SPECIAL MEETING NOTICE and AGENDA (TELECONFERENCE)
September 9, 2015
6:00 p.m.

MAIN LOCATION: Sequoia Room, 2420 Del Paso Road, Sacramento, CA 95834

TELECONFERENCE LOCATIONS:

Community Health Center
150 Tejas Place
Nipomo, CA 93444

Allan Lindsey Park
2150 Armsmere Circle
El Dorado Hills, CA 95762

Kaiser Permanente
Department of Optometry
Room 1761
5601 De Soto Avenue
Woodland Hills, CA 91367

Peet’s Coffee Courtyard
University Center
4213 Campus Drive
Irvine, CA 92612

Capital Public Radio
Conference Room A
7055 Folsom Blvd.
Sacramento, CA 95826

4349 E. Slauson Ave.
Maywood, Ca. 90270

Cafe Europa
64 Moraga way
Orinda, CA 94563

FULL BOARD OPEN SESSION

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

2. Finding of Necessity for Special Meeting (Gov. Code, § 11125.4)

3. Discussion and Consideration of Position on Assembly Bill 684, (Alejo) (State Board of Optometry; Registered Dispensing Opticians)

4. Adjournment

The mission of the California State Board of Optometry is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will 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 Lydia Bracco at (916) 575-7170 or sending 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. Information regarding this meeting may be found at www.optometry.ca.gov
Dr. Madhu Chawla, O.D., Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Madhu Chawla, O.D., President, Professional Member
Cyd Brandvein, Vice President, Public Member
Rachel Michelin, Secretary, Public Member
Alejandro Arredondo, O.D., Professional Member
Donna Burke, Public Member
Frank Giardina, O.D., Professional Member
Glenn Kawaguchi, O.D., Professional Member
William H. Kysella, Jr., Public Member
Mark Morodomi, Public Member
David Turetsky, O.D., Professional Member
Lillian Wang, O.D., Professional Member
To: Board Members  
From: Madhu Chawla, OD  
Date: September 9, 2015  
Telephone: (916) 575-7170  

Subject: Agenda Item 2 – Finding of Necessity for Special Meeting (Gov. Code, § 11125.4)

At the commencement of the special meeting, the Board must make a finding of necessity in open session, pursuant to Government Code Section 11125.4:

11125.4.

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when immediate action is required to protect the public interest:

(1) To consider “pending litigation” as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting.
has been made, but shall deliver the notice in a manner that allows it to be received by the members and
by newspapers of general circulation and radio or television stations at least 48 hours before the time of the
special meeting specified in the notice. Notice shall be made available to newspapers of general circulation
and radio or television stations by providing that notice to all national press wire services. Notice shall also
be made available on the Internet within the time periods required by this section. The notice shall specify
the time and place of the special meeting and the business to be transacted. The written notice shall
additionally specify the address of the Internet Web site where notices required by this article are made
available. No other business shall be considered at a special meeting by the state body. The written notice
may be dispensed with as to any member who at or prior to the time the meeting convenes files with the
clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram,
facsimile transmission, or similar means. The written notice may also be dispensed with as to any member
who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this
section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that
the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would
cause a substantial hardship on the body or that immediate action is required to protect the public interest.
The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm
to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-
thirds of the members are present, a unanimous vote of those members present. The finding shall be made
available on the Internet. Failure to adopt the finding terminates the meeting.

(Amended by Stats. 2007, Ch. 92, Sec. 1. Effective January 1, 2008.)
Memo

To: Board Members
From: Jessica Sieferman
Date: September 9, 2015
Telephone: (916) 575-7170

Executive Officer

Subject: Agenda Item 3 – Discussion and Consideration of Position on Assembly Bill 684, (Alejo) (State Board of Optometry; Registered Dispensing Opticians)

Background:

Business and Professions Code (BPC) Section 655 prohibits a licensed optometrist and a registered dispensing optician (RDO) from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteehip, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. BPC Section 655 makes violations of this section a misdemeanor.

Under existing law, the Medical Board of California (MBC) is responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. Health care services plans are licensed and regulated by the Department of Managed Health Care (DMHC).

Assembly Bill (AB) 595 was introduced by Assembly Member Alejo after several meetings with the National Association of Optometrists and Opticians, the California Optometric Association, the MBC, the Board, and various other optical stakeholders. AB 595 removed the prohibitions set forth in BPC Sections 655, and added provisions intended to protect an optometrist’s clinical judgment by preventing an RDO’s influence or interference in the optometrist’s clinical decisions. After several concerns were raised, AB 595 was made into a two-year bill and AB 684 was amended to provide safe harbor language for optometrists and RDOs while the legislature worked through the concerns.

Due to the significance of this issue, AB 684 was the subject of much discussion and many parties, including the Administration, became actively involved in finding a more comprehensive solution. AB 684, in its current form, is the result of several stakeholder meetings.

Description of Current Legislation (AB 684): Amended September 4, 2015

Ownership in Health Plan

The bill would authorize a RDO or optical company to operate, own, or have an ownership interest in a health plan, if the health plan does not directly employ optometrists to provide optometric services directly to health plan enrollees, and would also provide for the provision of products and services to the health plan or its contracted providers or enrollees or to other optometrists.
Landlord-Tenant

The bill would authorize an optometrist, a RDO, an optical company, or a health care service plan to execute a lease with an optometrist if specified conditions are contained in a written agreement. Landlord or tenant would be required to comply with an enforcement entity’s request to inspect a lease agreement. The Board would be authorized to inspect, upon request, an individual lease agreement.

RDO Program to Board

This bill would move the RDO Program (RDOs, spectacle and contact lens dispensers, and nonresident contact lens sellers) from the MBC to the Board. The bill would make various conforming changes in this regard.

Consumer Notice

Similar to CCR Sections 1566 and 1566.1, this bill would require RDOs to post a consumer notice that notifies patients when to expect a prescription, the option to take their prescription anywhere to be filled, who regulates RDOs, and where to file a complaint.

Inspection Authority

The bill would require all licensed optometrists in a setting with a RDO to report the business relationship to the Board. The Board would be authorized to inspect any RDO/optometrist co-locations for BPC Section 655 compliance.

Board Composition Change and Creation of Dispensing Optician Committee

This bill would replace one optometrist member with one RDO. A Dispensing Optician Committee would be created to advise and make recommendations to the Board regarding the regulation of dispensing opticians. The advisory committee would consist of five members, including two registered dispensing opticians, two public members, and a Board Member. The Board would make initial committee appointments, staggering the terms of the initial members appointed. After initial appointments, the Governor would appoint the RDO and public members. The committee would recommend the Board Member to serve on the committee and the Board would appoint the member to serve.

Enforcement Moratorium for Transition Period

This bill would prohibit the Board from taking action against a RDO or optometrist for engaging in conduct prohibited by Sections 655 or 2556 until January 1, 2019. During the moratorium, applicable health plans would be required to report to the Board that (1) 15 percent of its locations no longer employ an optometrist January 1, 2017, (2) 45 percent of its locations no longer employ an optometrist by August 1, 2017, and (3) 100 percent of its locations no longer employ an optometrist by January 1, 2019. The Board would be required to provide those reports to DCA’s Director and the Legislature. The moratorium would not apply to prohibited business relationships commencing on or after the effective date of the section. It also would not apply to any pending administrative or civil actions/litigations.

Analysis:

During its August 28, 2015 Board meeting, the Board took an Oppose Unless Amended Position on AB 684 when the bill only contained the moratorium language. The Board was not persuaded that providing a safe harbor to those operating in prohibited relationships is in the best interest in consumer protection. The Board believed that more than just a moratorium on enforcement actions was needed, and sought amendments that proposed a more comprehensive solution to this issue.

The bill, in its current form, is believed to be the comprehensive solution and represents the output of the stakeholder meetings. While it still provides for a moratorium, it requires check points to promote compliance and accountability during the three year period. The bill adds protections to ensure
optometrists can practice independently without influence from lay individuals, strengthens enforcement provisions, and promotes efficiencies by moving the RDO program under the Board.

However, some concerns remain. One overall concern is the bill’s recognition of an unregulated entity - optical companies. Throughout the bill, requirements are placed on optical companies as they are placed on optometrists, RDOs, and health plans – but optical companies are not regulated under the auspices of DCA or DMHC. If an optical company breaks the law, it is considered a misdemeanor, but a District Attorney would have to take the case and press charges. In other words, since the Board does not license optical companies, it does not have a direct enforcement mechanism like it does with a licensee.

Another substantial concern is allowing personal information as defined in Civil Code Section 1798.3 to be redacted prior to an RDO or optometrist submitting a lease to the Board (Section (d)(15)). No other law section allows a subject to determine what can and cannot be redacted prior to submitting information to the Board. This provides an opportunity for a subject to erroneously redact pertinent information without Board knowledge.

Further, under Civil Code Section 1798.3, “personal information” is any information that identifies or describes an individual, including his/her name. The Board would not be able to tie any lease back to any individual. In addition, “financial matters” could be redacted. This is problematic since many restrictions imposed by this bill could be considered financial matters (e.g., profit sharing, lease/rent payments, financial incentives, etc.) If redaction is allowed, Board staff believes the name, address, and license/registration number of the parties that have executed the lease and any financial information should not be allowed to be redacted.

There is also a concern that current RDO fees are not adequate to sustain the RDO program. While all fees collected would be transferred from the MBC to the Board, the added inspection authority and committee creation adds costs not currently accounted for. A complete fiscal analysis has yet to be completed, but preliminary estimates provided by the MBC Executive Director suggest the statutory fees should be increased. Since RDO fees have not been increased since 1999, an occupational analysis may be needed to determine appropriate fees.

Although this bill requires RDO/optical company-owned health plans that employ optometrists to report their transition progress during specified time periods, the Board does not capture health plan ownership information or what health plans employ optometrists. Therefore, enforcing this section may prove problematic or at best difficult.

The provisions of this bill that move the RDO Program from the MBC to the Board will involve substantial staff time to implement, which may ultimately impact licensing cycle times. Staff will need to be trained on the RDO registration process, create fact sheets for licensees, provide outreach to licensees/RDOs including making several updates to the Board’s website, create/amend regulations, create applicable forms, etc. Administrative workload (mail, cashiering, phone calls, etc.) is also expected to increase. While the MBC estimated they received roughly 90 enforcement cases per year, the Board will most likely receive more based on the creation of inspection authority alone. Budget Change Proposals will be needed to address staffing needs. This bill also will have a BreEZe impact, but Board staff will work closely with DCA and the MBC to ensure the smoothest transition possible.

Attachments
1. AB 684, Amended September 4, 2015
2. Civil Code Section 1798.3
An act to amend Sections 2546.2, 2546.9, 2550.1, 2556, 2567, 3010.5, 3011, and 3013 of, to add Sections 2556.1 and 3020 to, to add and repeal Section 2556.2 of, and to repeal and add Section 655 of, the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 2546.2, 2546.9, 2550.1, 2554, 2556, 2567, 3010.5, 3011, 3013 of, to add Sections 2556.1, 2556.2, 3020, 3021, 3023.1 to, and to repeal and add Section 655 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST


Existing law prohibits a licensed optometrist and a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with each other. Existing
law prohibits a licensed optometrist from having any membership, proprietary interest, coowners, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Existing law makes a violation of these provisions by a licensed optometrist and any other persons, whether or not a healing arts licensee, who participates with a licensed optometrist, subject to a crime.

Under existing law, the Medical Board of California is responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. Existing law requires fees collected from nonresident contact lens sellers to be deposited in the Dispensing Opticians Fund, and to be available, upon appropriation, to the Medical Board of California. Existing law requires fees collected from registered dispensing optician to be paid into the Contingent Fund of the Medical Board of California. Existing law makes a violation of the registered dispensing optician provisions a crime. Existing law, the Optometry Practice Act, makes the State Board of Optometry responsible for the licensure and regulation of optometrists. A violation of the Optometry Practice Act is a crime. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime.

This bill would repeal those prohibitions. The bill would prohibit a licensed optometrist from having any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or registered dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products, except as otherwise authorized. The bill would authorize a registered dispensing optician or optical company to operate, own, or have an ownership interest in a licensed health care service plan and to directly or indirectly provide products and services to the health care service plan or its contracted providers and enrollees, if the health care service plan meets certain requirements.
as a licensed health care service plan, if the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and would also provide for the direct or indirect provision of products and services to the health plan or its contracted providers or enrollees or to other optometrists, as specified. The bill would authorize an optometrist, a registered dispensing optician, and an optical company, or a health care service plan to execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist if specified conditions are contained in a written agreement, as provided. The bill would require a landlord or tenant to comply with an enforcement entity's request to inspect a lease agreement. The bill would authorize the State Board of Optometry, to inspect, upon request, an individual lease agreement, and the bill would require the landlord or tenant to comply. Because the failure to comply with that request would be a crime under specified acts, the bill would impose a state-mandated local program. The bill would prohibit a registered dispensing optician from having any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as authorized. The bill would make a violation of these provisions a crime. By creating a new crime, the bill would impose a state-mandated local program.

This bill would instead make the State Board of Optometry responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. The bill would direct fees collected from registered dispensing opticians and persons seeking registration as a dispensing optician to be paid into the Dispensing Opticians Fund, and to be available, upon appropriation, to the State Board of Optometry. The bill would make various conforming changes in this regard.

Existing law requires each registered dispensing optician to conspicuously and prominently display at each registered location the name of the registrant's employee who is currently designated to handle customer inquiries and complaints and the telephone number where he or she may be reached during business hours.

This bill would instead require specified consumer information to be displayed. Because a violation of the registered dispensing provisions would be a crime, the bill would impose a state-mandated local program.

Existing law makes it unlawful to, among other things, advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist,
or a physician and surgeon, or to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes.

This bill, except as specified, would make it unlawful for a registered dispensing optician to, among other things, advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon or to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes. The bill would authorize the State Board of Optometry, by regulation, to impose and issue administrative fines and citations for a violation of these provisions, as specified. The bill would require all licensed optometrists in a setting with a registered dispensing optician to report the business relationship to the State Board of Optometry. The bill would authorize the State Board of Optometry to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist for the purposes of determining compliance with the aforementioned written lease agreement provisions. The bill would also authorize the State Board of Optometry to take disciplinary action against a party who fails to comply with the inspection and would require the State Board of Optometry to provide specified copies of the inspection results. Because the failure to comply with the inspection would be a crime under the registered dispensing provisions, a violation of the registered dispensing provisions would be a crime, the bill would impose a state-mandated local program.

This bill, until January 1, 2019, would prohibit an individual, corporation, or firm operating as a registered dispensing optician before the effective date of the bill, or an employee of such an entity, from being subject to any action for engaging in that aforementioned unlawful conduct. The bill would require any health plan subject to these provisions to report to the State Board of Optometry in writing that certain percentages of its locations no longer employ an optometrist by specified dates. The bill would require the State Board of Optometry to provide those reports to the Director of Consumer Affairs and the Legislature.

Under existing law, the State Board of Optometry consists of 11 members, 6 licensee members and 5 public members.

This bill would require one of the nonpublic members to be a registered dispensing optician and would require the Governor to make
that appointment. The bill would establish within the State Board of Optometry a Registered Dispensing Optician Committee to oversee the registration and enforcement of registered dispensing opticians to advise and make recommendations to the board regarding the regulation of dispensing opticians, as provided. The bill would require the advisory committee to consist of 5 members, including 2 registered dispensing opticians, 2 public members, and a member of the State Board of Optometry.

This bill would make various conforming changes.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 declare that it is to take effect immediately as an urgency statute.


The people of the State of California do enact as follows:

SECTION 1. Section 655 of the Business and Professions Code is repealed.

655. (a) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division.

(b) No person licensed under Chapter 5.5 (commencing with Section 2550) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form directly or indirectly.
with any person licensed under Chapter 7 (commencing with Section 3000) of this division.

(c) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

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

SEC. 2. Section 655 is added to the Business and Professions Code, to read:

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

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

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

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

(4) “Registered dispensing optician” means a person licensed pursuant to Chapter 5.5 (commencing with Section 2550).

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

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

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

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

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

(d) An optometrist, a registered dispensing optician, 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.

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

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

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

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

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

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

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

(10) The term of the lease shall be no less than one year and shall not require the optometrist to contract exclusively with a health plan. The optometrist may terminate the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:
(A) The optometrist’s failure to maintain a license to practice optometry or the imposition of restrictions, suspension or revocation of the optometrist’s license or if the optometrist or the optometrist’s employee is or becomes ineligible to participate in state or federal government-funded programs.

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

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

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

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

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

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

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

(15) The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or
refusal to comply with the request for lease agreements within 30
days of receiving the request constitutes unprofessional conduct
and is grounds for disciplinary action by the appropriate
regulatory agency. Only personal information as defined in Section
1798.3 of the Civil Code may be redacted prior to submission of
the lease or agreement. This section shall not affect the Department
of Managed Health Care’s authority to inspect all books and
records of a health plan pursuant to Section 1381 of the Health
and Safety Code.

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

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

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

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

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

SEC. 3. Section 2546.2 of the Business and Professions Code
is amended to read:
AB 684 — 12 —

2546.2. All references in this chapter to the division shall mean the Medical Board of California. State Board of Optometry.

SEC. 4. Section 2546.9 of the Business and Professions Code is amended to read:

2546.9. The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars ($100).
(b) The renewal fee shall be one hundred dollars ($100).
(c) The delinquency fee shall be twenty-five dollars ($25).
(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars ($25).
(e) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the Medical Board of California State Board of Optometry for the purposes of this chapter.

SEC. 5. Section 2550.1 of the Business and Professions Code is amended to read:

2550.1. All references in this chapter to the board or the Board of Medical Examiners or division shall mean the Medical Board of California. State Board of Optometry.

SEC. 6. Section 2554 of the Business and Professions Code is amended to read:

2554. Each registrant shall conspicuously and prominently display at each registered location the name of the registrant’s employee who is currently designated to handle customer inquiries and complaints and the telephone number where he or she may be reached during business hours. The following consumer information:

This section shall become operative on January 1, 1988.

“Eye doctors are required to provide patients with a copy of their ophthalmic lens prescriptions as follows:

Spectacle prescriptions: Release upon completion of exam.

Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process.

Patients may take their prescription to any eye doctor or registered dispensing optician to be filled.

Optometrists and registered dispensing opticians are regulated by the State Board of Optometry. The State Board of Optometry receives and investigates all consumer complaints involving the
practice of optometry and registered dispensing opticians.

Complaints involving a California-licensed optometrist or a registered dispensing optician should be directed to:

California State Board of Optometry
Department of Consumer Affairs
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
Phone: 1-866-585-2666 or (916) 575-7170
Email: optometry@dca.ca.gov
Website: www.optometry.ca.gov"

SEC. 7. Section 2556 of the Business and Professions Code is amended to read:

2556. (a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician to do any of the following: to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon, to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes, or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same. For the purposes of this section, “furnish” does not mean to enter into a landlord-tenant relationship of any kind.

(b) Notwithstanding Section 125.9, the board may, by regulation, impose and issue administrative fines and citations for a violation of this section or Section 655, which may be assessed in addition to any other applicable fines, citations, or administrative or criminal actions.

SEC. 8. Section 2556.1 is added to the Business and Professions Code, to read:

2556.1. All licensed optometrists in a setting with a registered dispensing optician shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the
registered dispensing optician and the optometrist or between the
optometrist and the health plan. Failure to comply with the
inspection or any request for information by the board may subject
the party to disciplinary action. The board shall provide a copy
of its inspection results, if applicable, to the Department of
Managed Health Care.
SEC. 9. Section 2556.2 is added to the Business and Professions
Code, to read:
2556.2. (a) Notwithstanding any other law, subsequent to the
effective date of this section and until January 1, 2019, any
individual, corporation, or firm operating as a registered
dispensing optician under this chapter before the effective date of
this section, or an employee of such an entity, shall not be subject
to any action for engaging in conduct prohibited by Section 2556
or Section 655 as those sections existed prior to the effective date
of this bill, except that a registrant shall be subject to discipline
for duplicating or changing lenses without a prescription or order
from a person duly licensed to issue the same.
(b) Nothing in this section shall be construed to imply or suggest
that a person registered under this chapter is in violation of or in
compliance with the law.
(c) This section shall not apply to any business relationships
prohibited by Section 2556 commencing registration or operations
on or after the effective date of this section.
(d) Subsequent to the effective date of this section and until
January 1, 2019, nothing in this section shall prohibit an
individual, corporation, or firm operating as a registered
dispensing optician from engaging in a business relationship with
an optometrist licensed pursuant to Chapter 7 (commencing with
Section 3000) before the effective date of this section at locations
registered with the Medical Board of California before the effective
date of this section.
(e) This section does not apply to any administrative action
pending, litigation pending, cause for discipline, or cause of action
accruing prior to September 1, 2015.
(f) Any health plan, as defined in Section 655, subject to this
section shall report to the State Board of Optometry in writing
that (1) 15 percent of its locations no longer employ an optometrist
by January 1, 2017, (2) 45 percent of its locations no longer employ
an optometrist by August 1, 2017, and (3) 100 percent of its
locations no longer employ an optometrist by January 1, 2019. The board shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 10. Section 2567 of the Business and Professions Code is amended to read:

2567. (a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Contingent Fund of the Medical Board of California Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

SEC. 11. Section 3010.5 of the Business and Professions Code is amended to read:

3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members, 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.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to former Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that
is enacted before January 1, 2018, deletes or extends that date.
Notwithstanding any other law, the repeal of this section renders
the board subject to review by the appropriate policy committees
of the Legislature.
SEC. 12. Section 3011 of the Business and Professions Code
is amended to read:
3011. Members of the board, except the public members and
the registered dispensing optician member, shall be appointed only
from persons who are registered optometrists of the State of
California and actually engaged in the practice of optometry at the
time of appointment or who are members of the faculty of a school
of optometry. The public members shall not be a licentiate of the
board or of any other board under this division or of any board
referred to in Sections 1000 and 3600.
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.
No person, including the public members, person shall serve as
a member of the board for more than two consecutive terms.
A member of the faculty of a school of optometry may be
appointed to the board; however, no more than two faculty
members of schools of optometry may be on the board at any one
time. Faculty members of the board shall not serve as public
members.
SEC. 13. Section 3013 of the Business and Professions Code
is amended to read:
3013. (a) Each member of the board shall hold office for a
term of four years, and shall serve until the appointment and
qualification of his or her successor or until one year shall have
elapsed since the expiration of the term for which he or she was
appointed, whichever first occurs.
(b) Vacancies occurring shall be filled by appointment for the
unexpired term.
(c) The Governor shall appoint three of the public members and
the six members, five members qualified as provided in Section
3011, and the registered dispensing optician member as
provided in Section 3010.5. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

(f) The initial appointment of a registered dispensing optician member shall replace the optometrist member whose term expired on June 1, 2015.

SEC. 14. Section 3020 is added to the Business and Professions Code, to read:

3020. (a) There shall be established under the State Board of Optometry a dispensing optician committee to advise and make recommendations to the board regarding the regulation of a 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.

(b) The committee shall be responsible for:

(1) Recommending registration standards and criteria for the registration of dispensing opticians.

(2) Reviewing of the disciplinary guidelines relating to registered dispensing opticians.

(3) Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550).

93
(4) Carrying out and implementing all responsibilities and duties imposed upon it pursuant to this chapter or as delegated to it by the board.

(c) The committee shall meet at least twice a year and as needed in order to conduct its business.

(d) Recommendations by the committee regarding scope of practice or regulatory changes or additions shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(e) 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.

SEC. 15. Section 3021 is added to the Business and Professions Code, to read:

3021. The board shall have rulemaking authority with respect to Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) in accordance with Section 3025. Regulations adopted pursuant to Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) by the Medical Board of California prior to the effective date of this section shall continue to be valid, except that any reference to the board or division contained therein shall be construed to mean the State Board of Optometry, unless the context determines otherwise.

SEC. 16. Section 3023.1 is added to the Business and Professions Code, to read:

3023.1. (a) The nonresident contact lens seller program established under Chapter 5.45 (commencing with Section 2546)
and the registered dispensing optician, spectacle lens dispensing, and contact lens dispensing programs established under Chapter 5.5 (commencing with Section 2550) are hereby transferred from the jurisdiction of the Medical Board of California and placed under the jurisdiction of the State Board of Optometry.

(b) All the duties, powers, purposes, responsibilities, and jurisdictions of the Medical Board of California under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550) shall be transferred to the State Board of Optometry.

(c) For the performance of the duties and the exercise of the powers vested in the board under Chapter 5.45 (commencing with Section 2546) and Chapter 5.5 (commencing with Section 2550), the State Board of Optometry shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the Medical Board of California.

SEC. 17. The Legislature finds and declares that Section 1 of this act imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the State Board of Optometry and the Department of Managed Health Care to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to those departments to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

SEC. 18. 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.
SECTION 1. Section 655 of the Business and Professions Code is repealed.

SEC. 2. Section 655 is added to the Business and Professions Code, to read:

655. Notwithstanding any other law:
(a) No optometrist licensed under Chapter 7 (commencing with Section 3000) may have any membership, proprietary interest, co-ownership, or any profit sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician, as described in Chapter 5.5 (commencing with Section 2550), or any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or registered dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products, except as otherwise permitted under this section.
(b) A registered dispensing optician may operate, own, or have an ownership interest in a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code and may directly or indirectly provide products and services to the health care service plan or its contracted providers and enrollees if the health care service plan has a current and active license with the Department of Managed Health Care and is in compliance with all laws and regulations applicable to the health care service plan. Any complaints received by the Department of Managed Health Care related to the services provided by an optometrist or any findings by the Department of Managed Health Care that reflect substandard care or a potential violation of the Optometry Practice Act (Chapter 7 (commencing with Section 3000)) by an optometrist shall be forwarded to the State Board of Optometry.
(c) An optometrist, a registered dispensing optician, and a health care service plan may execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:
(1) The optometry practice shall be owned by the optometrist and in every aspect be under the optometrist’s exclusive control, including, but not limited to, 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 health
care service plans. This paragraph shall not preclude a lease from
including commercially reasonable terms that do any of the
following:

(A) Require the provision of optometric services at the premises
during certain days and hours.

(B) Restrict the use of the premises 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 landlord does not offer any
substantially similar therapeutic ophthalmic products for sale.

(C) Enter the optometrist into an agreement with a health care
service plan or health insurer.

(D) Permit the landlord to directly or indirectly provide
furnishings and equipment in the leased space.

(2) The patient records shall be the sole property of the
optometrist. Only the optometrist and those persons who have been
authorized, in writing, by the optometrist shall have access to the
patient records and the examination room, except as otherwise
provided by law.

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

(4) All signs, advertising, and displays shall be separate and
distinct from that of the other occupants and shall have the
optometrist’s name and the word “optometrist” prominently
displayed in connection therewith. This paragraph shall not prohibit
optometrists or registered dispensing opticians, individually or
jointly, from advertising their practice locations in the leased
premises, their participation in any health care service plan’s
network, or the health care service plan’s products in which they
participate.
(5) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the landlord.

(6) Except for a statement that an independent Doctor of Optometry is located on the premises and in-store pricing signs, as permitted by this subdivision, the landlord shall not link its advertising with the optometrist's name, practice, or fees.

(7) The optometrist shall not be precluded from collecting fees for services that are not included in a health care service plan's products and services contained in the health care service plan's provider agreement with the optometrist, subject to any disclosure requirements to the patients and enrollees.

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

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

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

(C) Other reasons pursuant to the terms of the lease or permitted under the Civil Code, unrelated to the practice of optometry or the sale of optical goods, except as otherwise provide by this section.

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

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

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

(12) The landlord shall not interfere with an outgoing optometrist’s efforts to inform the optometrist’s patients, in accordance with customary practice and professional obligations, of the relocation of the optometrist’s practice.

(13) The State Board of Optometry, the Medical Board of California, or the Department of Managed Health Care may inspect, upon request, an individual lease agreement pursuant to its investigation authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for a lease agreement within 30 days of receiving the request shall constitute unprofessional conduct, grounds for disciplinary action by the appropriate regulatory agency and a violation of the Optometry Practice Act and the Knox-Keene Health Care Service Plan Act of 1975, as applicable. Only personal information as defined in Section 1798.3 of the Civil Code may be redacted prior to dispatch of the lease or agreement.

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

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

SEC. 3. Section 2546.2 of the Business and Professions Code is amended to read:

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

(b) Unless contrary to the provisions of this chapter, regulations adopted by the Medical Board of California shall continue to apply to nonresident contact lens sellers until other regulations are adopted by the State Board of Optometry. All references in those regulations to “board” shall mean the State Board of Optometry, which shall solely enforce the regulations with respect to nonresident contact lens sellers.
SEC. 4. Section 2546.9 of the Business and Professions Code is amended to read:

2546.9. The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars ($100).
(b) The renewal fee shall be one hundred dollars ($100).
(c) The delinquency fee shall be twenty-five dollars ($25).
(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars ($25).
(e) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter.

SEC. 5. Section 2550.1 of the Business and Professions Code is amended to read:

2550.1. (a) All references in this chapter to the board or the Board of Medical Examiners or division shall mean the State Board of Optometry.
(b) Unless contrary to the provisions of this chapter, regulations adopted by the Medical Board of California shall continue to apply to registered dispensing opticians until other regulations are adopted by the State Board of Optometry. All references in those regulations to “board” shall mean the State Board of Optometry, which shall solely enforce the regulations with respect to registered dispensing opticians.

SEC. 6. Section 2556 of the Business and Professions Code is amended to read:

2556. (a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician to do any of the following: to advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon, to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes, or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same. For the purposes of this section, “furnish” does not mean to enter into a landlord-tenant relationship of any kind.
(b) Notwithstanding Section 125.9, the board may, by regulation, impose and issue administrative fines and citations for a violation
of this section or Section 655, which may be assessed in addition
to any other applicable fines, citations, or administrative or criminal
actions.

SEC. 7. Section 2556.1 is added to the Business and Professions
Code, to read:

2556.1. The board shall have the authority to inspect any
premises at which the business of a registered dispensing optician
is co-located with the practice of an optometrist for the purposes
of determining compliance with Section 655. The inspection may
include the review of any written lease agreement between the
registered dispensing optician and the optometrist. Failure to
comply with the inspection or any request for information by the
board may subject the party to disciplinary action. The board shall
provide a copy of its inspection results, if applicable, to the
optician, optometrist, and the Department of Managed Health Care.

SEC. 8. Section 2556.2 is added to the Business and Professions
Code, to read:

2556.2. (a) Notwithstanding any other law and except as
provided in Section 655, any individual, corporation, or firm
operating as a registered dispensing optician under this chapter
before the effective date of this section, or an employee of such
entity, shall not be subject to any action for engaging in conduct
prohibited by Section 2556 as it read prior to the effective date of
the act adding this section, except that a registrant shall be subject
to discipline for duplicating or changing lenses without a
prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest
that a person registered under this chapter is in violation of or in
compliance with the law.

c) This section shall not apply to any business relationships
prohibited by Section 2556 registered and operating on or after
the effective date of this section.

d) Nothing in this section shall prohibit an individual,
corporation, or firm operating as a registered dispensing optician
from engaging in a business relationship with an optometrist
licensed pursuant to Chapter 7 (commencing with Section 3000)
before the effective date of this section at locations registered with
the Medical Board of California before the effective date of this
section.
(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 9. Section 2567 of the Business and Professions Code is amended to read:

2567. (a) The provisions of Article 19 (commencing with Section 2420) and Article 20 (commencing with Section 2435) of Chapter 5 which are not inconsistent or in conflict with this chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

SEC. 10. Section 3010.5 of the Business and Professions Code is amended to read:

3010.5. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members and one of whom shall be a registered dispensing optician. The registered dispensing optician shall be registered pursuant to Chapter 5.5 (commencing with Section 2550) and in good standing with the board.

Six members of the board shall constitute a quorum.

(b) The board, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to former Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 11. Section 3011 of the Business and Professions Code is amended to read:
3011. Members of the board, except the public members and the registered dispensing optician member, shall be appointed only from persons who are registered optometrists of the State of California and actually engaged in the practice of optometry at the time of appointment or who are members of the faculty of a school of optometry. The public members shall not be a licentiate of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600.

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.

No person shall serve as a member of the board for more than two consecutive terms.

A member of the faculty of a school of optometry may be appointed to the board; however, no more than two faculty members of schools of optometry may be on the board at any one time. Faculty members of the board shall not serve as public members.

SEC. 12. Section 3013 of the Business and Professions Code is amended to read:

3013. (a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members; five members qualified as provided in Section 3011, and the registered dispensing optician member as provided in Section 3010.5. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of
the public members appointed by the Governor and two of the
professional members shall serve terms of three years. The
remaining public member appointed by the Governor and the
remaining two professional members shall serve terms of four
years. The public members appointed by the Senate Committee
on Rules and the Speaker of the Assembly shall each serve for a
term of four years.

SEC. 13. Section 3020 is added to the Business and Professions
Code, to read:

3020. (a) There shall be established within the State Board of
Optometry a Registered Dispensing Optician Committee to oversee
the registration and enforcement of registered dispensing opticians
as described in Chapter 5.5 (commencing with Section 2550).
(b) The committee shall be responsible for all of the following:
(1) Oversight of and setting criteria for all applications for
dispensing opticians.
(2) Investigating all enforcement matters relating to a dispensing
optician.
(3) Investigating any complaint against a dispensing optician
provided to the committee by the board.
(4) Determining and enforcing penalties, including fines,
suspensions, and revocations.
(5) Carrying out and implementing all responsibilities and duties
imposed upon it pursuant to this chapter.
(c) The committee shall meet as needed.

SEC. 14. 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.

SEC. 15. This act is an urgency statute necessary for the
immediate preservation of the public peace, health, or safety within
the meaning of Article IV of the Constitution and shall go into
immediate effect. The facts constituting the necessity are:
In order to, as soon as possible, protect various businesses,
registered dispensing opticians, and optometrists who engage in
a business relationship that is prohibited by Section 655 of the Business and Professions Code, as amended by Chapter 975 of the Statutes of 1979, or Section 2556 of the Business and Professions Code, as amended by Chapter 653 of the Statutes of 1979, of the Business and Professions Code from discipline by the Medical Board of California, the State Board of Optometry, or any other state agency with enforcement authority while those entities transition to a model that will allow California businesses to provide health services to patients and also protect the interests of healing arts practitioners, it is necessary that this act take effect immediately.
§ 1798
As used in this chapter:

(a) The term “personal information” means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

(b) The term “agency” means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:
   (1) The California Legislature.
   (2) Any agency established under Article VI of the California Constitution.
   (3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.
   (4) A local agency, as defined in subdivision (a) of Section 6252 of the Government Code.

(c) The term “disclose” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(d) The term “individual” means a natural person.

(e) The term “maintain” includes maintain, acquire, use, or disclose.

(f) The term “person” means any natural person, corporation, partnership, limited liability company, firm, or association.

(g) The term “record” means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual’s name, photograph, finger or voice print, or a number or symbol assigned to the individual.

(h) The term “system of records” means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(i) The term “governmental entity,” except as used in Section 1798.26, means any branch of the federal government or of the local government.

(j) The term “commercial purpose” means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.

(k) The term “regulatory agency” means the Department of Business Oversight, the Department of Insurance, the Bureau of Real Estate, and agencies of the United States or of any other state responsible for regulating financial institutions.

(Amended by Stats. 2013, Ch. 352, Sec. 52. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)
To:    Board Members                      Date:    September 9, 2015

From:  Madhu Chawla, OD                   Telephone:  (916) 575-7170
       Board President

Subject:  Agenda Item 4 – Adjournment