]: CK - For those cases where Respondent has not already completed a mental health evaluation, this was added to “if warranted”

E. Gross Negligence (B&P Code sec. 3110 (b); Title 16 CCR sec. 1510)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

22. Worksite Monitor

24. Remedial Education

25. Suspension

22. Worksite Monitor

If Warranted:

20. Notice to Patients

23. Direct Supervision

25. Suspension of 30 days or more

26. Employment Limitations

31. Restitution

34. Restricted Practice

36. Restrictions on Advertisements

37. Take and Pass NBEO Exam

38. Continuing Education

39. Medical Record Keeping Course

Commented [JM47]: CK – may be appropriate in some cases for consumer protection

Commented [JM48]: CK – removed for more discretion

Commented [JM49]: Ck - Provides opportunity for increasing knowledge base in subjects directly related to the charge

F. Failure to Refer Patient (B&P Code sec. 3110(y); 3041)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

22. Worksite Monitor

38. Continuing Education

If Warranted:

20. Notice to Patients

23. Direct Supervision

24. Remedial Education

34. Restricted Practice

25. Suspension of 30 days or more

22. Worksite Monitor

26. Employment Limitations

33. Prescriptions – Maintain Records

34. Restricted Practice

39. Medical Record Keeping Course

Commented [JM50]: Ck – helps ensure practice on daily basis

Commented [JM51]: Ck – removed for more discretion

Commented [JM52]: Ck - Allows the opportunity to verify that Respondent is not over-prescribing instead of referring patients

G. Violation of Quality Standards for Prescription Ophthalmic Devices (B&P Code sec. 2541.3; Title 16 CCR sec. 1519)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

33. Prescriptions – Maintain Records

38. Continuing Education

24. Remedial Education

If Warranted:

20. Notice to Patients

34. Restricted Practice

22. Worksite Monitor

25. Suspension of 30 days or more

Commented [JM53]: Ck – allows change to verify quality of dispensed prescriptions

Commented [JM54]: Ck – opportunity to increase knowledge base

Commented [JM55]: Ck – cumbersome to complete than CE; not appropriate to this violation

Commented [JM56]: Ck – allows more discretion

- 22. Worksite Monitor
- 34. Restricted Practice
- 37. Take and Pass NBEO Exam
- 39. Medical Record Keeping Course

H. Violation of Health and Safety Standards (B&P Code sec. 3025.5; ~~Title 16 CCR sec. 1520~~)

Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 37. Take and Pass NBEO Exam – Part III Clinical Skills Exam
- 38. Continuing Education

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 24. Remedial Education
- 34. Restricted Practice
- 25. Suspension of 30 days or more
- 22. Worksite Monitor
- 39. Medical Record Keeping Course

Commented [JM57]: CK – provides opportunity to assess clinical skills

Commented [JM58]: Ck – removed – more discretion

I. Failure to Follow Infection Control Guidelines (B&P Code sec. 3110(w); Title 16 CCR sec. 1520)

Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 38. Continuing Education

If Warranted:

- 20. Notice to Patients
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension

J. Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec. 1560; 1561; 1562; 1563)

Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 33. Prescriptions – Maintain Records
- 38. Continuing Education

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension of 30 days or more
- 34. Restricted Practice

Commented [JM59]: CK – opportunity to verify pharmaceutical prescriptions

Commented [JM60]: Ck – for more discretion

39. Medical Record Keeping Course

Commented [JM61]: Ck – may be warranted where record keeping is an issue

K. Fraud, Misrepresentation or Dishonesty (B&P Code sec. 810; 3101; 3110 (e))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 24. Remedial Education
- 32. Audit Required
- 39. Medical Record Keeping Course

If Warranted:

- 20. Notice to Patients**
- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension of 30 days or more
- 26. Employment Limitations
- 31. Restitution
- 33. Prescriptions – Maintain Records
- 36. Restrictions on Advertisements
- 38. Continuing Education

Commented [JM62]: Ck – allows for more discretion

Commented [JM63]: Ck – may be warranted where record keeping is an issue

L. Procuring a License by Fraud (B&P Code sec. 123; 496; 3110(i))

Maximum Discipline: Denial or Revocation

Minimum Discipline: Denial or Revocation

M. Practicing without Valid License (B&P Code sec. 3110(s); 3110(t))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

25. Suspension

If Warranted:

- 20. Notice to Patients**
- 22. Worksite Monitor
- 25. Suspension**
- 36. Restrictions on Advertisements
- 38. Continuing Education

Commented [JM64]: Moved to Required due to the severity of the violation. Removed the 30-day minimum for more discretion

Commented [JM65]: As warranted – for discussion

N. Using Controlled Substances or Alcohol (B&P Code sec. 3110 (l))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 17-18. Standard Alcohol/Drug Conditions

If Warranted:

- 19. Participate in Group Support**
- 20. Notice to Patients**
- 21. Alcohol and Drug Treatment
- 25. Suspension of 30 days or more**
- 22. Worksite Monitor

Commented [JM66]: CK – directly related to violation

Commented [JM67]: CK- removed 30 day minimum for more discretion

- 22. Direct Supervision
- ~~25. Suspension~~
- ~~34. Restricted Practice~~
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- ~~34. Restricted Practice~~
- 38. Continuing Education

Q. Employing Suspended or Unlicensed Optometrist (B&P Code sec. 3110 (t); 3106)
Permitting Another to Use License (B&P Code sec. 3110 (u); 3106)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

~~25. Suspension~~

If Warranted:

- ~~20. Notice to Patients~~
- ~~35. Restrictions on Branch Offices~~
- ~~25. Suspension of 30 days or more~~
- 22. Worksite Monitor
- ~~34. Restricted Practice~~
- 26. Employment Limitations
- ~~34. Restricted Practice~~
- ~~35. Restrictions on Branch Offices~~
- 38. Continuing Education

Commented [JM68]: CK - Moved to Required due to the severity of the violation. Removed the 30-day minimum for more discretion

P. Accepting Employment By Unlicensed Person (B&P Code sec. 3109)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

25. Suspension

If Warranted:

- ~~20. Notice to Patients~~
- 22. Worksite Monitor
- 26. Employment Limitations
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 38. Continuing Education

Commented [KC69]: Moved to Required due to the severity of the violation. Removed the 30-day minimum for more discretion

Commented [KC70]: Provides opportunity for more direct supervision

Commented [KC71]: Allows limitations on employment settings when appropriate

Commented [KC72]: Allows restrictions on specific procedures when appropriate

Commented [KC73]: Allows restrictions on branch offices when appropriate

Commented [KC74]: Moved to "if warranted" for discretion

~~Maximum Discipline:~~ Revocation and Cost Recovery

~~Minimum Discipline:~~ Stayed Revocation, 3-5 years probation

~~Required:~~

- ~~1-16. Standard Conditions~~

~~38. Continuing Education~~

~~If Warranted:~~

- ~~25. Suspension of 30 days or more~~

Q. Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

~~35. Restrictions on Branch Offices~~

22. Worksite Monitor

25. Suspension of 30 days or more

26. Employment Limitations

~~22. Worksite Monitor~~

34. Restricted Practice

35. Restrictions on Branch Operations

36. Restrictions as to Advertisements

38. Continuing Education

Commented [JM75]: Ck – removed 30 day for more discretion

Commented [JM76]: Ck – allows restrictions on branch offices where appropriate

Commented [JM77]: CK – allows board oversight of advertisements

Commented [JM78]: Ck – moved to if warranted for discretion

R. Deceptive Advertising (B&P Code sec 651; 651.3; 3099 ; 3100; 3102; 3103; 3110(g); 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)

Maximum Discipline: Revocation and Cost Recovery

Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

If Warranted:

20. Notice to Patients

25. Suspension of 30 days or more

36. Restrictions on Advertisements

Commented [JM79]: Ck – allows oversight of advertisements – directly related to violation

Commented [JM80]: Ck – removed 30 day for more discretion

S. Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

22. Worksite Monitor

25. Suspension of 30 days or more

26. Employment Limitations

34. Restricted Practice

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

Commented [JM81]: Ck – provides opportunity for more discretion

Commented [JM82]: Ck - Allows for limitations on employment settings when appropriate. Directly related to the violation.

Commented [JM83]: Ck - Allows restrictions on specific procedures when appropriate

Commented [JM84]: Ck – allows restrictions on branch offices when appropriate

Commented [JM85]: Ck – moved to if warranted for discretion

T. Advertising While Not Holding Valid License (B&P Code sec. 3101)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

38. Continuing Education

If Warranted:

20. Notice to Patients

22. Worksite Monitor

25. Suspension of 30 days or more

26. Employment Limitations

34. Restricted Practice

36. Restrictions on Advertisements

Commented [JM86]: Ck – allows oversight of advertisements – directly related to violation

Commented [JM87]: Ck – provides opportunity for more discretion

Commented [JM88]: Ck - Allows for limitations on employment settings when appropriate. Directly related to the violation.

Commented [JM89]: Ck - Allows restrictions on specific procedures when appropriate

U. Misuse of Professional Titles or Abbreviations (B&P Code sec. 3098; Title 16 CCR sec. 1512)

Maximum Discipline: 6-month suspension. Revocation for successive violation

Minimum Discipline: 30 days suspension, and at least one-year probation
Revocation, 3-5 years' probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

38. Continuing Education

If Warranted:

20. Notice to Patients

25. Suspension of 30 days or more

26. Employment Limitations

34. Restricted Practice

36. Restrictions on Advertisements

38. Continuing Education

Commented [JM90]: Ck – changed for consistency with other violations

Commented [JM91]: Ck – allows oversight of advertisements – directly related to violation

Commented [JM92]: Ck - Allows for limitations on employment settings when appropriate. Directly related to the violation.

Commented [JM93]: Ck - Allows restrictions on specific procedures when appropriate

Commented [JM94]: Ck – moved to if warranted for discretion

V. Unlawful Solicitation (B&P Code sec. 3097)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

38. Continuing Education

If Warranted:

20. Notice to Patients

22. Worksite Monitor

25. Suspension of 30 days or more

34. Restricted practice

38. Continuing Education

Commented [JM95]: Ck – allows oversight of advertisements – directly related to violation

Commented [JM96]: Ck – moved to if warranted for discretion

W. Unlawful Referrals (B&P Code sec. 650; 650.01)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions
If Warranted:

22.-Worksite Monitor
25. Suspension
34. Restricted practice
36. Restrictions on Advertisements
38. Continuing Education

Commented [JM97]: Ck - discretion

X. Employing Cappers or Steerers (B&P Code sec. 3104)
Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions
38. Continuing Education

If Warranted:

20. Notice to Patients
25. Suspension of 30 days or more
22. Worksite Monitor
25. Suspension
34. Restricted practice
36. Restrictions on Advertisements
38. Continuing Education

Commented [JM98]: Ck – removed the 30 day minimum for more discretion

Commented [JM99]: Ck - discretion

Y. Criminal Conviction (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)
Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

20. Notice to Patients
17-18. Standard Drug/Alcohol Conditions
22.-Worksite Monitor
24. Remedial Education
25. Suspension of 30 days or more
26. Employment Limitations
27. Mental Health Evaluation
28. Medical Health Evaluation
34. Restricted practice
38. Continuing Education

Commented [JM100]: Ck – this violation can be related to a substance abuse conviction

Commented [JM101]: Ck - Allows for limitations on employment settings when appropriate.

Commented [JM102]: Ck – may be appropriate depending on circumstances of violation

Commented [JM103]: Ck – may be appropriate depending on circumstances of violation

Z. Fictitious Name Violation (B&P Code sec. 3078; Title 16 CCR sec. 1513; 1518)
Maximum Penalty: 6 month Suspension. Revocation and Cost Recovery for successive violations
Minimum Discipline: Stayed Revocation, 3 years probation

Required:

1-16. Standard Conditions
36. Restrictions on Advertisements
38. Continuing Education

Commented [JM104]: Ck – allows oversight of advertisements – directly related to violation

If Warranted:

20. Notice to Patients

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

Commented [JM105]: Ck – allows restrictions on branch offices when appropriate

Commented [JM106]: Ck - discretion

AA. Violation of Probation

Maximum Discipline: Impose discipline that was stayed, revocation

Minimum Discipline: Impose an actual period of suspension

Commented [JM107]: The stayed discipline is not always revocation, adding revocation here gives us the authority to revoke a license for probation violations

The maximum discipline should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. Other violations of probation should draw at least a period of actual suspension.

BB. Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162; 3163; 3164; 3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

20. Notice to Patients

22. Worksite Monitor

24. Remedial Education Course for corporate principals involved

25. Suspension of 30 days or more

26. Employment Limitations

Commented [JM108]: More discretion

Commented [JM109]: Ck - Allows for limitations on employment settings when appropriate.

31. Restitution

34. Restricted practice

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

Commented [JM110]: Ck – allows restrictions on branch offices when appropriate

CC. Fraudulently Altering Medical Records (B&P Code sec. 3105)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

38. Continuing Education

39. Medical Record Keeping Course

If Warranted:

20. Notice to Patients

22.-Worksite Monitor

23. Direct Supervision

25. Suspension

26. Employment Limitations

32. Audit Required

34. Restricted Practice

38. Continuing Education

Commented [JM111]: Ck - Allows for limitations on employment settings when appropriate.

Commented [JM112]: Ck – allows restriction on specific procedures when appropriate

Commented [JM113]: Ck - discretion

DD. False Representation of Fact (B&P Code sec. 3106)

Maximum Discipline: Revocation and Cost Recovery
Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 32. Audit Required
- 39. Medical Record Keeping Course

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 33. Prescriptions – Maintain Records
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

Commented [JM114]: Ck – moved to required to provide more complete oversight

Commented [JM115]: Ck - required

Commented [JM116]: Ck – provides opportunity for more direct supervision

Commented [JM117]: Ck – provides opportunity to verify prescription

Commented [JM118]: Question – why removing this from 2012 version?

Unprofessional Conduct (B&P code sec. 3110)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 5 years probation

Required:

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 24. Remedial Education

If Warranted:

- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education
- 39. Medical Record Keeping Course

Commented [JM119]: Ck – suggest removal as 3110 without a subsection is not necessarily a violation

EE. Violating or abetting violation of any section of Optometry Practice Act (B&P Code sec. 3110 and/or sec. 3110(a))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 5 years probation

Required:

- 1-16. Standard Conditions
- 24. Remedial Education

If Warranted:

- 19. Participate in Group Support Meeting
- 20. Notice to Patients
- 21. Alcohol and Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education

Commented [JM120]: Ck - This can be used in conjunction with any other violation, so we added all of the probation terms as "if warranted"

- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- 31. Restitution
- 32. Audit Required
- 33. Prescriptions – Maintain Records
- 34. Restricted Practice
- 35. Restrictions as to Branch Offices
- 36. Restrictions as to Advertisement
- 37. Take and Pass NBEO Exams
- 38. Continuing Education
- 39. Medical Record Keeping Course

- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

FF. Repeated Negligent Acts (B&P Code sec. 3110 (c))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: ~~Revocation and Cost Recovery~~ Stayed Revocation, 5 years probation

Required:

- 1-16. Standard Conditions
- 24. Remedial Education

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 33. Prescriptions – Maintain Records
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

Commented [KC121]: Probation terms added for discretion

GG. Incompetence (B&P Code sec. 3110 (d))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

If Required:

- 1-16. Standard Conditions
- 22. Worksite Monitor**
23. Direct Supervision
24. Remedial Education
25. Suspension
26. Employment Limitations

If Warranted:

20. Notice to Patients
- 22. Worksite Monitor**
- 33. Prescriptions – Maintain Records**
37. Take and Pass NBEO Exam
- 38. Continuing Education**
39. Medical Record Keeping Course

Commented [KC122]: Provides direct consumer protection through patient notice

Commented [KC123]: Can be cumbersome, not always warranted. Moved from “required” to “if warranted”

Commented [KC124]: Provides opportunity for review of prescriptions

Commented [JM125]: Ck – provides opportunity for increased knowledge base

HH. Conduct Warranting License Denial (B&P Code sec. 3110 (f))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 17-18. Standard Alcohol/ Drug Conditions
- 19. Participate in Group Support Meeting**
- 20. Notice to Patients**
21. Alcohol or Drug Treatment
22. Worksite Monitor
23. Direct Supervision
24. Remedial Education
25. Suspension
26. Employment Limitations
27. Psychotherapy or Counseling Program
28. Mental Health Evaluation
- 29. Medical Health Evaluation**
- 30. Medical Treatment**
31. Restitution
32. Audit Required
33. Prescription – Maintain Records
- 34. Restricted Practice**
- 35. Restrictions as to Branch Offices**
36. Restrictions on Advertisements
37. Take and Pass NBEO Exam
38. Continuing Education
39. Medical Record Keeping Course

II. License Discipline by Other State or Agency (B&P Code sec. 3110 (h))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 17-18. Standard Alcohol/ Drug Conditions

Commented [JM126]: Ck – could be related to any violation, so all optional terms moved into if warranted

19. Participate in Group Support Meeting

20. Notice to Patients

21. Alcohol or Drug Treatment

22. Worksite Monitor

23. Direct Supervision

24. Remedial Education

25. Suspension

26. Employment Limitations

27. Psychotherapy or Counseling Program

28. Mental Health Evaluation

29. Medical Health Evaluation

30. Medical Treatment

31. Restitution

32. Audit Required

33. Prescription – Maintain Records

34. Restricted Practice

35. Restrictions as to Branch Offices

36. Restrictions on Advertisements

37. Take and Pass NBEO Exam

38. Continuing Education

39. Medical Record Keeping Course

Commented [JM127]: Question - "as to" or "on" advertisements?

JJ. Making False Statement on Application (B&P Code sec. 3110 (j))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

24. Remedial Education

32. Audit Required

39. Medical Record Keeping Course

If Warranted:

20. Notice to Patients

22. Worksite Monitor

23. Direct Supervision

24. Remedial Education

25. Suspension

26. Employment Limitations

31. Restitution

33. Prescriptions – Maintain Records

36. Restrictions on Advertisements

38. Continuing Education

Commented [JM128]: Ck – changed to mirror false representation of fact as the violations are similar and frequently charged together

KK. Prescribing, Furnishing, or Administering Drugs without Good Faith Examination (B&P Code sec. 3110 (p))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

24. Remedial Education

25. Suspension

Commented [JM129]: Ck – cumbersome that is not appropriate as a requirement

33. Prescriptions – Maintain Records

38. Continuing Education

If Warranted:

20. Notice to Patients

22. Worksite Monitor

23. Direct Supervision

24. Remedial Education

26. Employment Limitations

34. Restricted Practice

37. Take and Pass NBEO Exams

38. Continuing Education

39. Medical Record Keeping Course

Commented [JM130]: Ck – provides opportunity to review and verify scripts

Commented [JM131]: Ck- Moved to “required” to replace remedial education in providing the opportunity to increase knowledge base

Commented [JM132]: Ck – allows limitations on employment when approp

Commented [JM133]: Ck – allows limits on specific procedures

Commented [JM134]: Ck – opportunity to verify clinical skills

LL. Failure to Maintain Adequate Records(B&P Code sec. 3110 (g)(q))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

33. Prescriptions – Maintain Records

39. Medical Record Keeping Course

If Warranted:

20. Notice to Patients

22. Worksite Monitor

24. Remedial Education

25. Suspension

26. Employment Limitations

32. Audit Required

34. Restricted Practice

38. Continuing Education

Commented [JM135]: Ck – provides opportunity to review and verify scripts

Commented [JM136]: Ck – allows limitations on employment when approp

Commented [JM137]: Ck – allows limits on specific procedures

MM. Altering or Using Altered License (B&P Code sec. 3110 (v))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

22. Worksite Monitor

25. Suspension

If Warranted

20. Notice to Patients

26. Employment Limitations

34. Restricted Practice

38. Continuing Education

Commented [JM138]: Ck – allows limitations on employment when approp

Commented [JM139]: Ck – allows limits on specific procedures

NN. Professional Services Beyond the Scope of the License (B&P Code sec. 3110 (r))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 34. Restricted Practice
- 37. Take and Pass NBEO Exams
- 38. Continuing Education

Commented [JM140]: Ck – provides direct supervision

Commented [JM141]: Ck – allows limits on specific procedures

Commented [JM142]: Ck – opportunity to verify clinical skills

OO. Failure to Comply with Patient Records Request (B&P Code sec. 3110 (x))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 39. Medical Record Keeping Course

If Warranted:

- 20. Notice to Patients
- 24. Remedial Education
- 38. Continuing Education

PP. Use of Fraudulently issued, counterfeited, etc., Certificate (B&P Code 3107)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education

Commented [JM143]: Ck- given the severity of the violation, did not feel probation terms were appropriate

QQ. CE Audit Failure (BPC 3110)

Commented [JM144]: Added per CPC request



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Board Members
FROM	Shara Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst</i>
SUBJECT	Agenda Item #11A – Update, Discussion and Possible Action on Potential 2020 Legislation: Temporary License for Instructors at Accredited Schools of Optometry

Summary:

Staff was directed at the August 2, 2019 public meeting to review the possibility of a special permit being granted by the Board for foreign-trained optometrists who teach at a school of optometry in California. This permit would allow holders to perform the full optometry scope of practice within the clinics of the school by which they are employed. At a September 13, 2019 public meeting, the Legislative and Regulatory Committee approved the proposed statutory language with minor changes and recommended it to the full Board. If approved, staff will seek an legislative author for a bill in 2020.

Background:

At the April 5, 2019 public meeting, Board Member Wang commented that several foreign trained optometrists who are currently employed at schools of optometry are unable to practice the full scope of the optometry license within their clinics, despite being qualified and their education and qualifications thoroughly vetted. At the August 2, 2019 meeting, Dr. Wang again raised the issue, and referenced temporary exemptions to be issued via [BPC 3042.5](#). These exemptions are for practice which is conducted for educational purposes and which is confined to the clinical department of the accredited school or college employing the person to whom the exemption is granted "for a specific period of time".

Dr. Wang also cited the need for clarification of the statute and asked whether the Board should require passage of the jurisprudence exam, in order to allow these foreign trained optometrists to practice the full scope of optometry within the schools. Public comment was made in support of this issue. Additional questions were raised regarding licensure implementation, CE requirements and clarification of the opportunity for foreign trained optometrists to teach in the clinics of the schools. Staff was directed to research the issue and the Medical Board's laws to develop possible statutory text.

At the September 13, 2019 public meeting, the LRC approved the proposed statutory language with a modification requiring the optometry school to verify the permit holder's continued employment and status with the school upon permit renewal. Additionally, the



LRC felt Board staff would be able to complete application review instead of a special board committee, although the proposed text would allow the Board to establish such a committee in the future, if needed.

Discussion:

The proposed bill text is based on [Business and Professions Code §§2168 – 2169](#), which sets out requirements for the MBC's special faculty permit, forms and renewal requirements. Based on preliminary direction and the LRC's discussion, the intent of this bill is to do the following:

1. Create a special faculty permit for use by instructors in accredited schools of optometry and sets fees for application and renewals;
2. Require permit applicants, specifically foreign applicants, undergo and be approved by the board upon submission of documentation verifying degree obtained, education completed and various other requirements similar to a regular optometry license;
3. An applicant would need to pass the CLRE;
4. An applicant would need to pass a criminal background check;
5. An applicant would subject to all laws and regulations pertaining to the practice of Optometry and be thus subject to discipline by the Board;
6. States the permit would be renewed biannually and would need to meet normal CE renewal requirements. Additionally, verification from the optometry school about the permit holder's status would be required.
7. The permit is subject to an application fee of \$500 and biannual renewal fee of \$400.
8. Create a process for the Board to review applications and allow for a committee to review the applications, if needed.

Suggested Motion:

"I move to direct the Executive Officer to pursue legislation for an special faculty permit in the 2020 Legislative session based on the proposed text and materials presented here today, pending review by Legal Counsel, and delegate the authority to the Executive Officer to make any technical, non-substantive changes to the text as needed."



Proposed Text – Optometry Special Faculty Permits

Add §3042.55 to Article 4 of Chapter 7 of Division 2 of the Business and Professions Code:

§3042.55

(a) The Board may issue a special faculty permit for the practice of optometry, as defined in Section 3041, only within an California accredited school of optometry and any affiliated institution in which the faculty permit holder is providing instruction as part of the optometry school's educational program and for which the optometry school has assumed direct responsibility. The holder of a such a faculty permit shall not engage in the practice of optometry except as provided above.

(1) Any person who meets all of the following eligibility requirements may apply for a special faculty permit:

(A) Holds or has been offered an appointment at the level at the academic rank of professor, associate professor, or clinical professor, except that the status of adjunct or affiliated faculty member shall not be deemed sufficient.

(B) Has a degree as a doctor of optometry issued by an accredited school or college of optometry in another state, country or jurisdiction;

(C) Has successfully passed the licensing examination for an optometric license in another state, country or jurisdiction.

(D) Possesses a current valid license in good standing to practice optometry issued by another state, country, or other jurisdiction. The term "in good standing" means the same as in section 3057, subsection (e).

(E) Meets the requirements of section 3057, subsection (a), paragraphs (4), (5), (7), (9) and (10).

(F) Has successfully passed the board's jurisprudence examination.

(2) The Board may establish a review committee comprised of two members of the Board, one of whom shall be a licensed optometrist and one of whom shall be a public member. The committee may review and make recommendations to the full Board regarding the applicants applying pursuant to section. Any member of the Board who is currently employed by an accredited school of optometry shall not be appointed to the committee, and may not vote on the recommendation as part of the full Board vote. At the Board's discretion, an existing subcommittee under the Board may act as the review committee.

(b) Any person who meets the requirements specified above shall complete an application on a form prescribed by the board prior to being issued a special faculty permit. This information shall include, but is not limited to, the following:

(1) A signed statement from the president of the optometry school at which the applicant will be employed describing the applicant's qualifications and justifying the president's determination that the applicant satisfies the requirements above.

(2) A signed statement by the president of the optometry school listing every affiliated institution in which the applicant will be providing instruction as part of



the optometry school's educational program and justifying any clinical activities at each of the institutions listed by the president.

(3) An acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(a) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(b) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(4) Any other information the Board deems necessary in order to verify applicant's background and qualifications for the permit.

(c) The applicant shall pay an application fee in an amount prescribed pursuant to subdivision (u) of Section 3152.

(d) A special faculty permit may be denied, suspended, or revoked for any violation that would be grounds for denial, suspension, or revocation of a optometrist license, or for violation of any provision of this article. The holder of a special faculty permit shall be subject to all the provisions of this chapter applicable to the holder of an optometry license.

(e) A special faculty permit expires and becomes invalid at midnight on the last day of the month in which the permit was issued during the second year of a two-year term commencing from the date of issuance, if not renewed. A person who holds a special faculty permit shall show at the time of license renewal that he or she continues to meet the eligibility criteria set forth in subsection (a) and (b)(1) and (b)(2) above.

(f) A person who holds a special faculty permit shall meet the continuing education requirements of section 3059 and shall be renewed in the same manner as an optometrist's license. The fee for renewal shall be an amount prescribed pursuant to subdivision (v) of Section 3152.

(g) The Board shall adopt regulations in furtherance of this section.

Amend §3152 to Article 7 of Chapter 7 of Division 2 of the Business and Professions Code:

(u) The application fee for a special faculty permit is five hundred dollars (\$500). The board may increase the fee to not more than six hundred dollars (\$600).

(v) The renewal fee for a special faculty permit is four hundred dollars (\$400). The board may increase the fee to not more than five hundred dollars (\$500).

Commented [JM1]: LRC added the requirement that an optometry school provide a statement upon permit renewal of the licensee's status at the school. Reference to (b)(1) and (b)(2) adds that requirement

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Board Members
FROM	Shara Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst</i>
SUBJECT	Agenda Item #11B - Update, Discussion and Possible Action on Potential 2020 Legislation – Endorsement Fee

Summary

Staff has identified the need for a fee for completion of license endorsements (also known as license verifications) to other states and jurisdictions for optometry licenses and optician registrations. The Board currently does not charge such a fee since it not authorized in statute, but such a fee is very common with other DCA Boards. At the September 13, 2019 public meeting, the Legislative and Regulatory Committee approved the proposed statutory language with a modification of the fee from \$40 to \$50 and recommended it to the full Board. If approved, staff will seek a legislative author for a bill in 2020.

Discussion

According to the Board's Licensing Unit, approximately 80 requests for license or registrant endorsement are made per month. The endorsements require staff to review a licensee history, verify current license or registration and check for any enforcement actions. The endorsement is then completed via a letter from the Board or a form from another state or jurisdiction. This letter then has to be sent to the requesting party and also uploaded to BreEZe. Staff estimates each endorsement takes 15 minutes to complete, totaling 1,200 minutes or 20 hours of staff work per month. The Board currently charges no fee for this service.

Other Boards charge fees for an endorsement:

- Acupuncture Board: \$10, not to exceed \$10
- Dental Board: \$50, not to exceed \$125
- Physical Therapy Board: \$60, not to exceed \$60

The proposed fee is \$50, ultimately not to exceed \$100, per endorsement, which would cover the costs of staff time, BreEZe usage and mailing. With a fee of \$50, staff estimates revenue of approximately \$48,000 per year. Regulations via the normal regulatory rulemaking process may be also needed to implement that statute if the bill is passed.

Although the fee would impose a small impact on California licensees or registrants applying in other states, these fees are commonly levied by other boards. This ensures public protection within this state and others by making sure license applicants are fully licensed and endorsed by the Board before practicing in another state or jurisdiction.

Suggested Motion

"I move to direct the Executive Officer to pursue legislation for an endorsement fee in the 2020 Legislative session based on the proposed text and materials presented here today, and delegate the authority to the Executive Officer to make any technical, non-substantive changes to the text as needed."

Proposed Text – Endorsement Fee

Amend §3152 of Chapter 7 of Division 2 of the California Business and Professions Code:

(u) The endorsement fee is fifty dollars (\$50). The board may increase the fee to not more than one hundred dollars (\$100).



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer
SUBJECT	Agenda Item #12 – Executive Officer's Report

Board Executive Officer, Shara Murphy, and designated staff will offer the Executive Officer's Report regarding the following topics:

- A. Enforcement Program
- B. Examination and Licensing Programs
- C. Legislative and Regulatory Update
- D. Staff Update

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Cheree Kimball, Acting Assistant Executive Officer
SUBJECT	Agenda Item #12a – Enforcement Program

Disciplinary Guidelines

Enforcement staff continues to work on updating the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (Disciplinary Guidelines) for both Optometry licenses and Dispensing Optician registrations. The Disciplinary Guidelines for Optometrists are being presented for approval at this meeting. If approved, staff will begin work on submitting the rulemaking package to implement into regulation.

A previous draft of the Disciplinary Guidelines for Dispensing Optician registrants is being updated to incorporate changes from the SACC Committee, the Dispensing Optician Committee, and staff, and will be presented to the DOC for review in early 2020.

Disciplinary and Administrative Actions

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

1. John S. Son, Optometrist. Effective July 18, 2019: license revoked, revocation stayed, license placed on probation for 2 years.
2. Ted Atherton Bailey, Optometrist. Effective September 16, 2019: license revoked, revocation stayed, license placed on probation for 3 years.
3. Ace F. Armani, Optometrist. Effective July 18, 2019: license revoked.
4. David Perez, Spectacle Lens Dispenser. Effective July 18, 2019: registration revoked.
5. Adina Cassondra Guerrero, Spectacle Lens Dispenser, Contact Lens Dispenser. Effective July 18, 2019: registrations revoked.

Additionally, six (6) Administrative Citations, with fines totaling \$10,500, were issued to licensees in the first quarter.

	Q1 – FY19/20						FY Total	
	Routine		High		Urgent			
Cases by Priority	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO
Received	63	50	4	0	0	0	67	50
Closed	66	48	2	0	0	0	68	48
Average Age (days) - Closed	196	170	404	0	0	0	203	170
Pending	130	116	13	2	0	0		118
Average Age (days) – Pending	392	361	254	426	0	0	380	362
Referred to AG	1	0	0	0	0	0	1	0
Pending at AG	5	27	3	0	0	0	8	27
Final Disciplinary Orders	3	2	0	0	0	0	3	2

Fig. 1: Overall Case Statistics, Q1, FY 2019-2020

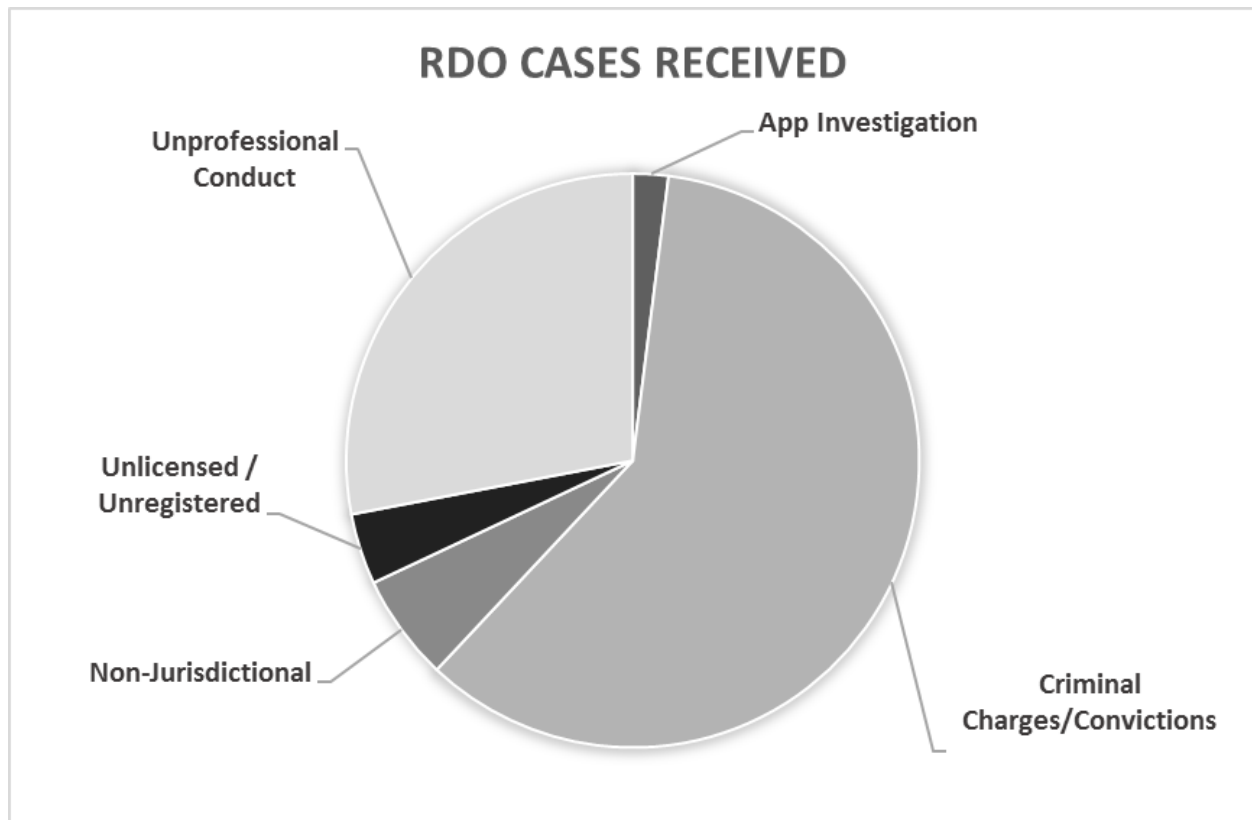


Fig. 2: RDO Cases Received by Classification, Q1, FY 2019-2020

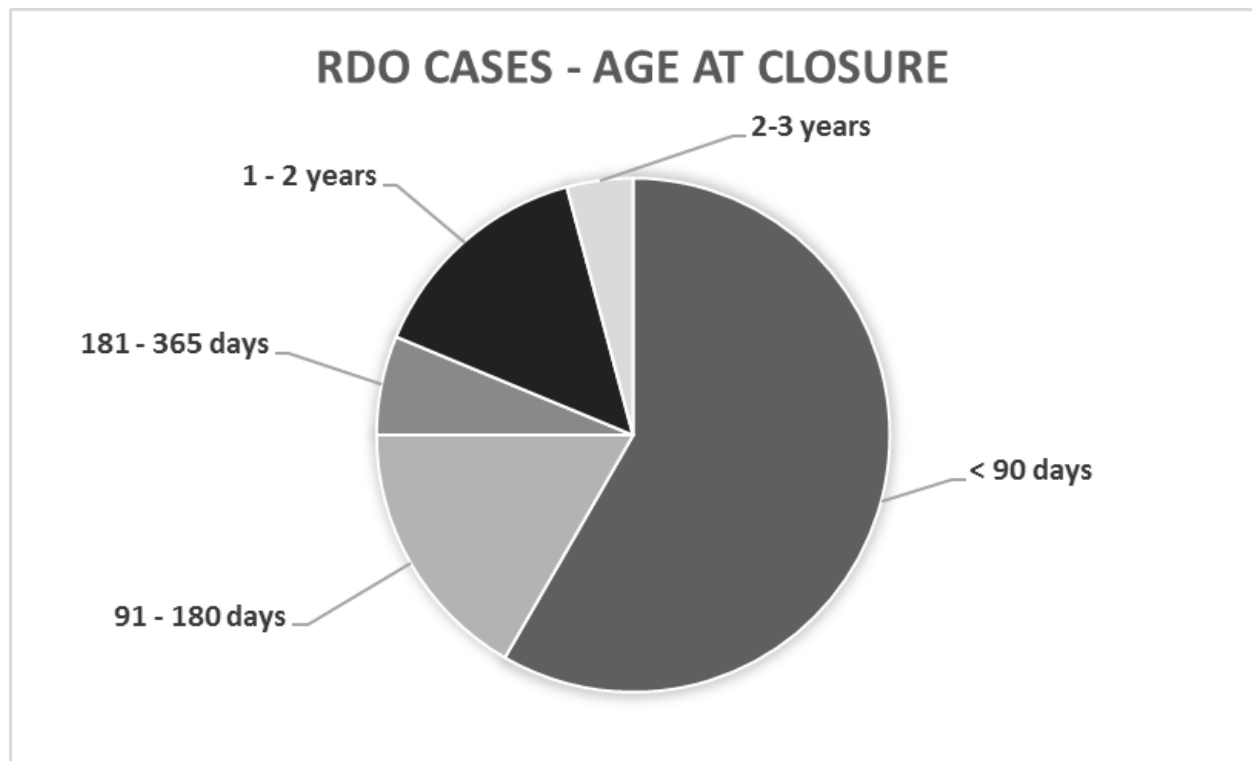


Fig. 3: RDO Cases – Age at Closure, Q1, FY 2019-2020

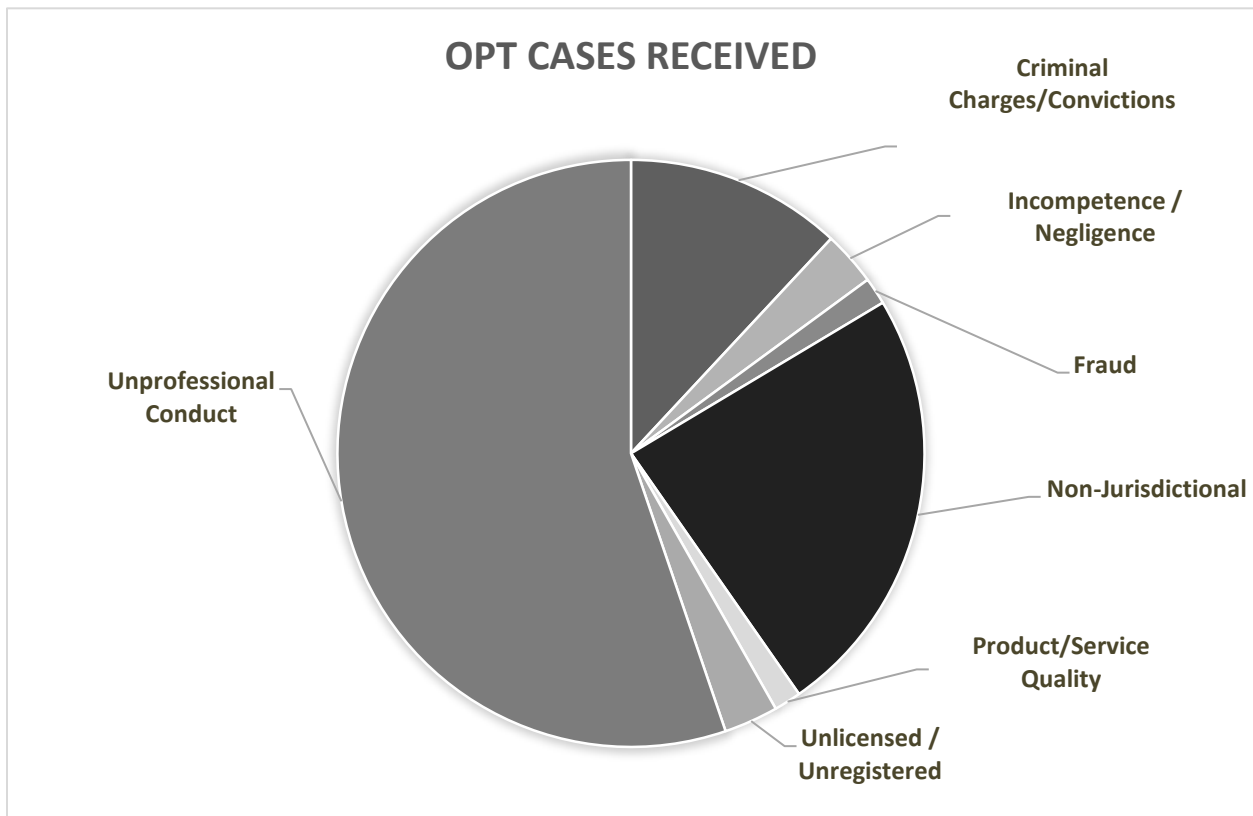


Fig. 4: OPT Cases Received by Classification, Q1, FY 2019-2020

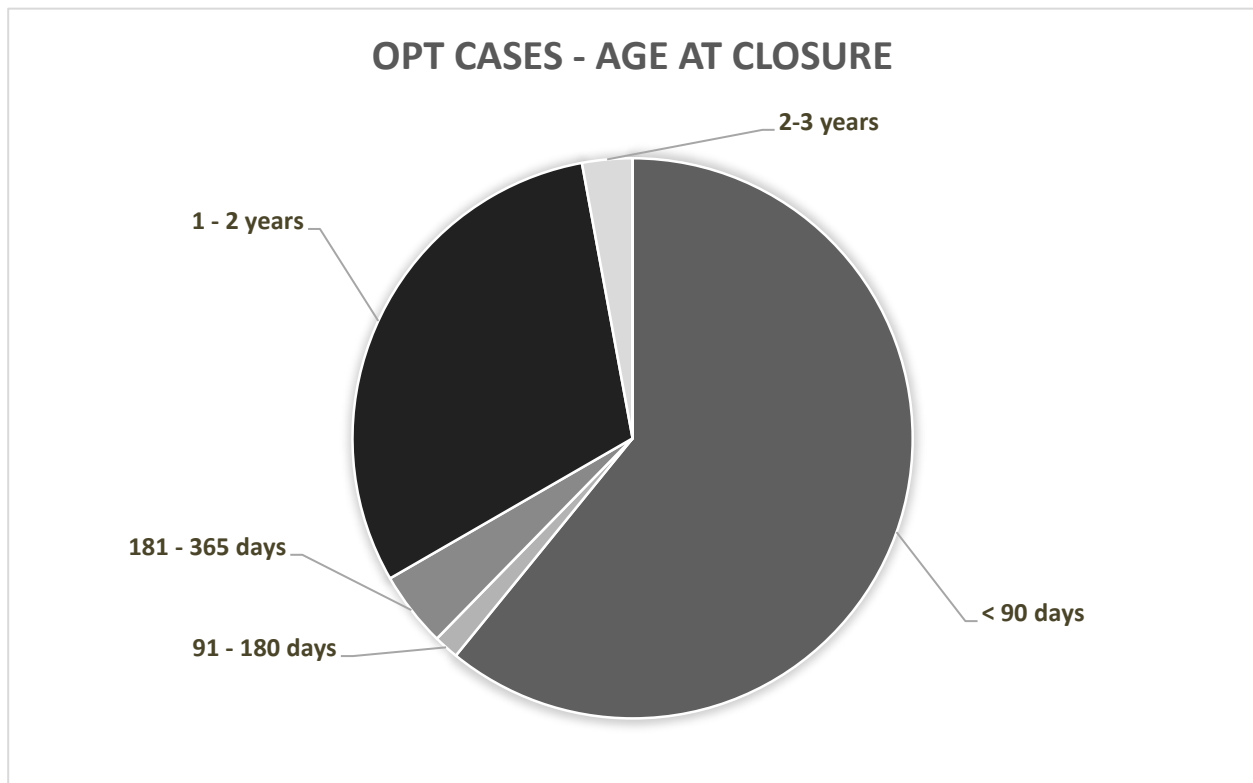


Fig. 5: OPT Cases – Age at Closure, Q1, FY 2019-2020

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara P. Murphy, Executive Officer <i>prepared by Arsha Qasmi, Lead Licensing Analyst</i>
SUBJECT	Agenda Item #12B – Examination and Licensing

Optometry Licensing Program:

The Licensing Unit successfully completed another year of processing applications for licensure of new graduates. With 366 applications received in total, this was the highest number of applications received in the past 3 years. Despite this uptick, staff maintained a steady pace and licensed applicants within the 8-10 week timeframe set forth by the Executive Officer.

Staff has issued an additional 154 new licenses since July; this is concurrent to the months of July through September which are the busiest time for new optometry license applications. This separate 154 licenses consist of individuals who have recently passed the National Board of Examiners in Optometry (NBEO) or the California Law and Regulation Exam (CLRE) after multiple attempts. The 154 licenses also consist of (new graduate) applicants who did not timely submit items for review (LiveScan, payment or attestation submitted after receipt of transcripts or scores).

After this peak season, current processing times have returned to normal (an average of 6 weeks). As of Q1 FY 2019/2020, CSBO received 51 exam requests; this leads staff to believe that there will be an increased number of applications this fiscal year as well.

The lead licensing analyst is currently working with the Office of Information Services, BreEZe unit (within the Department of Consumer Affairs) to streamline the application process for Fictitious Name Permits (FNP). This year staff worked with a number of optometrists who in error applied for an FNP. Staff processed refunds and nullified applications through intensive individual communication. Due to multiple communications and document processing, there were longer processing times for the FNP and Statement of Licensure license types. These licenses and OPT renewals are currently processed by a single, individual staff member.

As of September, processing times for FNP license type have normalized and are between 6-8 weeks. The Lead's work with BreEze will redirect applicants to apply for the correct license type and will stop applicants from recreating a duplicate FNP, eliminating the need for recontacting and retraining erroneous applications.

Opticianry Licensing Program:

To address concerns regarding processing times within the Opticianry program, staff spent considerable time and energy in August and September 2019 auditing processes and procedures (including SLD, CLD, RDO, and NCLS registrations). Applicants are sent a deficiency letter outlining all missing information within 30 days. These changes have improved processing times and reduced the volume of calls and postal mail received by the Board. Concurrently, staff has worked with BreEZe to remove invalid requirements from the online application, such as removal of photo and notarization. This will allow faster input for applicants.

As the American Board of Opticianry (ABO) exam results posted in August and September, the Optician Program crossed-through its fourth-quarter peak in application submissions. Despite this uptick, Opticianry program processing times are currently between 4-6 weeks.

In August, management hired a new management services technician to assist with the Optician Licensing Program. This has allowed processing times to stabilize and given the existing Optician Program coordinator capacity to focus on BreEZe issues and committee meetings.

Optometry Examination:

CSBO and the Office of Professional Examination Services (within the Department of Consumer Affairs) continue to work hand-in-hand to update current laws and regulations in the California Law and Regulations Exam (CLRE). An updated version of the CLRE is under review and will be released through this fall.

ISSUE MEMORANDIUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst</i>
SUBJECT	Agenda Item #12C – Executive Officer’s Report: Legislative and Regulatory Update

LEGISLATIVE UPDATE

The 2019 Legislative session concluded on September 13, 2019, with October 13 the last day for the Governor to sign or veto bills from year one of the two-year session. The Legislature is scheduled to reconvene on January 6, 2020 for the second year of the two-year session. Copies of the most recent version of each bill, position letters (if applicable) and analysis are included as part of this agenda item.

Based upon previous Board action, staff is currently tracking the following bills:

1. Assembly Bill 458 (Nazarian) Optometrists: home residence permits.

Board Position: Sponsor

Status: Signed into law on October 2, 2019 (Chapter 425, Statutes of 2019).

Summary: This bill would require an optometrist to obtain a home residence permit to engage in the practice of optometry at a home residence, as defined, except for a person engaging in the temporary practice of optometry. The bill would authorize an optometrist who is certified as a therapeutic pharmaceutical agent to obtain a home residence permit by submitting an application to the board and paying applicable fees, and would establish a process for the issuance and renewal of home residence permits, including prescribing application, renewal, and delinquency fees. This bill also contains other related provisions.

Comments: Staff anticipates regulations implementing the bill will be presented to the Consumer Protection Committee in early 2020.

2. Assembly Bill 613 (Low) Professions and Vocations: regulatory fees.

Board Position: Support

Status: Held in Senate Business, Professions and Economic Development Committee. Two year bill.

Summary: This bill would authorize each board within the Department of Consumer Affairs to increase their fees every 4 years in an amount not to exceed the increase in the Consumer Price Index in the preceding 4 years. Fees increased pursuant to this bill would be exempt from the Administrative Procedure Act.

3. Assembly Bill 896 (Low) Registered Dispensing Opticians: dispensing opticians fund: optometry fund.

Board Position: Sponsor (version as introduced February 20, 2019)

Status: Held in Senate Rules Committee as of September 1, 2019. Two year bill.

Summary: As introduced, this bill would dissolve the Dispensing Opticians Fund on July 1, 2022 and transfer those funds to the Optometry Fund. Amendments dated August 30, 2019 added the following provisions:

- Definition of an “extended optometric clinical facility” to mean a trailer, van or other means of transportation in which the practice of optometry is conducted and which is not affiliated with an optometry school in California;
- Limit that ownership to a charitable organization;
- Limit that facility to only accepting Medi-Cal payments;
- Require the Board to adopt regulations and fees for registration of such facilities;
- Prohibit the Board from bringing enforcement actions against any charitable organization prior to January 1, 2021.

Comments: The Board originally sponsored AB 896 to merge the optometry and optician funds. Amendments were unexpectedly made on August 30 adding the provisions above; due to legislative deadlines the Board was unable to review the bill and take a position. Originally, staff understood the amendments were to be placed into Assembly Bill 1714 (Blanca-Rubio). The Board reviewed the proposed text to AB 1714 at the August 2, 2019 public meeting, but did not take a position on that bill or the issue itself. Staff is continuing conversations with the author and stakeholders and the issue will be taken up again in 2020.

4. Assembly Bill 1467 (Salas and Low) Optometrists: scope of practice: delegation of services agreement.

Board Position: Watch

Status: Held in Senate Business, Professions and Economic Development Committee as of May 22, 2019. Two year bill.

Summary: This bill would authorize an optometrist to provide services set forth in a delegation of services agreement between an optometrist and an ophthalmologist, thereby expanding the optometry scope of practice.

5. Senate Bill 53 (Wilk) Open Meetings.

Board Position: Oppose (version as amended March 5, 2019)

Status: Held in Senate Appropriations Committee as of August 30, 2019.

Summary: This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a state body to hold open, public meetings if specified conditions are met.

Comments: This bill was held in Senate Appropriations due to concerns about implementation and high costs to bureaus and boards. It is unclear if the author will attempt to move the bill again in 2020.

REGULATORY UPDATE

Staff is currently working on the following regulatory issues:

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

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

Status: The regulatory text was approved at the [April 5, 2019 public meeting](#). DCA legal has reviewed and approved the rulemaking package; it is now being reviewed by DCA Director's office. Upon DCA approval, it is anticipated this rulemaking package will be submitted for OAL review and possible approval by early 2020, to meet the statutory implementation deadline of July 1, 2020.

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

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

Status: The regulatory text and application form were approved at the [April 5, 2019 public meeting](#). The rulemaking package was reviewed by DCA legal and several changes, requiring Board approval, are proposed as part of Agenda Item #9.

3. Optometry Disciplinary Guidelines (Amend §1575):

Subject: 2019 Update of Optometry Board Disciplinary Guidelines

Status: The Consumer Protection Committee reviewed the guidelines at the [September 13, 2019 public meeting](#). At that meeting, several changes were made and the guidelines were recommended for approval by the full Board, as part of Agenda Item #10.

4. Dispensing Optician Disciplinary Guidelines (Amend §1399.273):

Subject: Implementation of Dispensing Optician Disciplinary Guidelines

Status: The DOC reviewed the latest version of the Optician Disciplinary Guidelines at the [March 15, 2019 meeting](#). Additionally, further updates have been made to several sections of the Guidelines due to statutory changes coming into effect in 2019. Staff work is ongoing; it is anticipated the updated guidelines will be ready for DOC review by Spring 2020.

5. Continuing Education Regulations (Amend §1536):

Subject: Updates and revisions to the Board's CE regulations

Status: The Practice and Education Committee last reviewed the issue at the March 15, 2019 meeting and made several recommendations. Staff work is ongoing. It is anticipated draft language and potential changes will be submitted to the Practice and Education Committee by spring 2020.

Assembly Bill No. 458
CHAPTER 425

An act to amend Sections 3070.1 and 3152 of the Business and Professions Code, relating to healing arts.

[Approved by Governor October 2, 2019. Filed with Secretary of State October 2, 2019.]

AB 458, Nazarian. Optometrists: home residence permit.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of the practice of optometry by the State Board of Optometry and makes a violation of the act a misdemeanor. Existing law authorizes an optometrist to practice optometry at a health facility or residential care facility, subject to specified conditions, including that the optometrist maintain and disclose patient records in a specified manner. Existing law requires an optometrist to be certified to use therapeutic pharmaceutical agents in order to diagnose and treat specified conditions.

This bill would require an optometrist to obtain a home residence permit to engage in the practice of optometry at a home residence, as defined, except for a person engaging in the temporary practice of optometry. The bill would authorize an optometrist who is certified as a therapeutic pharmaceutical agent to obtain a home residence permit by submitting an application to the board and paying applicable fees, and would establish a process for the issuance and renewal of home residence permits, including prescribing application, renewal, and delinquency fees.

The bill would require an optometrist engaging in the practice of optometry at any health facility or residential care facility, or home residence to provide each patient with a consumer notice, as specified, prescribed by the board. The bill would require a certified home residence optometrist, before engaging in the practice of optometry at a home residence, to provide the patient with a prescribed consumer notice and an authorization to release the patient's medical information related to the optometrist's provision of optometry services to the board for specified purposes, including investigating complaints and conducting the board's enforcement duties. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 3070.1 of the Business and Professions Code is amended to read:

3070.1. (a) For purposes of this section, the following terms have the following meanings:

(1) "Health facility" means a health facility, as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.

(2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:

(A) Adult residential facilities.

(B) Adult residential facilities for persons with special health care needs.

(C) Residential care facilities for the chronically ill.

(D) Residential care facilities for the elderly.

(E) Continuing care retirement communities.

(F) Social rehabilitation facilities.

(3) "Home residence" means the primary residence of an individual who is restricted by a disabling physical or mental condition. "Home residence" does not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a community care facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, but does include an individual condominium unit, apartment, single-family home, cooperative unit, mobilehome, or trailer, if it is used as a residence.

(b) (1) An optometrist who is certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3 may, in the form and manner prescribed by the board, submit an application to the board for a home residence permit, and pay all applicable fees prescribed in Section 3152. The board shall, upon application and payment of the fee prescribed in Section 3152, issue a home residence permit to an optometrist certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3. A home residence permit authorizes the holder to engage in the practice of optometry at a home residence as specified in this section.

(2) A home residence permit shall expire on the same date the licensee's optometry license expires. A home residence optometrist may renew the permit by submitting an application, in the form and manner prescribed by the board, to the board for renewal, and paying any applicable fees prescribed in Section 3152.

(3) A person engaging in the temporary practice of optometry, as defined in subdivision (b) of Section 3070, is not required to obtain a home residence permit in order to engage in the temporary practice of optometry at a home residence.

(c) An optometrist may engage in the practice of optometry at any health facility or residential care facility, and in a home residence, if all of the following requirements are satisfied:

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(1) The optometrist maintains a primary business office, separate from the health facility, residential care facility, or home residence, that meets all of the following requirements:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

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

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- (B) Information for filing a complaint with the board.
- (d) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility, residential care facility, or home residence shall not be required to comply with Section 3070 with

regard to providing notification to the board of each health facility, residential care facility, or home residence at which the optometrist practices.

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

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

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

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

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

SEC. 2. Section 3152 of the Business and Professions Code is amended to read:

3152. The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).

(b) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).

(d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).

(g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).

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(h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).

(i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).

- (j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).
- (k) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).
- (l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).
- (m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).
- (n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (o) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).
- (q) The fee for a retired license shall not exceed twenty-five dollars (\$25).
- (r) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (s) The biennial renewal fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (t) The application fee for a certificate to administer immunizations shall not exceed fifty dollars (\$50).
- (u) The application fee for a home residence permit is fifty dollars (\$50). The board may increase the fee to not more than one hundred dollars (\$100).
- (v) The renewal fee for a home residence permit is fifty dollars (\$50). The board may increase the fee to not more than one hundred dollars (\$100).
- (w) The delinquency fee for a home residence permit is twenty-five dollars (\$25). The board may increase the fee to not more than one hundred dollars (\$100).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Steven Glazer, Chair
2019 - 2020 Regular

Bill No: AB 458
Author: Nazarian
Version: June 6, 2019
Urgency: No
Consultant: Sarah Huchel

Hearing Date: June 10, 2019

Fiscal: Yes

Subject: Optometrists: home residence certification

SUMMARY: Authorizes an optometrist to practice optometry in the residence of a homebound individual.

Existing law:

- 1) Establishes the California State Board of Optometry (Board) within the Department of Consumer Affairs to regulate the practice of optometry through the Optometry Practice Act. (Business and Professions Code (BPC) Section 3010.5)
- 2) Requires each optometrist to notify the Board in writing of the address or addresses where he or she is to engage in the practice of optometry and of any changes in his or her place of practice. A statement of licensure must be placed in all practice locations other than an optometrist's principal place of practice. (BPC § 3070 (a))
- 3) Exempts the location notification requirements for an optometrist who engages in the temporary practice of optometry or who practices in a health facility or residential care facility. "Temporary practice" is defined as the practice of optometry at locations other than the optometrist's principal place of practice for not more than five calendar days during a 30-day period, and not more than 36 days within a calendar year. This limitation shall apply to all practice locations where the licensed optometrist is engaging in temporary practice, not to each practice location individually. (BPC § 3070 (b))
- 4) Limits an optometrist, and no more than two or more optometrists jointly, from having more than 11 offices. (BPC § 3077(b))
- 5) Authorizes the Board to grant a therapeutic pharmaceutical agents (TPA) certification to any licensee who graduated from a California accredited school of optometry on or after January 1, 1996 and passed all sections of the National Board of Examiners in Optometry's national board examination, or its equivalent. (BPC § 3041.3 (c))
- 6) Authorizes an optometrist to practice optometry at any health facility or residential care facility under specified conditions. Defines a "residential care facility" as:

- a) Any family home, group care facility, or similar facility determined by the State Department of Public Health, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual, including, but not limited to the following:
 - i) Adult residential facilities.
 - ii) Adult residential facilities for persons with special health care needs.
 - iii) Residential care facilities for the chronically ill.
 - iv) Residential care facilities for the elderly.
 - v) Continuing care retirement communities.
 - vi) Social rehabilitation facilities. (Health and Safety Code (HSC) § 1250 (a)(1); BPC § 3070.1 (a)(2))

This bill:

- 1) Authorizes an optometrist to practice optometry in the home of an individual who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition.
- 2) Defines a “home residence” as the primary residence of an individual who is restricted by a disabling mental or physical condition. The term does not apply to facilities defined in the HSC, but encompass an individual condominium unit, apartment, single-family home, cooperative unit, mobilehome, and trailer, if used as a residence.
- 3) Requires a home residence permit (HRP) to practice optometry at a home residence, except for optometrists engaged in the temporary practice of optometry.
- 4) Requires a TPA certification to apply for a HRP.
- 5) Establishes an application, renewal, and delinquency fee for a HRC, and states that the HRC shall expire on the same date the licensee’s optometry license expires.
- 6) Requires a home residence optometrist to abide by the following requirements:
 - a) The optometrist maintains a primary business office, separate from the health facility or facility, residential care facility, or home residence, that meets all of the following requirements:
 - i) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.
 - ii) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.

- iii) Is registered with the Board of Optometry and owned or leased by the optometrist or by the employer of the optometrist.
 - iv) Is not located in or connected with a residential dwelling.
- b) The optometrist maintains or discloses patient records in the following manner:
- i) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed.
 - ii) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records.
 - iii) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:
 - (1) Name.
 - (2) Optometrist license number.
 - (3) The place of practice and the primary business office.
 - (4) Description of the goods and services for which the patient is charged and the amount charged.
 - iv) A copy of any referral or order requesting optometric services for a patient from the health facility's or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.
- c) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility or facility, residential care facility, or home residence.
- d) Before engaging in the practice of optometry, provide each patient and, if applicable, the patient's caregiver, a consumer notice approved by the Board that includes the following:
- i) An authorization to release the patient's medical information related to the optometrist's provision of optometry services to the Board. The authorization shall disclose that the patient's authorization to release medical information to the board is voluntary and that the medical information shall be used by the board only to investigate complaints and to conduct the Board's enforcement duties.

- ii) Any other information the Board deems appropriate to safeguard the public from substandard optometric care, fraud, and other violations of the optometric practice act.
 - e) The optometrist maintains a copy of the consumer notice in the patient's file.
- 7) Requires an optometrist practicing in a home residence or health or residential care facility to provide each patient and, if applicable, the patient's caregiver, a consumer notice approved by the Board that includes the following:
- a) The name, license number, primary telephone number, and primary business address of the optometrist.
 - b) Information for filing a complaint with the Board.
- 8) Exempts a home residence optometrist from notifying the Board of each home residence at which the optometrist practices.
- 9) Authorizes the Board to promulgate regulations to conduct quality assurance reviews for optometrists engaging in the practice of optometry at a home residence.

FISCAL EFFECT: According to the Assembly Appropriations Committee Analysis dated April 24, 2019, the costs to the Board are expected to be minor and absorbable.

COMMENTS:

1. **Purpose.** This bill is sponsored by the California State Board of Optometry. According to the Author, "As of 2010, there were more than 38.9 million people aged 65 and older in the United States. Up to 3.6 million of these people were considered housebound and in need of home-based care. According to the 2017 California State Plan on Aging, the number of people age 60 and over in California will grow to 13.9 million by 2050, an increase of 128% from 2010. Statistically, more than 1 million of these people will be housebound and in need of home-based care. Additionally, many of those people may not have access to regular health care screenings and services, especially in rural and underserved areas.

"Both the Centers for Disease Control and the National Institutes for Health have noted the importance of eye health and the role of vision impairment as a serious health concern, especially in older adults. It can lead to a reduction in common activities such as self-care, cooking, reading, watching TV, or using a computer or smart phone. As a result, vision loss can impact the overall health and wellbeing of seniors, increasing depression, causing difficulty in identifying medication, and increasing risk from falls or fractures. Quality, comprehensive vision care could help ease their suffering and delay their entry into a nursing home or hospital. The American Academy of Ophthalmology also notes the additional health benefits of eye exams, especially for seniors. These exams can uncover symptoms of significant health problems—including carotid artery blockages, hypertension, high cholesterol, and diabetes. If these warning signs are detected, the Optometrist can promptly refer the patient to a primary care provider for diagnosis and treatment.

“AB 458 will allow licensed optometrists to bring vision services and testing into the homes of individuals who are homebound due to physical or mental disability.”

2. **Background on the Board.** Since its inception over 100 years ago, the Board has supported and helped consumers by advocating consumer interests before lawmakers, regulating to protect consumers from unlicensed practitioners and guarding our licensees against unfair competition, enforcing laws to protect the consumer and resolving disputes between business and a customer or a consumer and a licensee.

Today, the Board regulates the largest population of optometrists and dispensers in the United States with over 17,400 licenses, registrations, and permits. The Board is also responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma.

3. **Home care.** Current law authorizes optometrists to practice in traditional optometric settings, as well as in health facilities and residential care facilities, as long as the optometrist retains a traditional office-based practice and complies with other requirements. This bill will allow optometrists to treat homebound individuals in their homes, as well.

While this bill subjects an optometrist practicing in a home to many of the same requirements as those practicing in a health or residential care facility, home care further requires a permit, TPA certification, and a request for release of medical records related to the provision of optometric care, and the Board plans to conduct random quality assurance reviews on patient files.

The Board explains these additional provisions by observing that health and residential care facilities are licensed by other state regulators and often involve team care, frequently by mandated reporters, that afford additional layers of patient protection. Homebound consumers are less likely to have multiple professional healthcare relationships, and therefore deserve the heightened oversight provided by permitting and prospective enforcement action by the Board.

4. **Prior Related Legislation.** SB 1386 (McGuire, Chapter 334, Statutes of 2018) authorized an optometrist to own, maintain, or operate up to 11 offices and eliminated the branch office license.

SUPPORT AND OPPOSITION:

Support:

California State Board of Optometry (Sponsor)

Opposition:

None on file as of June 5, 2019.

-- END --



August 5, 2019

The Honorable Gavin Newsom
Governor of California
State Capital, 1st Floor
Sacramento, CA 95814

Sent via email and U.S. Mail

Re: Sponsorship and Support of Assembly Bill 458 (Nazarian)

Dear Governor Newsom,

The California State Board of Optometry (Board) is proud to sponsor and strongly supports AB 458 (Nazarian), relating to Optometrists: Home Residence Certification. We are grateful to Assembly Member Nazarian for authoring this bill.

AB 458 will allow licensed optometrists to bring vision services and testing into the homes of individuals who are homebound due to physical or mental disability, increasing access to care while maintaining strong consumer protection standards. This bill enjoys strong support from stakeholders and has not had any opposition throughout the legislative process.

We respectfully urge your support and signature on AB 458.

Should you have any questions, please do not hesitate to contact me at 916-575-7184 or shara.murphy@dca.ca.gov.

Sincerely,

Shara Murphy, Executive Officer
California State Board of Optometry

Cc: Assembly Member Adrin Nazarian

ASSEMBLY BILL

No. 613

Introduced by Assembly Member Low

February 14, 2019

An act to add Section 101.1 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 613, as introduced, Low. Professions and vocations: regulatory fees.

Existing law establishes the Department of Consumer Affairs, which is comprised of boards that are established for the purpose of regulating various professions and vocations, and generally authorizes a board to charge fees for the reasonable regulatory cost of administering the regulatory program for the profession or vocation. Existing law establishes the Professions and Vocations Fund in the State Treasury, which consists of specified special funds and accounts, some of which are continuously appropriated.

This bill would authorize each board within the department to increase every 4 years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding 4 years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 101.1 is added to the Business and Professions Code, to read:

101.1. (a) Notwithstanding any other law, no more than once every four years, any board listed in Section 101 may increase any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding four years in accordance with the following:

(1) The board shall provide its calculations and proposed fee, rounded to the nearest whole dollar, to the director and the director shall approve the fee increase unless any of the following apply:

(A) The board has unencumbered funds in an amount that is equal to more than the board's operating budget for the next two fiscal years.

(B) The fee would exceed the reasonable regulatory costs to the board in administering the provisions for which the fee is authorized.

(C) The director determines that the fee increase would be injurious to the public health, safety, or welfare.

(2) The adjustment of fees and publication of the adjusted fee list is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) of the Government Code.

(b) For purposes of this section, "fee" includes any fees authorized to be imposed by a board for regulatory costs. "Fee" does not include administrative fines, civil penalties, or criminal penalties.

**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Steven Glazer, Chair
2019 - 2020 Regular

Bill No:	AB 613	Hearing Date:	July 1, 2019
Author:	Low		
Version:	February 14, 2019		
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Mason		

Subject: Professions and vocations: regulatory fees

SUMMARY: Authorizes specified regulatory boards, under the Department of Consumer Affairs (DCA), to adjust their licensing fees once every four years by an amount not to exceed the increase in the California Consumer Price Index (CPI) for the preceding four years, with limitations.

Existing law:

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Requires an agency to reduce license or other fees, as specified, if at the end of any fiscal year, an agency within the DCA, except as specified, has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years. (BPC § 128.5)
- 3) Specifies that a charge for the estimated administrative expenses of the DCA, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance. (BPC § 201(a)(1))
- 4) Requires the DCA to submit a report on of the accounting of the pro rata calculation of administrative expenses to the appropriate policy committees of the Legislature on or before July 1 of each subsequent year. (BPC § 201(a)(2))

This bill:

- 1) Allows a board, no more than once every four years, to increase any fee authorized to be imposed by that board by any amount not to exceed the increase in the CPI, as specified, for the preceding four years. Requires a board to provide its calculations and proposed fee, rounded to the nearest whole dollar, to the director of the DCA, and the director must approve the fee unless any of the following apply:
 - a) The Board has unencumbered funds in an amount that is equal to more than the Board's operating budget for the next two fiscal years;

- b) The fee would exceed the reasonable regulatory costs to the Board in administering the provisions for which the fee is authorized;
 - c) The director determines that the fee increase would be injurious to the public, health, safety, or welfare.
- 2) States that the adjustment of fees and publication of the adjusted fee list is not subject to the Administrative Procedure Act.
 - 3) Specifies, for purposes of this bill, that “fee” includes any fees authorized to be imposed by a board for regulatory costs, but does not include administrative fines, civil penalties, or criminal penalties.

FISCAL EFFECT: This bill is keyed fiscal by the Legislative Counsel. According to the Assembly Committee on Appropriations Analysis dated April 10, 2019, this bill will result in minor and absorbable costs to DCA to adapt to this change. DCA indicates while this bill exempts the adjustment of fees and publication of a fee schedule from the regulatory process, some programs may elect to pursue regulation changes to conform existing fee schedules to the new fees, therefore avoiding confusion.

COMMENTS:

- 1. **Purpose.** This bill is sponsored by the Author. According to the author, “because boards receive no General Fund support, insufficient revenue derived from fees typically means that a board’s programs and operations can no longer be sustained. The volatile nature of fee-driven revenue often results in a board seeing the health of its fund condition decline steadily over time. Meanwhile, the only solution is to pursue a fee increase.”

“For fees set in statute, a fee increase requires the introduction, passage, and enactment of legislation, which many boards see as a substantial undertaking. For fees contained in regulations, adjustments must be made in accordance with the Administrative Procedures Act, which involves extensive public rulemaking processes in conjunction with the Office of Administrative Law, and may only be initiated following approval from the Director of Consumer Affairs—a process that may take a year or more to complete. The result of these challenges is often that a board will hold off from adjusting its fees for as long as possible, diverting resources and allowing program operations to decline.”

“During the Legislature’s sunset review process, boards report on their fund conditions and whether they are maintaining a healthy reserve. It is often revealed that boards have not appropriately sought needed fee increases, and the Legislature is prompted to take action to ensure increases occur. When boards do pursue adjustments, it is common that fees will go up substantially, sometimes doubling or more in order to reconcile structural imbalances that was long unaddressed—often for decades.”

“This bill would provide an additional mechanism for boards to adjust their regulatory fees as a means of sustaining fiscal health. The bill would allow for limited administrative adjustments, which would only be allowed once every four years and would be restricted to the increase in CPI calculated over the preceding four years. As described by the Department of Industrial Relations, the CPI is used as a measure of the average change over time in the prices paid by urban consumers for a fixed market basket of goods and services. The CPI provides a way to compare what this market basket of goods and services costs on a given month with what the same market basket cost at another past point in time.”

2. **Background.**

DCA and Board Fees. There are over 30 regulatory entities within the jurisdiction of the DCA. These entities are responsible for the licensure and regulation of a variety of occupations throughout California that consumers rely on every day. These licensed professions impact consumer health and wellness, home-buying and moving, private security guards, animal healthcare, death-care, and automotive repair, among numerous others. The DCA’s boards and bureaus are funded almost entirely through the collection of fees from licensees, rather than any General Fund allocations.

The dollar amount charged by a board to a licensee or applicant is either expressly set in statute or contained in board-promulgated regulations, which may be statutorily capped. Of course when a licensee’s fee increases, there is a chance that the cost will be passed on to the consumer. Often times, there are questions from the legislature or the public, including the licensed populations, about whether a board has justified their need for a fee increase or whether there are possible alternatives, such as lowering operating expenses.

When a board experiences insufficient revenue, their programs and operations must continue, but the health of their reserve fund declines. Typically, the DCA has recommended that boards maintain a six-month reserve, and under current law, most boards are prohibited from having a reserve of more than 24 months; and if they reach that point, the board is required to reduce licensing fees. The volatility of fee-driven revenue makes these board and bureaus susceptible to unhealthy fund conditions due sometimes to factors they are unable to identify. Often, the only solution proposed is to pursue a fee increase.

Because many of the licensing fees are set in statute with a floor and a ceiling, the board will have the opportunity to gradually raise the fees through the regulatory process. Through the regulatory process, adjustments must be made in accordance with the Administrative Procedures Act, which comprises of an extensive public rulemaking processes in conjunction with the Office of Administrative Law, and may only be initiated following approval from the director of DCA—a process that may take a year or more to complete. However, if a board or the DCA is monitoring its fund condition appropriately, the timeframe to identify a necessary fee increase through the regulatory process should be sufficient. When a change or increase to the statutory fee ceiling is necessary, the boards or bureaus must come to the Legislature. There, the proposed fee increase is again

subject to public hearings and legislative oversight. As currently drafted, this bill would allow for limited administrative adjustments once every four years, and would restrict the increase to the rise in the Consumer Price Index over the preceding four years. Additionally, this bill does not require a notice that would allow for public comment.

Many board executive officers rely on information from DCA's Office of Administrative Services, which consists of Fiscal Operations (Budgets, Accounting, Cashier), Business Services Office and the Office of Human Resources to do one of the most critical components of their job: managing the fiscal and fund condition of the board. Budget numbers are, at minimum, reported to board members at every board meeting, while some boards provide more regular updates on the status of their budget. Yet, boards may not have full control of establishing budgets and rely instead on budgets provided to staff at the DCA.

Pro Rata. DCA is almost entirely funded by a portion of the licensing fees paid by California's state-regulated professionals in the form of "pro rata." Pro rata funds DCA's two divisions: the Consumer and Client Services Division and the Division of Insurance. Pro rata is primarily apportioned based on the number of authorized staff at each board. DCA also charges boards based on actual use for some services, such as the Office of Information Services, the Consumer Information Center, the Office of Professional Examination Services, and DOI. Based on DCA's own figures, actual pro rata costs for every board have increased significantly since FY 2012-2013.

In 2017, the Bureau of Real Estate (CalBRE) was removed from DCA's jurisdiction pursuant to SB 173 (Dodd, Chapter 828, Statutes of 2017). CalBRE's pro rata charges grew from \$1.8 million in 2013, when CalBRE was an independent department, to \$5.2 million in FY 2016-17 under the DCA. In readjusting its pro rata calculations following CalBRE's departure, DCA reduced its overall budget by only \$1.3 million, even though it planned to charge CalBRE \$5.7 million. Critically, if the \$5.7 million charged to CalBRE had been entirely, or even mostly, justified in service to CalBRE, then DCA should have reduced its pro rata by \$5.7 million. It appears that CalBRE may have been subsidizing services provided to other boards, in violation of current law (Business and Professions Code Section 202(a)) which prohibits the funds of one board from being used to pay the expenses of any other.

3. **Arguments in Support.** The Board of Behavioral Sciences, California Acupuncture Board, California Architects Board, Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, and the Medical Board of California write in support and note that this bill provides another mechanism to adjust regulatory fees.

The California Dental Association supports this bill if it is amended, noting that "Many times, due to the current process, boards put off raising fees for years or decades and then in the face of huge, looming budget shortfalls, are forced to substantially increase fees. Other times, the process of increasing fees through the regulatory process can take well over a year. However, allowing these requests to be ultimately approved by the DCA Director, a role by its very nature that is dependent on the budgets of the licensing entities it oversees could be a conflict of

interest. Instead, requiring fee increases permitted through this bill to go through a separate entity without any financial ties would allow for proper additional oversight and the expertise to appropriately audit while also allowing for relatively faster changes in the fee scheduled, as opposed to that of a regulatory or legislative process.”

According to the Contractors State License Board, “due to the ‘notwithstanding any other law’ language in the bill, Assembly Bill 613 may supersede the Board’s existing authority to raise fees through the regulatory process above the CPI, due to the customary operational, budgetary, or other needs. The Board would appreciate language in the bill that preserves a Board’s existing ability or authority to pursue fee changes through statute or regulation unrelated to the new authority that would be granted by Assembly Bill 613”.

4. **Arguments in Opposition.** Opponents argue that existing law already authorizes boards to seek fee increases through the regulatory and legislative process and to request fee increases through the sunset review process which occurs every four years.

The California Medical Association has “concerns regarding the bill’s lack of public transparency for licensees to provide input regarding whether fee increases are appropriate; and the absence of safeguards to ensure that department do not request multiple fee increases through different processes...AB 613 would add yet another mechanism for requesting fee increases, but for which there would be limited oversight and transparency and no process for reviewing the requested fee increase in the context of Board’s other pending fee increase requests...AB 613 would also increase the likelihood that licensees could be subject to multiple fee increases for various board functions during a given time period, resulting in increased mistrust regarding whether the Board is appropriate steward of licensee fees. A transparent comprehensive process for considering all fee increases, regardless of the reason, that allows for licensee and stakeholder input and the opportunity to consider options for redistributing existing Board resources would be a more effective approach to consistent Board revenue and expenditures.”

According to the California Orthopaedic Association, “Our members feel that licensing fees for doctors are already high: \$491 to apply and \$808 to get the license; see http://www.mbc.ca.gov/Applicants/Physicians_and_Surgeons/ . The people paying these fees are newly-minted doctors, many of whom graduate medical school with tremendous debt. We do not support blanket authority for automatic fee increases, absent a showing of need. High licensure fees are burdensome for new, young doctors, and may discourage out-of-state doctors from coming to practice in California. Given our state’s problem with access to health care, we are concerned with anything that could discourage more doctors from practicing here.”

5. **Policy Issues and Author’s Amendments.**

Additional oversight and responses to issues noted by interested parties. Currently, almost every DCA entities’ fees are adjusted through statute and the determination

is made by the Legislature as to the appropriateness and necessity of fee adjustments. The bill cedes Legislative authority for these discussions to the Administration, as the DCA Director would have the authority to confirm boards' fee proposals. *The following amendments allow for clearer oversight in this new process and ensure that the public and Legislature are aware of proposed changes, as well as advised of fee updates.*

101.1. (a) Notwithstanding any other law, no more than once every four years, any board listed in Section 101 may increase any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding four years in accordance with the following:

(1) The board shall provide its calculations and proposed fee, rounded to the nearest whole dollar, to the director **Department of Finance** and the director **which**

shall approve the fee increase unless any of the following apply:

(A) The board has unencumbered funds in an amount that is equal to more than the board's operating budget for the next two fiscal years.

(B) The fee would exceed the reasonable regulatory costs to the board in administering the provisions for which the fee is authorized.

(C) The director **Department of Finance** determines that the fee increase would be injurious to the public health, safety, or welfare.

(2) **Any fee adjusted pursuant to this subdivision shall be published by the board on its internet website and transmitted in writing to the Joint Legislative Budget Committee, as well as the appropriate policy committees of the Legislature so that the adjustments may be considered during the board's next regularly scheduled sunset review.**

(3) Any fee adjustment made pursuant to this subdivision shall be effective on the first day of the first calendar quarter commencing more than 90 days after the publication and transmittal of the adjustment made pursuant to paragraph (2)

(4)The adjustment of fees and publication of the adjusted fee list is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) of the Government Code.

(5) A board that is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) shall approve any proposed fee adjustments made pursuant to this subdivision by a majority vote prior to providing the adjustments to the Department of Finance for approval

(b) For purposes of this section, “fee” includes any fees authorized to be imposed by a board for regulatory costs. “Fee” does not include administrative fines, civil penalties, or criminal penalties.

(c) Nothing in this section shall preclude a board from adjusting any fee within its existing authority or authorize the creation of any new fee.

SUPPORT AND OPPOSITION:

Support:

Board of Behavioral Sciences
California Acupuncture Board
California Architects Board
California Dental Association
Contractors State License Board
Medical Board of California
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

Opposition:

California Academy of Family Physicians
California Medical Association
California Orthopaedic Association
California Psychiatric Association

-- END --



April 10, 2019

The Honorable Evan Low
California State Assembly
State Capitol, Room 4126
Sacramento, CA 95814

RE: Assembly Bill 613 (Low) SUPPORT

Dear Assembly Member Low:

As the Executive Officer of the California State Board of Optometry (Board), I write on behalf of the Board in support of Assembly Bill (AB) 613, relating to professions and vocations. The Board is pleased to support this bill and appreciates your efforts in authoring this legislation.

Should you have any questions, please contact me at 916-575-7184 or Shara.murphy@dca.ca.gov, or the Board's policy analyst Marc Johnson at 916-575-7182 or marc.johnson@dca.ca.gov.

Sincerely,

Shara Murphy, Executive Officer
California State Board of Optometry

CC: Assembly Business and Professions Committee

AMENDED IN SENATE AUGUST 30, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 896

Introduced by Assembly Member Low
(Coauthors: Assembly Members Arambula, Bonta, Carrillo, and Gipson)

February 20, 2019

An act to amend Sections 655, 2545, 2546.9, 2556.2, 2567, and 2568 of, to amend, repeal, and add Section 205 of, and to add ~~Section 205.2~~ *Sections 205.3 and 3070.2* to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 896, as amended, Low. Registered Dispensing Opticians: ~~dispensing opticians~~ *Dispensing Opticians* Fund: Optometry ~~Fund~~. *Fund: extended optometric clinical facilities.*

Existing law provides for the registration and regulation of dispensing opticians, spectacle lens dispensers, nonresident contact lens sellers, and contact lens dispensers by the State Board of Optometry and requires certain fees and fines in connection therewith to be paid to the board. Existing law establishes the Dispensing Opticians Fund and requires that these fees and fines be paid into that fund, and provides that the funds be available, upon appropriation, to the board for specified purposes.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the board and requires certain fees and fines in connection therewith to be paid to the board. The act establishes the Optometry Fund and requires that these fees and fines be paid into that fund, and provides that the funds, unless otherwise

provided, be available, upon appropriation, to the board in order to carry out the purposes of the act.

This bill would abolish the Dispensing Opticians Fund on July 1, 2022, and would require that any moneys in that fund be transferred to the Optometry Fund before July 1, 2022. The bill would make various related conforming changes.

Existing law provides that specified provisions of the Medical Practice Act that are not inconsistent or in conflict with certain provisions of law relating to the registration and regulation of dispensing opticians apply to the issuance, and govern the expiration and renewal, of certificates of registration issued to dispensing opticians.

This bill would delete that provision.

The Optometry Practice Act requires each licensed optometrist, before engaging in the practice of optometry, to notify the board in writing of the address or addresses where the optometrist is to engage in the practice of optometry and of any changes in their place of practice. A violation of the act is a crime.

This bill would define “extended optometric clinical facility” to mean a trailer, van, or other means of transportation in which the practice of optometry is performed and which is not affiliated with an approved optometry school in California. The bill would limit ownership of an extended optometric clinical facility to a charitable organization that is providing optometric services to patients regardless of the patient’s ability to pay. The bill would require an extended optometric clinical facility to register with the board. The bill would prohibit such a facility from accepting payment for services other than those provided to Medi-Cal beneficiaries.

The bill would require the board, by January 1, 2021, to adopt regulations establishing a registry for extended optometric clinical facilities and to set a registration fee at an amount not to exceed the costs of administration. The bill would authorize the board to adopt regulations to conduct quality assurance reviews for optometrists engaging in the practice of optometry at an extended optometric clinical facility.

The bill would prohibit the board from bringing an enforcement action against a charitable organization that is not affiliated with an approved optometry school in California for remotely providing optometric service before January 1, 2021.

Because this bill would expand the scope of an existing crime, it would therefore impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would add Section 205 to the Business and Professions Code as proposed by both this bill and AB 1519 to be operative only if this bill and AB 1519 are enacted and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 205 of the Business and Professions Code
- 2 is amended to read:
- 3 205. (a) There is in the State Treasury the Professions and
- 4 Vocations Fund. The fund shall consist of the following special
- 5 funds:
- 6 (1) Accountancy Fund.
- 7 (2) California Architects Board Fund.
- 8 (3) Athletic Commission Fund.
- 9 (4) Barbering and Cosmetology Contingent Fund.
- 10 (5) Cemetery and Funeral Fund.
- 11 (6) Contractors' License Fund.
- 12 (7) State Dentistry Fund.
- 13 (8) Home Furnishings and Thermal Insulation Fund.
- 14 (9) California Architects Board-Landscape Architects Fund.
- 15 (10) Contingent Fund of the Medical Board of California.
- 16 (11) Optometry Fund.
- 17 (12) Pharmacy Board Contingent Fund.
- 18 (13) Physical Therapy Fund.
- 19 (14) Private Investigator Fund.
- 20 (15) Private Security Services Fund.
- 21 (16) Professional Engineer's, Land Surveyor's, and Geologist's
- 22 Fund.
- 23 (17) Consumer Affairs Fund.
- 24 (18) Behavioral Sciences Fund.
- 25 (19) Licensed Midwifery Fund.
- 26 (20) Court Reporters' Fund.

- 1 (21) Veterinary Medical Board Contingent Fund.
- 2 (22) Vocational Nursing and Psychiatric Technicians Fund.
- 3 (23) Electronic and Appliance Repair Fund.
- 4 (24) Dispensing Opticians Fund.
- 5 (25) Acupuncture Fund.
- 6 (26) Physician Assistant Fund.
- 7 (27) Board of Podiatric Medicine Fund.
- 8 (28) Psychology Fund.
- 9 (29) Respiratory Care Fund.
- 10 (30) Speech-Language Pathology and Audiology and Hearing
- 11 Aid Dispensers Fund.
- 12 (31) Board of Registered Nursing Fund.
- 13 (32) Animal Health Technician Examining Committee Fund.
- 14 (33) State Dental Hygiene Fund.
- 15 (34) State Dental Assistant Fund.
- 16 (35) Structural Pest Control Fund.
- 17 (36) Structural Pest Control Eradication and Enforcement Fund.
- 18 (37) Structural Pest Control Research Fund.
- 19 (38) Household Movers Fund.
- 20 (b) For accounting and recordkeeping purposes, the Professions
- 21 and Vocations Fund shall be deemed to be a single special fund,
- 22 and each of the several special funds therein shall constitute and
- 23 be deemed to be a separate account in the Professions and
- 24 Vocations Fund. Each account or fund shall be available for
- 25 expenditure only for the purposes as are now or may hereafter be
- 26 provided by law.
- 27 (c) This section shall be repealed on July 1, 2022.
- 28 SEC. 2. Section 205 is added to the Business and Professions
- 29 Code, to read:
- 30 205. (a) There is in the State Treasury the Professions and
- 31 Vocations Fund. The fund shall consist of the following special
- 32 funds:
- 33 (1) Accountancy Fund.
- 34 (2) California Architects Board Fund.
- 35 (3) Athletic Commission Fund.
- 36 (4) Barbering and Cosmetology Contingent Fund.
- 37 (5) Cemetery and Funeral Fund.
- 38 (6) Contractors' License Fund.
- 39 (7) State Dentistry Fund.
- 40 (8) Home Furnishings and Thermal Insulation Fund.

- 1 (9) California Architects Board-Landscape Architects Fund.
- 2 (10) Contingent Fund of the Medical Board of California.
- 3 (11) Optometry Fund.
- 4 (12) Pharmacy Board Contingent Fund.
- 5 (13) Physical Therapy Fund.
- 6 (14) Private Investigator Fund.
- 7 (15) Private Security Services Fund.
- 8 (16) Professional Engineer's, Land Surveyor's, and Geologist's
- 9 Fund.
- 10 (17) Consumer Affairs Fund.
- 11 (18) Behavioral Sciences Fund.
- 12 (19) Licensed Midwifery Fund.
- 13 (20) Court Reporters' Fund.
- 14 (21) Veterinary Medical Board Contingent Fund.
- 15 (22) Vocational Nursing and Psychiatric Technicians Fund.
- 16 (23) Electronic and Appliance Repair Fund.
- 17 (24) Acupuncture Fund.
- 18 (25) Physician Assistant Fund.
- 19 (26) Board of Podiatric Medicine Fund.
- 20 (27) Psychology Fund.
- 21 (28) Respiratory Care Fund.
- 22 (29) Speech-Language Pathology and Audiology and Hearing
- 23 Aid Dispensers Fund.
- 24 (30) Board of Registered Nursing Fund.
- 25 (31) Animal Health Technician Examining Committee Fund.
- 26 (32) State Dental Hygiene Fund.
- 27 (33) State Dental Assistant Fund.
- 28 (34) Structural Pest Control Fund.
- 29 (35) Structural Pest Control Eradication and Enforcement Fund.
- 30 (36) Structural Pest Control Research Fund.
- 31 (37) Household Movers Fund.
- 32 (b) For accounting and recordkeeping purposes, the Professions
- 33 and Vocations Fund shall be deemed to be a single special fund,
- 34 and each of the several special funds therein shall constitute and
- 35 be deemed to be a separate account in the Professions and
- 36 Vocations Fund. Each account or fund shall be available for
- 37 expenditure only for the purposes as are now or may hereafter be
- 38 provided by law.
- 39 (c) This section shall become operative on July 1, 2022.

1 ~~SEC. 3. Section 205.2 is added to the Business and Professions~~
2 ~~Code, to read:~~

3 ~~205.2. Whenever any reference is made in any provision of~~
4 ~~this code to the “Dispensing Opticians Fund,” it means the~~
5 ~~Optometry Fund. All moneys within the Dispensing Opticians~~
6 ~~Fund shall be deposited into the Optometry Fund by July 1, 2022.~~
7 ~~On July 1, 2022, the Dispensing Opticians Fund shall be abolished.~~

8 ~~SEC. 2.5. Section 205 is added to the Business and Professions~~
9 ~~Code, to read:~~

10 ~~205. (a) There is in the State Treasury the Professions and~~
11 ~~Vocations Fund. The fund shall consist of the following special~~
12 ~~funds:~~

- 13 ~~(1) Accountancy Fund.~~
- 14 ~~(2) California Architects Board Fund.~~
- 15 ~~(3) Athletic Commission Fund.~~
- 16 ~~(4) Barbering and Cosmetology Contingent Fund.~~
- 17 ~~(5) Cemetery and Funeral Fund.~~
- 18 ~~(6) Contractors’ License Fund.~~
- 19 ~~(7) State Dentistry Fund.~~
- 20 ~~(8) Home Furnishings and Thermal Insulation Fund.~~
- 21 ~~(9) California Architects Board-Landscape Architects Fund.~~
- 22 ~~(10) Contingent Fund of the Medical Board of California.~~
- 23 ~~(11) Optometry Fund.~~
- 24 ~~(12) Pharmacy Board Contingent Fund.~~
- 25 ~~(13) Physical Therapy Fund.~~
- 26 ~~(14) Private Investigator Fund.~~
- 27 ~~(15) Private Security Services Fund.~~
- 28 ~~(16) Professional Engineer’s, Land Surveyor’s, and Geologist’s~~
29 ~~Fund.~~
- 30 ~~(17) Consumer Affairs Fund.~~
- 31 ~~(18) Behavioral Sciences Fund.~~
- 32 ~~(19) Licensed Midwifery Fund.~~
- 33 ~~(20) Court Reporters’ Fund.~~
- 34 ~~(21) Veterinary Medical Board Contingent Fund.~~
- 35 ~~(22) Vocational Nursing and Psychiatric Technicians Fund.~~
- 36 ~~(23) Electronic and Appliance Repair Fund.~~
- 37 ~~(24) Acupuncture Fund.~~
- 38 ~~(25) Physician Assistant Fund.~~
- 39 ~~(26) Board of Podiatric Medicine Fund.~~
- 40 ~~(27) Psychology Fund.~~

- 1 (28) *Respiratory Care Fund.*
2 (29) *Speech-Language Pathology and Audiology and Hearing*
3 *Aid Dispensers Fund.*
4 (30) *Board of Registered Nursing Fund.*
5 (31) *Animal Health Technician Examining Committee Fund.*
6 (32) *State Dental Hygiene Fund.*
7 (33) *Structural Pest Control Fund.*
8 (34) *Structural Pest Control Eradication and Enforcement Fund.*
9 (35) *Structural Pest Control Research Fund.*
10 (36) *Household Movers Fund.*

11 (b) *For accounting and recordkeeping purposes, the Professions*
12 *and Vocations Fund shall be deemed to be a single special fund,*
13 *and each of the several special funds therein shall constitute and*
14 *be deemed to be a separate account in the Professions and*
15 *Vocations Fund. Each account or fund shall be available for*
16 *expenditure only for the purposes as are now or may hereafter be*
17 *provided by law.*

18 (c) *This section shall become operative on July 1, 2022.*

19 SEC. 3. *Section 205.3 is added to the Business and Professions*
20 *Code, to read:*

21 205.3. *Whenever any reference is made in any provision of*
22 *this code to the “Dispensing Opticians Fund,” it means the*
23 *Optometry Fund. All moneys within the Dispensing Opticians Fund*
24 *shall be deposited into the Optometry Fund by July 1, 2022. On*
25 *July 1, 2022, the Dispensing Opticians Fund shall be abolished.*

26 SEC. 4. *Section 655 of the Business and Professions Code is*
27 *amended to read:*

28 655. (a) *For the purposes of this section, the following terms*
29 *have the following meanings:*

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

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

1 (3) “Optometrist” means a person licensed pursuant to Chapter
2 7 (commencing with Section 3000) or an optometric corporation,
3 as described in Section 3160.

4 (4) “Registered dispensing optician” means a person licensed
5 pursuant to Chapter 5.5 (commencing with Section 2550).

6 (5) “Therapeutic ophthalmic product” means lenses or other
7 products that provide direct treatment of eye disease or visual
8 rehabilitation for diseased eyes.

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

14 (c) (1) A registered dispensing optician or an optical company
15 may operate, own, or have an ownership interest in a health plan
16 so long as the health plan does not directly employ optometrists
17 to provide optometric services directly to enrollees of the health
18 plan, and may directly or indirectly provide products and services
19 to the health plan or its contracted providers or enrollees or to other
20 optometrists. For purposes of this section, an optometrist may be
21 employed by a health plan as a clinical director for the health plan
22 pursuant to Section 1367.01 of the Health and Safety Code or to
23 perform services related to utilization management or quality
24 assurance or other similar related services that do not require the
25 optometrist to directly provide health care services to enrollees.
26 In addition, an optometrist serving as a clinical director may not
27 employ optometrists to provide health care services to enrollees
28 of the health plan for which the optometrist is serving as clinical
29 director. For the purposes of this section, the health plan’s
30 utilization management and quality assurance programs that are
31 consistent with the Knox-Keene Health Care Service Plan Act of
32 1975 (Chapter 2.2 (commencing with Section 1340) of Division
33 2 of the Health and Safety Code) do not constitute providing health
34 care services to enrollees.

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

37 (3) The Department of Managed Health Care shall forward to
38 the State Board of Optometry any complaints received from
39 consumers that allege that an optometrist violated the Optometry
40 Practice Act (Chapter 7 (commencing with Section 3000)). The

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

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

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

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

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

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

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

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

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

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

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

39 (9) The optometrist shall not be precluded from collecting fees
40 for services that are not included in a health plan's products and

1 services, subject to any patient disclosure requirements contained
2 in the health plan's provider agreement with the optometrist or
3 that are not otherwise prohibited by the Knox-Keene Health Care
4 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
5 1340) of Division 2 of the Health and Safety Code).

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

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

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

20 (C) If the health plan is the landlord, the termination of the
21 provider agreement between the health plan and the optometrist,
22 in accordance with the Knox-Keene Health Care Service Plan Act
23 of 1975 (Chapter 2.2 (commencing with Section 1340) of Division
24 2 of the Health and Safety Code).

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

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

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

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

39 (14) The landlord shall provide the optometrist with written
40 notice of the scheduled expiration date of a lease at least 60 days

1 prior to the scheduled expiration date. This notice obligation shall
2 not affect the ability of either party to terminate the lease pursuant
3 to this section. The landlord may not interfere with an outgoing
4 optometrist's efforts to inform the optometrist's patients, in
5 accordance with customary practice and professional obligations,
6 of the relocation of the optometrist's practice.

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

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

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

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

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

1 (g) Any violation of this section constitutes a misdemeanor as
2 to such person licensed under Chapter 7 (commencing with Section
3 3000) of this division and as to any and all persons, whether or
4 not so licensed under this division, who participate with such
5 licensed person in a violation of any provision of this section.

6 (h) (1) Notwithstanding any other law and in addition to any
7 action available to the State Board of Optometry, the State Board
8 of Optometry may issue a citation containing an order of
9 abatement, an order to pay an administrative fine, or both, to an
10 optical company, an optometrist, or a registered dispensing optician
11 for a violation of this section. The administrative fine shall not
12 exceed fifty thousand dollars (\$50,000) per investigation. In
13 assessing the amount of the fine, the board shall give due
14 consideration to all of the following:

15 (A) The gravity of the violation.

16 (B) The good faith of the cited person or entity.

17 (C) The history of previous violations of the same or similar
18 nature.

19 (D) Evidence that the violation was or was not willful.

20 (E) The extent to which the cited person or entity has cooperated
21 with the board's investigation.

22 (F) The extent to which the cited person or entity has mitigated
23 or attempted to mitigate any damage or injury caused by the
24 violation.

25 (G) Any other factors as justice may require.

26 (2) A citation or fine assessment issued pursuant to a citation
27 shall inform the cited person or entity that if a hearing is desired
28 to contest the finding of a violation, that hearing shall be requested
29 by written notice to the board within 30 days of the date of issuance
30 of the citation or assessment. If a hearing is not requested pursuant
31 to this section, payment of any fine shall not constitute an
32 admission of the violation charged. Hearings shall be held pursuant
33 to Chapter 5 (commencing with Section 11500) of Part 1 of
34 Division 3 of Title 2 of the Government Code.

35 (3) The board shall adopt regulations to implement a system for
36 the issuance of citations, administrative fines, and orders of
37 abatement authorized by this section. The regulations shall include
38 provisions for both of the following:

39 (A) The issuance of a citation without an administrative fine.

1 (B) The opportunity for a cited person or entity to have an
2 informal conference with the executive officer of the board in
3 addition to the hearing described in paragraph (2).

4 (4) The failure of a licensee to pay a fine within 30 days of the
5 date of assessment, unless the citation is being appealed, may result
6 in disciplinary action being taken by the board. Where a citation
7 is not contested and a fine is not paid, the full amount of the
8 assessed fine shall be added to the fee for renewal of the license.
9 A license shall not be renewed without payment of the renewal
10 fee and fine.

11 (5) Notwithstanding any other law, if a fine is paid to satisfy an
12 assessment based on the finding of a violation, payment of the fine
13 shall be represented as satisfactory resolution of the matter for
14 purposes of public disclosure.

15 (i) Administrative fines collected pursuant to this section shall
16 be deposited in the Optometry Fund. It is the intent of the
17 Legislature that moneys collected as fines and deposited in the
18 fund be used by the board primarily for enforcement purposes.

19 SEC. 5. Section 2545 of the Business and Professions Code is
20 amended to read:

21 2545. (a) Whenever any person has engaged, or is about to
22 engage, in any acts or practices which constitute, or will constitute,
23 an offense against this chapter, the superior court in and for the
24 county wherein the acts or practices take place, or are about to
25 take place, may issue an injunction, or other appropriate order,
26 restraining the conduct on application of the State Board of
27 Optometry, the Medical Board of California, the Osteopathic
28 Medical Board of California, the Attorney General, or the district
29 attorney of the county.

30 The proceedings under this section shall be governed by Chapter
31 3 (commencing with Section 525) of Title 7 of Part 2 of the Code
32 of Civil Procedure.

33 (b) (1) Any person who violates any of the provisions of this
34 chapter shall be subject to a fine of not less than one thousand
35 dollars (\$1,000) nor more than two thousand five hundred dollars
36 (\$2,500) per violation. The fines collected pursuant to this section
37 from licensed physicians and surgeons shall be available upon
38 appropriation to the Medical Board of California for the purposes
39 of administration and enforcement. The fines collected pursuant
40 to this section from licensed optometrists and registered dispensing

1 opticians shall be deposited into the Optometry Fund and shall be
2 available upon appropriation to the State Board of Optometry for
3 the purposes of administration and enforcement.

4 (2) The Medical Board of California and the State Board of
5 Optometry shall adopt regulations implementing this section and
6 shall consider the following factors, including, but not limited to,
7 applicable enforcement penalties, prior conduct, gravity of the
8 offense, and the manner in which complaints will be processed.

9 (3) The proceedings under this section shall be conducted in
10 accordance with the provisions of Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code.

13 SEC. 6. Section 2546.9 of the Business and Professions Code
14 is amended to read:

15 2546.9. The amount of fees prescribed in connection with the
16 registration of nonresident contact lens sellers is that established
17 by the following schedule:

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

21 (b) The initial registration fee shall be a minimum of two
22 hundred dollars (\$200) and shall not exceed three hundred dollars
23 (\$300).

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

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

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

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

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

37 SEC. 7. Section 2556.2 of the Business and Professions Code
38 is amended to read:

39 2556.2. (a) Notwithstanding any other law, subsequent to the
40 effective date of this section and until January 1, 2019, any

1 individual, corporation, or firm operating as a registered dispensing
2 optician under this chapter before the effective date of this section,
3 or an employee of such an entity, shall not be subject to any action
4 for engaging in conduct prohibited by Section 2556 or Section 655
5 as those sections existed prior to the effective date of this bill,
6 except that a registrant shall be subject to discipline for duplicating
7 or changing lenses without a prescription or order from a person
8 duly licensed to issue the same.

9 (b) Nothing in this section shall be construed to imply or suggest
10 that a person registered under this chapter is in violation of or in
11 compliance with the law.

12 (c) This section shall not apply to any business relationships
13 prohibited by Section 2556 commencing registration or operations
14 on or after the effective date of this section.

15 (d) Subsequent to the effective date of this section and until
16 January 1, 2019, nothing in this section shall prohibit an individual,
17 corporation, or firm operating as a registered dispensing optician
18 from engaging in a business relationship with an optometrist
19 licensed pursuant to Chapter 7 (commencing with Section 3000)
20 before the effective date of this section at locations registered with
21 the Medical Board of California before the effective date of this
22 section.

23 (e) This section does not apply to any administrative action
24 pending, litigation pending, cause for discipline, or cause of action
25 accruing prior to September 1, 2015.

26 (f) Any registered dispensing optician or optical company that
27 owns a health plan that employs optometrists, subject to this
28 section, shall comply with the following milestones:

29 (1) By January 1, 2017, 15 percent of its locations shall no
30 longer employ an optometrist.

31 (2) By August 1, 2017, 45 percent of its locations shall no longer
32 employ an optometrist.

33 (3) By January 1, 2019, 100 percent of its locations shall no
34 longer employ an optometrist.

35 (g) Any registered dispensing optician or optical company that
36 owns a health plan that employs optometrists shall report to the
37 State Board of Optometry in writing as to whether it has met each
38 of the milestones in subdivision (f) within 30 days of each
39 milestone. The State Board of Optometry shall provide those
40 reports as soon as it receives them to the director and the

1 Legislature. The report to the Legislature shall be submitted in
2 compliance with Section 9795 of the Government Code.

3 (h) (1) Notwithstanding any other law and in addition to any
4 action available to the State Board of Optometry, the State Board
5 of Optometry may issue a citation containing an order of
6 abatement, an order to pay an administrative fine, or both, to an
7 optical company, an optometrist, or a registered dispensing optician
8 for a violation of this section. The administrative fine shall not
9 exceed fifty thousand dollars (\$50,000). In assessing the amount
10 of the fine, the board shall give due consideration to all of the
11 following:

12 (A) The gravity of the violation.

13 (B) The good faith of the cited person or entity.

14 (C) The history of previous violations of the same or similar
15 nature.

16 (D) Evidence that the violation was or was not willful.

17 (E) The extent to which the cited person or entity has cooperated
18 with the board's investigation.

19 (F) The extent to which the cited person or entity has mitigated
20 or attempted to mitigate any damage or injury caused by the
21 violation.

22 (G) Any other factors as justice may require.

23 (2) A citation or fine assessment issued pursuant to a citation
24 shall inform the cited person or entity that if a hearing is desired
25 to contest the finding of a violation, that hearing shall be requested
26 by written notice to the board within 30 days of the date of issuance
27 of the citation or assessment. If a hearing is not requested pursuant
28 to this section, payment of any fine shall not constitute an
29 admission of the violation charged. Hearings shall be held pursuant
30 to Chapter 5 (commencing with Section 11500) of Part 1 of
31 Division 3 of Title 2 of the Government Code.

32 (3) The board shall adopt regulations to implement a system for
33 the issuance of citations, administrative fines, and orders of
34 abatement authorized by this section. The regulations shall include
35 provisions for both of the following:

36 (A) The issuance of a citation without an administrative fine.

37 (B) The opportunity for a cited person or entity to have an
38 informal conference with the executive officer of the board in
39 addition to the hearing described in paragraph (2).

(4) The failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(5) Notwithstanding any other law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(i) Administrative fines collected pursuant to this section shall be deposited in the Optometry Fund. It is the intent of the Legislature that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

SEC. 8. Section 2567 of the Business and Professions Code is amended to read:

2567. (a) All fees collected from persons registered or seeking registration under this chapter shall be paid into the Optometry Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Optometry Fund. Any moneys within the Dispensing Opticians Fund collected pursuant to this chapter shall be deposited in the Optometry Fund.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

SEC. 9. Section 2568 of the Business and Professions Code is amended to read:

2568. The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit in the Optometry Fund.

SEC. 10. Section 3070.2 is added to the Business and Professions Code, to read:

3070.2. (a) As used in this section, "extended optometric clinical facility" means a trailer, van, or other means of transportation in which the practice of optometry, as defined in

1 Section 3041, is performed and which is not affiliated with an
2 approved optometry school in California.

3 (b) This section shall not apply to optometric services provided
4 remotely by an approved optometry school in California that meets
5 the requirements of Section 1507 of Title 16 of the California Code
6 of Regulations.

7 (c) The ownership of an extended optometric clinical facility
8 shall be limited to a charitable organization that is providing
9 optometric services to patients regardless of the patient's ability
10 to pay. An extended optometric clinical facility shall register with
11 the board. An extended optometric clinical facility shall not accept
12 payment for services other than those provided to Medi-Cal
13 beneficiaries.

14 (d) The owner of the extended optometric facility registering
15 with the board pursuant to subdivision (c) shall provide the
16 following information to the board:

17 (1) The scope of the practice to be rendered by the facility.

18 (2) The names of optometrists providing patient care.

19 (3) The dates of operation and geographical areas served.

20 (4) A description of how followup care will be provided.

21 (e) The owner of the extended optometric facility shall notify
22 the board of any change to the information provided to the board
23 pursuant to subdivision (d).

24 (f) (1) An extended optometric clinical facility shall provide
25 each patient and, if applicable, the patient's caregiver, a consumer
26 notice approved by the board that includes the following:

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

29 (B) Information for filing a complaint with the board.

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

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

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

37 (g) By January 1, 2021, the board shall adopt regulations
38 establishing a registry for extended optometric clinical facilities
39 and shall set a registration fee at an amount not to exceed the
40 reasonable regulatory costs of administration.

1 (h) The board may adopt regulations to conduct quality
2 assurance reviews for optometrists engaging in the practice of
3 optometry at an extended optometric clinical facility.

4 (i) The board shall not bring an enforcement action against a
5 charitable organization that is not affiliated with an approved
6 optometry school in California for remotely providing optometric
7 service before January 1, 2021.

8 SEC. 11. No reimbursement is required by this act pursuant
9 to Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SEC. 12. Section 2.5 of this bill adds Section 205 to the
18 Business and Professions Code as proposed to be added by both
19 this bill and Assembly Bill 1519. That section of this bill shall only
20 become operative if (1) both bills are enacted and become effective
21 on or before January 1, 2020, (2) each bill adds Section 205 to
22 the Business and Profession Code, and (3) this bill is enacted after
23 Assembly Bill 1519, in which case Section 2 of this bill shall not
24 become operative.

ASSEMBLY BILL

No. 1467

Introduced by Assembly Members Salas and Low

February 22, 2019

An act to amend Section 3041 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1467, as introduced, Salas. Optometrists: scope of practice: delegation of services agreement.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry in the Department of Consumer Affairs. Existing law provides that the practice of optometry includes various functions relating to the visual system, including performing certain functions under the direction of, or after consultation with, an ophthalmologist. A violation of the act is a misdemeanor.

This bill would authorize an optometrist to provide services set forth in a delegation of services agreement, as defined, between an optometrist and an ophthalmologist. Because the bill would expand the scope of practice of optometry, this bill would revise the definition of a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The intent of the Legislature in enacting this act
2 is as follows:

3 (a) To authorize ophthalmologists to enter into agreements for
4 the delegation of services by ophthalmologists to optometrists that
5 will increase the two professions' collaboration in the treatment
6 of patients.

7 (b) That delegation of service agreements between
8 ophthalmologists and optometrists improve access to quality vision
9 care as well as provide options for screening and early diagnosis
10 of systemic diseases.

11 SEC. 2. Section 3041 of the Business and Professions Code is
12 amended to read:

13 3041. (a) The practice of optometry includes the prevention
14 and diagnosis of disorders and dysfunctions of the visual system,
15 and the treatment and management of certain disorders and
16 dysfunctions of the visual system, as well as the provision of
17 habilitative or rehabilitative optometric services, and is the doing
18 of any or all of the following:

19 (1) The examination of the human eye or eyes, or its or their
20 appendages, and the analysis of the human vision system, either
21 subjectively or objectively.

22 (2) The determination of the powers or range of human vision
23 and the accommodative and refractive states of the human eye or
24 eyes, including the scope of its or their functions and general
25 condition.

26 (3) The prescribing or directing the use of, or using, any optical
27 device in connection with ocular exercises, visual training, vision
28 training, or orthoptics.

29 (4) The prescribing of contact and spectacle lenses for, or the
30 fitting or adaptation of contact and spectacle lenses to, the human
31 eye, including lenses that may be classified as drugs or devices by
32 any law of the United States or of this state.

33 (5) The use of topical pharmaceutical agents for the purpose of
34 the examination of the human eye or eyes for any disease or
35 pathological condition.

36 (b) (1) An optometrist who is certified to use therapeutic
37 pharmaceutical agents, pursuant to Section 3041.3, may also

1 diagnose and treat the human eye or eyes, or any of its or their
2 appendages, for all of the following conditions:

3 (A) Through medical treatment, infections of the anterior
4 segment and adnexa, excluding the lacrimal gland, the lacrimal
5 drainage system, and the sclera in patients under 12 years of age.

6 (B) Ocular allergies of the anterior segment and adnexa.

7 (C) Ocular inflammation, nonsurgical in cause except when
8 comanaged with the treating physician and surgeon, limited to
9 inflammation resulting from traumatic iritis, peripheral corneal
10 inflammatory keratitis, episcleritis, and unilateral nonrecurrent
11 nongranulomatous idiopathic iritis in patients over 18 years of age.

12 (D) Traumatic or recurrent conjunctival or corneal abrasions
13 and erosions.

14 (E) Nonmalignant ocular surface disease and dry eye disease.

15 (F) Ocular pain, nonsurgical in cause except when comanaged
16 with the treating physician and surgeon, associated with conditions
17 optometrists are authorized to treat.

18 (G) Hypotrichosis and blepharitis.

19 (H) Pursuant to subdivision (e), glaucoma in patients over 18
20 years of age, as described in subdivision (k).

21 (2) For purposes of this section, “treat” means the use of
22 therapeutic pharmaceutical agents, as described in subdivision (c),
23 and the procedures described in subdivision (d).

24 (c) In diagnosing and treating the conditions listed in subdivision
25 (b), an optometrist certified to use therapeutic pharmaceutical
26 agents pursuant to Section 3041.3 may use or prescribe, including
27 for rational off-label purposes, all of the following therapeutic
28 pharmaceutical agents:

29 (1) Topical pharmaceutical agents for the examination of the
30 human eye or eyes for any disease or pathological condition,
31 including, but not limited to, topical miotics.

32 (2) Topical lubricants.

33 (3) Antiallergy agents. In using topical steroid medication for
34 the treatment of ocular allergies, an optometrist shall consult with
35 an ophthalmologist if the patient’s condition worsens 21 days after
36 diagnosis.

37 (4) Topical and oral anti-inflammatories.

38 (5) Topical antibiotic agents.

39 (6) Topical hyperosmotics.

1 (7) Topical and oral antiglaucoma agents pursuant to the
2 certification process defined in subdivision (e).

3 (8) Nonprescription medications used for the rational treatment
4 of an ocular disorder.

5 (9) Oral antihistamines.

6 (10) Prescription oral nonsteroidal anti-inflammatory agents.

7 (11) Oral antibiotics for medical treatment of ocular disease.

8 (12) Topical and oral antiviral medication for the medical
9 treatment of herpes simplex viral keratitis, herpes simplex viral
10 conjunctivitis, periocular herpes simplex viral dermatitis, varicella
11 zoster viral keratitis, varicella zoster viral conjunctivitis, and
12 periocular varicella zoster viral dermatitis.

13 (13) Oral analgesics that are not controlled substances.

14 (14) Codeine with compounds, hydrocodone with compounds,
15 and tramadol as listed in the California Uniform Controlled
16 Substances Act (Division 10 (commencing with Section 11000)
17 of the Health and Safety Code) and the United States Uniform
18 Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use
19 of these agents shall be limited to three days, with a referral to an
20 ophthalmologist if the pain persists.

21 (15) Additional therapeutic pharmaceutical agents pursuant to
22 subdivision (f).

23 (d) An optometrist who is certified to use therapeutic
24 pharmaceutical agents pursuant to Section 3041.3 may also perform
25 all of the following procedures:

26 (1) Corneal scraping with cultures.

27 (2) Debridement of corneal epithelia.

28 (3) Mechanical epilation.

29 (4) Collection of blood by skin puncture or venipuncture for
30 testing patients suspected of having diabetes.

31 (5) Suture removal, with prior consultation with the treating
32 physician and surgeon.

33 (6) Treatment or removal of sebaceous cysts by expression.

34 (7) Administration of oral fluorescein to patients suspected as
35 having diabetic retinopathy.

36 (8) Use of an auto-injector to counter anaphylaxis.

37 (9) Ordering of smears, cultures, sensitivities, complete blood
38 count, mycobacterial culture, acid fast stain, urinalysis, tear fluid
39 analysis, and X-rays necessary for the diagnosis of conditions or
40 diseases of the eye or adnexa. An optometrist may order other

1 types of images subject to prior consultation with an
2 ophthalmologist or appropriate physician and surgeon.

3 (10) A clinical laboratory test or examination classified as
4 waived under the federal Clinical Laboratory Improvement
5 Amendments of 1988 (CLIA) (42 U.S.C. Sec. 263a; Public Law
6 100-578) and designated in paragraph (9) necessary for the
7 diagnosis of conditions and diseases of the eye or adnexa, or if
8 otherwise specifically authorized by this chapter.

9 (11) Punctal occlusion by plugs, excluding laser, diathermy,
10 cryotherapy, or other means constituting surgery as defined in this
11 chapter.

12 (12) The use or prescription of diagnostic or therapeutic contact
13 lenses, including lenses or devices that incorporate a medication
14 or therapy the optometrist is certified to prescribe or provide.

15 (13) Removal of foreign bodies from the cornea, eyelid, and
16 conjunctiva with any appropriate instrument other than a scalpel.
17 Corneal foreign bodies shall be nonpenetrating, be no deeper than
18 the midstroma, and require no surgical repair upon removal.

19 (14) For patients over 12 years of age, lacrimal irrigation and
20 dilation, excluding probing of the nasal lacrimal tract. The board
21 shall certify any optometrist who graduated from an accredited
22 school of optometry before May 1, 2000, to perform this procedure
23 after submitting proof of satisfactory completion of 10 procedures
24 under the supervision of an ophthalmologist as confirmed by the
25 ophthalmologist. Any optometrist who graduated from an
26 accredited school of optometry on or after May 1, 2000, shall be
27 exempt from the certification requirement contained in this
28 paragraph.

29 (15) Intravenous injection for the purpose of performing ocular
30 angiography at the direction of an ophthalmologist as part of an
31 active treatment plan in a setting where a physician and surgeon
32 is immediately available.

33 (16) Skin testing to diagnose ocular allergies, limited to the
34 superficial layer of the skin.

35 (17) Use of any noninvasive medical device or technology
36 authorized pursuant to subdivision (f).

37 (e) An optometrist certified pursuant to Section 3041.3 shall be
38 certified for the treatment of glaucoma, as described in subdivision
39 (k), in patients over 18 years of age after the optometrist meets the
40 following applicable requirements:

1 (1) For licensees who graduated from an accredited school of
2 optometry on or after May 1, 2008, submission of proof of
3 graduation from that institution.

4 (2) For licensees who were certified to treat glaucoma under
5 this section ~~prior to~~ *before* January 1, 2009, submission of proof
6 of completion of that certification program.

7 (3) For licensees who completed a didactic course of not less
8 than 24 hours in the diagnosis, pharmacological, and other
9 treatment and management of glaucoma, submission of proof of
10 satisfactory completion of the case management requirements for
11 certification established by the board.

12 (4) For licensees who graduated from an accredited school of
13 optometry on or before May 1, 2008, and who are not described
14 in paragraph (2) or (3), submission of proof of satisfactory
15 completion of the requirements for certification established by the
16 board under Chapter 352 of the Statutes of 2008.

17 (f) (1) Any topical or oral therapeutic pharmaceutical agent,
18 which is not a controlled substance, or noninvasive medical device
19 or technology that is not expressly authorized for use or
20 prescription by an optometrist certified to use therapeutic
21 pharmaceutical agents pursuant to Section 3041.3 shall be deemed
22 to be authorized if it has received a United States Food and Drug
23 Administration approved indication for the diagnosis or treatment
24 of a condition authorized by this chapter. A licensee shall
25 successfully complete any clinical training imposed by a related
26 manufacturer ~~prior to~~ *before* using any of those therapeutic
27 pharmaceutical agents or noninvasive medical devices or
28 technologies.

29 (2) Any other topical or oral therapeutic pharmaceutical agent,
30 which is not a controlled substance, or noninvasive medical device
31 or technology that is not expressly authorized for use or
32 prescription by an optometrist certified to use therapeutic
33 pharmaceutical agents pursuant to Section 3041.3 and does not
34 meet the requirements in paragraph (1) shall be deemed authorized
35 if approved by the board through regulation for the rational
36 treatment of a condition authorized by this chapter. Any regulation
37 under this paragraph shall require a licensee to successfully
38 complete an appropriate amount of clinical training to qualify to
39 use each topical or oral therapeutic pharmaceutical agent or

1 noninvasive medical device or technology approved by the board
2 pursuant to this paragraph.

3 (3) This subdivision shall not be construed to authorize any of
4 the following:

5 (A) Any therapeutic pharmaceutical agent, medical device, or
6 technology involving cutting, altering, or otherwise infiltrating
7 human tissue by any means.

8 (B) A clinical laboratory test or imaging study not authorized
9 by paragraphs (1) to (16), inclusive, of subdivision (d).

10 (C) Treatment of any disease or condition that could not be
11 treated by an optometrist before January 1, 2018.

12 (g) (1) An optometrist certified pursuant to Section 3041.3 shall
13 be certified for the administration of immunizations after the
14 optometrist meets all of the following requirements:

15 (A) Completes an immunization training program endorsed by
16 the federal Centers for Disease Control and Prevention (CDC) or
17 the Accreditation Council for Pharmacy Education that, at a
18 minimum, includes hands-on injection technique, clinical
19 evaluation of indications and contraindications of vaccines, and
20 the recognition and treatment of emergency reactions to vaccines,
21 and maintains that training.

22 (B) Is certified in basic life support.

23 (C) Complies with all state and federal recordkeeping and
24 reporting requirements, including providing documentation to the
25 patient's primary care provider and entering information in the
26 appropriate immunization registry designated by the immunization
27 branch of the State Department of Public Health.

28 (D) Applies for an immunization certificate on a board-approved
29 form.

30 (2) For the purposes of this section, "immunization" means the
31 administration of immunizations for influenza, herpes zoster virus,
32 and pneumococcus in compliance with individual Advisory
33 Committee on Immunization Practices (ACIP) vaccine
34 recommendations published by the CDC for persons 18 years of
35 age or older.

36 (h) Other than for prescription ophthalmic devices described in
37 subdivision (b) of Section 2541, any dispensing of a therapeutic
38 pharmaceutical agent by an optometrist shall be without charge.

39 (i) The practice of optometry does not include performing
40 surgery. "Surgery" means any procedure in which human tissue

1 is cut, altered, or otherwise infiltrated by mechanical or laser
2 means. “Surgery” does not include those procedures specified in
3 paragraphs (1) to (15), inclusive, of subdivision (d). This
4 subdivision does not limit an optometrist’s authority to utilize
5 diagnostic laser and ultrasound technology within ~~his or her~~ *the*
6 *optometrist’s* scope of practice.

7 (j) An optometrist licensed under this chapter is subject to the
8 provisions of Section 2290.5 for purposes of practicing telehealth.

9 (k) For purposes of this chapter, “glaucoma” means either of
10 the following:

11 (1) All primary open-angle glaucoma.

12 (2) Exfoliation and pigmentary glaucoma.

13 (3) (A) Steroid induced glaucoma.

14 (B) If an optometrist treats a patient for steroid induced
15 ~~glaucoma~~ *glaucoma*, the optometrist shall promptly notify the
16 prescriber of the steroid medication if the prescriber did not refer
17 the patient to the optometrist for treatment.

18 (l) For purposes of this chapter, “adnexa” means ocular adnexa.

19 (m) In an emergency, an optometrist shall stabilize, if possible,
20 and immediately refer any patient who has an acute attack of angle
21 closure to an ophthalmologist.

22 (n) (1) *In addition to the authority granted pursuant to this*
23 *section, an optometrist may provide services set forth in a*
24 *delegation of services agreement between an optometrist and an*
25 *ophthalmologist.*

26 (2) *For purposes of this subdivision, “delegation of services*
27 *agreement” means a writing between an ophthalmologist and an*
28 *optometrist authorizing the optometrist to perform services*
29 *consistent with this act.*

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

O

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 1467 (Salas and Low) – As Introduced February 22, 2019

Policy Committee:	Business and Professions	Vote:	19-0
Urgency: No	State Mandated Local Program: Yes	Reimbursable:	No

SUMMARY:

This bill allows optometrists to perform services consistent with their current scope under a written “delegation of services” agreement with an ophthalmologist.

FISCAL EFFECT:

Minor and absorbable costs to the Board of Optometry, assuming agreements are not tracked by the board (Optometry Fund).

COMMENTS:

- 1) **Purpose.** This bill seeks to provide a vehicle to discuss further changes in the scope of services that can be performed by an optometrist through a delegation agreement with an ophthalmologist.
- 2) **Background.** California, unlike other states, does not generally allow optometrists to perform minor surgical procedures independently. This has been a source of frustration for many optometrists who are trained in these procedures in optometry school, but are unable to perform them in California. Legislation enacted in recent years allows optometrists to treat glaucoma, use therapeutic pharmaceutical agents and employ the use of new drugs and technologies to treat certain conditions, consistent with their training and newly developed certifications.

The author's intention is to expand the authority of an optometrist to perform certain procedures while ensuring physician oversight.

- 3) **Prior Legislation.** AB 443 (Salas), Chapter 549, Statutes of 2017, made a number of changes to the Optometry Practice Act including broadening the scope of practice for optometrists by permitting an optometrist to conduct additional procedures on their patients.

Analysis Prepared by: Lisa Murawski / APPR. / (916) 319-2081

AMENDED IN SENATE MARCH 5, 2019

SENATE BILL

No. 53

Introduced by Senator Wilk

~~(Coauthor: Assembly Member Lackey)~~

(Coauthors: Senators Bates, Glazer, Jones, and Portantino)

*(Coauthors: Assembly Members Choi, Gallagher, Lackey, Mathis, and
Patterson)*

December 10, 2018

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 53, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in ~~his or her~~ *their* official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11121 of the Government Code is
2 amended to read:

3 11121. As used in this article, “state body” means each of the
4 following:

5 (a) Every state board, or commission, or similar multimember
6 body of the state that is created by statute or required by law to
7 conduct official meetings and every commission created by
8 executive order.

9 (b) A board, commission, committee, or similar multimember
10 body that exercises any authority of a state body delegated to it by
11 that state body.

12 (c) An advisory board, advisory commission, advisory
13 committee, advisory subcommittee, or similar multimember
14 advisory body of a state body, if created by formal action of the
15 state body or of any member of the state body, and if the advisory
16 body so created consists of three or more persons, except as
17 provided in subdivision (d).

18 (d) A board, commission, committee, or similar multimember
19 body on which a member of a body that is a state body pursuant
20 to this section serves in ~~his or her~~ *their* official capacity as a
21 representative of that state body and that is supported, in whole or
22 in part, by funds provided by the state body, whether the
23 multimember body is organized and operated by the state body or
24 by a private corporation.

25 (e) Notwithstanding subdivision (a) of Section 11121.1, the
26 State Bar of California, as described in Section 6001 of the
27 Business and Professions Code. This subdivision shall become
28 operative on April 1, 2016.

29 SEC. 2. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety within
31 the meaning of Article IV of the California Constitution and shall
32 go into immediate effect. The facts constituting the necessity are:

1 In order to avoid unnecessary litigation and ensure the people's
2 right to access the meetings of public bodies pursuant to Section
3 3 of Article 1 of the California Constitution, it is necessary that
4 this act take effect immediately.

O

Date of Hearing: August 14, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 53 (Wilk) – As Amended March 5, 2019

Policy Committee: Governmental Organization

Vote: 21 - 0

Urgency: Yes

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a state body to hold open, public meetings if specified conditions are met.

FISCAL EFFECT:

Potentially significant costs to state agencies for complying with new notice and open meeting requirements. While this bill may apply to a range of state agencies and departments, the Department of Consumer Affairs (DCA) will be the most acutely affected. A range of DCA programs, such as the Board of Barbering and Cosmetology and the California State Athletic Commission, will see increased workload and costs related to coordinating additional meetings. Altogether, additional DCA costs could exceed \$850,000 annually.

COMMENTS:

- 1) **Purpose.** According to the author, the current definition of "state body" in Bagley-Keene contains an ambiguity with respect to whether standing committees composed of fewer than three members need to comply with public notice and open meeting requirements. This bill seeks to clarify that any multimember advisory body that includes one representative of the state body is advised falls under the scope of Bagley-Keene.
- 2) **Open Meeting Acts.** The Government Code contains two parallel open meeting statutes, Bagley-Keene for state government, and the Ralph M. Brown Act (the Brown Act) for local governments. The philosophy underpinning the two acts is that transparency and consensus should be favored over administrative efficiency in most cases. The acts explicitly mandate open meetings for state and local agencies, boards and commissions, providing the public with the ability to monitor and participate in the decision-making process.
- 2) **The fiscal impact of Bagley-Keene.** This bill imposes new costs by applying Bagley-Keene rules to advisory bodies currently unequipped to comply with open meeting and notification requirements. Right now, these types of advisory bodies often involve conversations over the phone or informal discussions between advisory body members and staff. Bringing these conversations and meetings into a more formal public environment will result in costs for meeting space, travel costs and per diem, document preparation, and webcasting and recording equipment costs.

- 3) **Recent legislation.** AB 85 (Wilk), of the 2015-2016 Legislative Session, was similar to this bill and was vetoed by the Governor, whose veto message stated:

This bill expands the Bagley-Keene Open Meeting Act to include state advisory bodies, regardless of their size.

My thinking on this matter has not changed from last year when I vetoed a similar measure, AB 2058. I believe strongly in transparency and openness but the more informal deliberation of advisory bodies is best left to current law.

Analysis Prepared by: Luke Reidenbach / APPR. / (916) 319-2081



August 6, 2019

The Honorable Gavin Newsom
Governor of California
State Capitol, 1st Floor
Sacramento, CA 95814

Sent via Email and U.S. Mail

Re: Opposition to Senate Bill 53 (Wilk), as amended March 5, 2019

Dear Governor Newsom,

At the August 2, 2019 public meeting, the California State Board of Optometry (Board) voted to oppose SB 53 (Wilk), as amended March 5, 2019, relating to open meetings.

The bill would prevent the Board or staff from asking two Board members to review a document, draft a letter or provide expert analysis without giving public notice. Additionally, SB 53 may prevent Board outreach and communications activities that include more than one Board member present, as that may constitute a meeting, and therefore be subject to the Open Meetings Act. The Board feels this bill would heavily restrict the Board's ability to conduct day to day business and would also hurt the public's ability to participate in those meetings.

For these reasons, the Board respectfully urges your veto of SB 53.

Should you have questions, please feel free to contact me at 916-575-7184 or shara.murphy@dca.ca.gov.

Sincerely,

Shara Murphy, Executive Officer
California State Board of Optometry

Cc: The Honorable Scott Wilk, Member of the Senate

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer <i>Prepared by Jessica Swan, Administrative Analyst</i>
SUBJECT	Agenda Item #12D – Staff Update

New Staff

The vacant Management Services Technician position for the Optician Program was filled August 27th by Tien Le. Tien will be assisting both the Opticianry and Optometry programs in reviewing initial applications.

Tien Le (Optician Program Coordinator)

Experienced in the service industry, Ms. Le has provided exceptional customer service to her guests over the years while acquiring her degree from Sacramento State. She completed an internship at Sutter Senior Care and was responsible for tracking patients, updating their database, and leading programs during her time there. She excelled throughout her training and is already able to take on additional tasks and special projects.

The vacant Office Technician position in the Administration Unit will be filled October 28th by Mushyal Shabbir. Mushyal will be the Receptionist and first point of contact for stakeholders and licensees.

Mushyal Shabbir (Receptionist)

Ms. Shabbir has excelled at delivering great customer service for over 5 years. She has held a variety of different positions in various industries that have prepared her to be the first line of communication for our applicants, licensees and other stakeholders. We are excited to begin her onboarding and training process.

Interviews were held for the vacant Assistant Executive Officer Position on October 14. A tentative offer has been extended to a promising candidate and that we expect will be able to begin in late October or early November.



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer
SUBJECT	Agenda Item #13 – Board Committee Reports

Committee Chairs will deliver the reports regarding September committee meetings which include the following:

- A. Dispensing Optician Committee
- B. Legislation and Regulation Committee
- C. Practice and Education Committee
- D. Consumer Protection Committee

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Dispensing Optician Committee (DOC) <i>Prepared by Alexander A. Juarez, Enforcement Analyst</i>
SUBJECT	Agenda Item #13A -- Update, Discussion and Possible Action Regarding Board Committee Reports – Dispensing Optician Committee Report

The Dispensing Optician Committee (DOC) met on [September 27th, 2019](#), via teleconference. All members were present with the exception of Adam Bentley. The Committee discussed the following items at the meeting:

1. Approval June 7, 2019 DOC Meeting Minutes

The Committee voted to approve the June 7, 2019 DOC meeting minutes.

2. Executive Officer's Report

The Contact Lens Dispenser Occupational Analysis was completed in July 2019. The Occupational Analysis for Spectacle Lens Dispensers will likely be complete in the spring of 2020. The Occupational Analysis for Unlicensed Assistants will likely begin in the fall of 2020, if approved by DCA, Department of Finance, the Legislature and the Governor.

Staff reported an improvement in processing times for the Optician Program. New Optician Program staff, a reduction in the submission of paper applications, and improvements with BreEZe have helped reduced processing times. Processing times for high priority and routine priority Optician Enforcement cases were discussed. Staff has been successful in dramatically decreasing the time it takes to open an enforcement case and assign it to an analyst. Processing times will continue to fluctuate based on the time it takes to obtain documents from other jurisdictions.

3. Dispensing Opticians Business Permitted by Law

Legal Counsel has determined that Limited Liability Companies are not permitted to be licensed as Registered Dispensing Opticians. The Board has notified all affected optician business registrants, and measures have been put in place to achieve compliance. A staff created checklist for these transitioning business types is being considered.

4. Dispensing Optician Statutes Review

The DOC is charged with recommending registration standards and criteria for the registration of dispensing optician businesses, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers. The intent of the review is to specify sections staff feels may need to be changed, explain potential reasons for the changes and to receive direction from committee members regarding those changes. Staff expects the review will likely take several committee meetings and will be supplemented by the completion of Occupational Analyses for SLDs and unlicensed optometric assistants in late 2020. Such changes will require legislative action.

As part of this review, the DOC discussed Chapters 5.4 (Prescription Lens), 5.45 (Nonresident Contact Lens Sellers), and 5.5 (Registered Dispensing Opticians) of the Business and Professions Code (BPC). The DOC discussed a number of potential changes including:

- “Nonresident Contact Lens Sellers” Chapter 5.45 under Chapter 5.5, Article 2.5 so that all license types fall under one chapter. Staff also recommends that the article be renamed “Nonresident Ophthalmic Lens Dispensing Business” to encompass all ophthalmic lens dispensing.
- Renaming “Registered Dispensing Optician” registration to “Ophthalmic Lens Dispensing Business” for better clarity.
- General changes to Chapter 5.5, including changes and additions to help distinguish between business and individual registrations types and reporting requirements to the Board.
- Staff discussed the potential to rewrite BPC §2555 to mirror BPC §3110 (Optometry) to further define unprofessional conduct for opticians and increase the fine ceiling to deter businesses from violating the chapter.
- Update references to Federal CLD rules and better specificity to prescription expiration dates.
- Adjustment of fines for violations of the opticianry practice act.
- Various technical, reference and non-substantive changes.

The DOC directed staff to make further changes and research several items, and will meet again on December 13, 2019, to consider these changes.

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Legislative and Regulatory Committee (LRC) <i>prepared by Marc Johnson, Policy Analyst</i>
SUBJECT	Agenda Item #13B – Legislative and Regulatory Committee Report from October 13, 2019 public meeting

The LRC met via teleconference on [October 13, 2019](#), beginning at 9:00 a.m. All members were present. The Committee discussed the following items:

1. May 28, 2019 LRC Meeting Minutes

The minutes were approved on a 4-0 vote.

2. Update and Discussion on Potential 2020 Legislation:

A. Temporary License for Instructors at Accredited Schools of Optometry

The LRC was presented with potential statutory text to create a special faculty permit for use by instructors at accredited schools of optometry, based on the California Medical Board's statute. Members of the LRC raised concern about faculty practicing at a remote or mobile clinic; Dr. Wang assured them that the faculty would rarely be doing so and potential malpractice was covered by the school's policy. The LRC also added in a requirement that the optometry school would be required to certify the employment of the permitholder as part of the biannual renewal. Processing and review of faculty permits would be completed by Board staff. The LRC endorsed the proposed text to the full Board on a 4-0 vote.

B. Other Possible Legislation – Endorsement fee

The LRC was presented with potential statutory text to allow the Board to charge a fee for processing of verification of California licenses to other states. Currently, staff receives about 80 requests a month for this service but does not charge a fee. The LRC raised the proposed fee from \$40 to \$50 with a statutory cap of \$100. Concern was raised by Kristine Schultz about the fee potentially impacting California licensees during public comment. The LRC endorsed the proposed text to the full Board on a 5-0 vote.

ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Practice and Education Committee (PEC) <i>Prepared by Arsha Qasmi, Lead Licensing Analyst</i>
SUBJECT	Agenda Item #13C – PEC Report from October 13, 2019 public meeting

The PEC met via teleconference on [September 13, 2019](#), beginning at 11:30 a.m. All committee members were present. The PEC discussed the following items:

1. June 14, 2019 PEC meeting minutes

The minutes were approved on a 3-0 vote.

2. Discussion and Possible Action on Continuing Education (CE) Course Approval Requests

The PEC approved 30 CE courses and denied six CE courses. Denials were due to missing information such as CVs for course instructors.

3. Review, Discussion and Possible Action on the Topic of Atropine Use for Myopia Control Under the Therapeutic Pharmaceutical Agents (TPA) Umbrella

This item was not taken up as the scheduled presenter did not attend.

Committee adjourned at 11:40 a.m.



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Consumer Protection Committee (CPC) <i>Prepared by Matt McKinney, Enforcement Analyst</i>
SUBJECT	Agenda Item #13D – Update, Discussion and Possible Action Regarding Board Committee Reports – Consumer Protection Committee

The CPC met via teleconference on [September 13, 2019](#), beginning at 1:30 pm. All members were present. The CPC discussed the following items:

1. January 11, 2019 and March 23, 2019 CPC Meeting Minutes

The minutes were approved on a 3-0-1 vote.

2. Review, Discussion, and Possible Action on Optometry Disciplinary Guidelines

Board staff provided an overview of the Optometry Disciplinary Guidelines. Staff updated the draft Optometry Disciplinary Guidelines with new language from the Substance Abuse Coordination Committee (SACC) made some formatting changes. The SACC was established by DCA at the direction of a Senate Bill and comprises of Executive Officers and Chiefs of health boards under DCA.

The CPC members discussed options for more efficiently noticing patients of disciplinary action taken against an optometrist's license. Dr. Turetsky moved to present the Disciplinary Guidelines to the full Board with the edits recommended during the CPC meeting. The motion passed 4-0.



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, President
SUBJECT	Agenda Item #14 – Future Agenda Items

The Board may wish to discuss future agenda items proposed by board members, staff or the public.



ISSUE MEMORANDUM

DATE	October 25, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mark Morodomi, President
SUBJECT	Agenda Item #15 - Adjournment