

MEMBERS OF THE BOARD

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



QUARTERLY BOARD MEETING AGENDA

Friday, April 5, 2019

Time: 9:15 a.m. until completion of business

Location:

**Four Points by Sheraton San Diego – SeaWorld
Pacífico Room
3888 Greenwood Street
San Diego, CA 92110**

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations of resources.

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. President's Report**
 - A. Discussion of Recent President's Message (distributed March 25, 2019)
 - B. Reflections and Thoughts about Service as Board President
- 4. Discussion and Possible Action - Board Meeting Minutes from February 1, 2019**
- 5. Update by Representative(s) of the Department of Consumer Affairs, Which May Include Updates Pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters**
 - A. Review and Discussion of Completed Executive Officer Salary Study
 - B. Update on Substance Abuse Coordination Committee's Revisions of Uniform Standards
- 6. Executive Officer's Report**
 - A. Strategic Plan Update
 - B. Enforcement Program
 - C. Examination and Licensing Programs
 - D. Regulatory Update
 - E. Budget Update
 - F. Outreach Activities

7. Discussion and Possible Action Regarding Board Attendance at Annual Conference of the Association of Regulatory Boards of Optometry

FULL BOARD CLOSED SESSION

8. 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

9. Update, Discussion and Possible Action Regarding Board Committee Reports

- A. Dispensing Optician Committee:
 - 1. Program Updates and Priorities, Future Meeting Dates, Draft Disciplinary Guidelines, AB 2138 Draft Regulations
- B. Practice and Education Committee:
 - 1. Continuing Education Program Updates, Priorities for Committee
- C. Legislation and Regulation Committee:
 - 1. Legislative Bills (Below #10), Children's Vision, AB 2138 Regulations Status

10. Discussion and Possible Action on 2019 Legislation Impacting the Practice of Optometry

- A. Assembly Bill 458 (Nazarian): Optometrist: Home Residence Certification
- B. Assembly Bill 613 (Low): Professions and vocations: regulatory fees
- C. Assembly Bill 896 (Low): Registered Dispensing Opticians: RDO Fund: Optometry Fund
- D. Assembly Bill 1467 (Salas): Optometrists: scope of practice: delegation of services agreement

11. Review, Discussion, and Possible Action on Implementing Regulations for Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018)

12. Review, Discussion, and Possible Action on Implementing Regulations for Assembly Bill 443 (Salas, Chapter 549, Statutes of 2017)

13. Election of Board Officers

- A. President
- B. Vice-President
- C. Secretary

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 Evan Gage at (916) 575-7185, emailing a written request to Evan.Gage@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	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
SUBJECT	Agenda Item #1 – Call to Order/Roll Call and Establishment of a Quorum

Board President, Cyd Brandvein, will call the meeting to order.

Board Secretary, Rachel Michelin, will call roll to establish a quorum of the Board.

Cyd Brandvein

David Turetsky OD

Madhu Chawla OD

Martha “Ruby” Garcia CLD/SLD

Glenn Kawaguchi O.D.

Debra McIntyre OD

Mark Morodomi

Maria Salazar-Sperber

Lillian Wang OD

Rachel Michelin

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
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)]

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
SUBJECT	Agenda Item #3 – President's Report

PRESIDENT'S MESSAGE



March 2019



ADVANCING CONSUMER ACCESSIBILITY - BRANCH OFFICE LICENSURE DISCONTINUED

For glasses and contact lens wearers, life can take an abrupt halt when optometric materials go missing or get broken. Having an optometrist office in your area can help lessen these interruptions. That's why [Senate Bill 1386 \(Chapter 334, Statutes of 2018\)](#) is so important to increasing care options for consumers.

Effective January 1, 2019, Optometrists may have up to 11 offices with ownership status in the practice. But there's no longer a need to obtain Branch Office Licenses for those locations. That's right! 2019 brought an end to the Branch Office License and the two-practice minimum.

This means that licensees holding a Branch Office License(s) are required to obtain a Statement of Licensure for their principal place of practice and may operate no more than 10 additional offices. Each of these offices now require Statements of Licensure.

If you formerly held a Branch Office License, please be sure that you have applied for Statement of Licensure for all former Branch Office locations.

[Start your application for Statements of Licensure today](#), and please feel to email the Board at optometry@dca.ca.gov with any questions.

Other Hot Topics:

Be sure to File Your Taxes: <https://www.dca.ca.gov/ab1424.shtml>

Follow the Board on Facebook, Twitter and LinkedIn:

<https://www.facebook.com/CAOptometry/>

<https://twitter.com/caoptometry>

<https://www.linkedin.com/company/state-of-california---board-of-optometry>

A handwritten signature in black ink that reads "Cyd Brandvein".

Cyd Brandvein, President

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Ms. Rachel Michelin, Board Secretary
SUBJECT	Agenda Item #4 - Discussion and Possible Action - Board Meeting Minutes from February 1, 2019

The Board meeting minutes from the February 1, 2019 public meeting are presented for review and possible approval.

PUBLIC BOARD MEETING
DRAFT MEETING MINUTES
February 1, 2019

Location:
American Career College – Ontario Campus
Room #178
3130 East Sedona Court
Ontario, CA 91764

Link to webcast for discussions:
<https://www.youtube.com/watch?v=kh2E6JBsneU&feature=youtu.be>

Members Present	Staff Present
Cyd Brandvein, Public Member, President	Shara Murphy, Executive Officer
Dr. David Turetsky, O.D., Vice President	Evan Gage, Assistant Executive Officer
Rachel Michelin, Public Member, Secretary	Marc Johnson, Policy Analyst
Martha Garcia, CLD, SLD	Cheree Kimball, Lead Enforcement Analyst
Dr. Glenn Kawaguchi, O.D.	Arsha Qasmi, Lead Licensing Analyst
Mark Morodomi, J.D., Public Member	Jessica Swan, Administrative Analyst
Maria Salazar Sperber, J.D., Public Member	Mina Hamilton, Legal Counsel
Dr. Lillian Wang, O.D.	
Dr. Madhu Chawla, O.D.	Guest List
Dr. Debra McIntyre, O.D.	On File

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

Discussion: <https://youtu.be/kh2E6JBsneU?t=59>

President Brandvein called the meeting to order at 9:15 a.m. Secretary Michelin called the roll. All members were present at the meeting. 10-0 quorum established.

2. Public Comment for Items Not on the Agenda

Discussion: <https://youtu.be/kh2E6JBsneU?t=163>

No public comments were made for items not on the agenda.

3. 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 at 9:20 a.m.

The Board resumed open session at 11:39 a.m.

4. President's Report

Discussion: <https://youtu.be/kh2E6JBsneU?t=375>

A. Discussion and Possible Action Regarding the Election of 2019 Board Officers

President Brandvein announced upcoming elections for Board President, Vice President and Secretary, which will be held at next meeting in April.

Public Comment: None.

Discussion: <https://youtu.be/kh2E6JBsneU?t=425>

B. Discussion of Governor Newsom's Budgetary Commitments to the Department of Consumer Affairs and Transition Plan

Chris Castrillo, Deputy Director from the Department of Consumer Affairs (DCA) Executive Office, presented on the item. He set out the information of the Governor's budgetary announcement and reported that DCA had a teleconference with Boards to outline a budget proposal. Additionally, he noted a Budget Change Proposal (BCP) for the DCA regulatory unit will be moving forward when the Governor's budget is signed in July. He further said that DCA has also submitted BCPs for the Fi\$Cal unit to improve workload with a faster turnaround time.

Public Comment: None.

5. Approval of Board Meeting Minutes

Discussion: <https://youtu.be/kh2E6JBsneU?t=2740>

A. May 22, 2018

Dr. Kawaguchi moved to approve the May 22, 2018 Board Meeting Minutes. Dr. Wang seconded. The Board voted unanimously (9-0) 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				

B. June 18, 2018

Dr. Kawaguchi moved to approve the June 18, 2018 Board Meeting Minutes. Dr. Wang seconded. The Board voted unanimously (10-0) 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				

C. June 29, 2018

Dr. Kawaguchi moved to approve the June 29, 2018 Board Meeting Minutes with the suggested edit made. Dr. Wang seconded. The Board voted (9-Aye, 0-No, 1-Abstention) 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				

D. November 2, 2018

Dr. Kawaguchi moved to approve the November 2, 2018 Board Meeting Minutes. Dr. Wang seconded. The Board voted (9-Aye, 0-No, 1-Abstention) 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				

Public Comment: None.

6. Executive Officer's Report

Discussion: <https://youtu.be/kh2E6JBsneU?t=11682>

A. RDO Fingerprint Deficiency Communication

Executive Officer Shara Murphy reported on the Registered Dispensing Optician fingerprint deficiency communication. Licensees who did not respond to the first notice to complete their fingerprints have received a second notification and had their license placed in delinquent status. Within the following two weeks, each licensee's employer of record will also receive a notice.

B. Personnel

New staff was introduced, including Evan Gage, Assistant Executive Officer; Marc Johnson, Policy Analyst; Natalia Leeper, RDO program technician and Aileen Jones, RDO program technician.

C. Status of DCA On-boarding for Executive Officer

Ms. Murphy noted she had completed her Executive Officer training through DCA.

D. Licensee Communication Regarding AB 1753 (Low, 2017-2018, Chapter 479) Controlled substances: CURES database

Discussion: <https://youtu.be/kh2E6JBsneU?t=10892>

Ms. Murphy explained that there are currently 653 optometry licensees with DEA numbers. This coming year those licensees will need to use serialized prescription pads. Licensees were emailed this notification and staff will answer all questions as received.

E. Optometry/RDO Program Annual Budget Meeting Report

Discussion: <https://youtu.be/kh2E6JBsneU?t=11891>

DCA Fiscal Officer Taylor Schick provided an update on the Board's fund condition. He explained that Fi\$Cal is the new statewide system for budgets, accounting and procurement. DCA was integrated into Fi\$Cal as of July 1, 2017. He assured that the system is working; revenue is being deposited, contracts are being executed and invoices are being paid; however, there are issues in the system with

reconciliation. This is mainly due to the State Controller's Office still being on the legacy system. The Department has not yet closed out fiscal year 17/18.

Mr. Schick reported that the Board's budget is in good condition and the Budget Office does not have any concerns.

F. Strategic Plan Update

Discussion: <https://youtu.be/kh2E6JBsneU?t=12086>

Board Members were given an update on the Board's Strategic Plan items.

G. Children's Vision Updates

Discussion: <https://youtu.be/kh2E6JBsneU?t=12383>

Ms. Murphy reported that the Board is engaging partners who took part in the legislative process over the last three cycles. Stakeholder meetings were held over the legislative break by Assembly Member Wendy Carrillo; Board staff has been in touch with her office on the issue.

H. Enforcement Program

Discussion: <https://youtu.be/kh2E6JBsneU?t=10153>

Enforcement Lead Analyst Cheree Kimball provided an update on the Enforcement Program. She announced that the Enforcement Unit is now fully staffed. In December, she and Ms. Murphy met with the Department of Investigation (DOI) to obtain complaint referral guidelines from DCA which will begin being implemented. Ms. Brandvein stated that for the next Board Meeting, Members would like to see actionable goals that can be measured over time.

I. Examination and Licensing Programs

Lead Licensing Analyst Arsha Qasmi provided an update on licensing and examination programs. She noted there has been an increase in optometrist applications with Optometry school graduations taking place. In an effort to absorb the increasing activity, the Board has been able to make changes to the BreEZe online application system to improve processing times and reduce phone calls. Processing times for Optometry licensees are currently 4-6 weeks once all documents necessary are received and RDO program processing times are currently at 8-10 weeks. Applicants can now apply to write the exam without receiving prior staff approval, and upon passing the law exam, they can utilize BreEZe to finalize their applications. Ms. Qasmi explained that Branch Office licenses have been discontinued and Statement of Licensure applications have taken their place; a notice has been sent to all impacted licensees.

Ms. Qasmi announced that the new Limited-Term position has been filled as of January 20, 2019, which should greatly improve RDO processing times.

Public Comment: None.

7. Update by Representatives of the Department of Consumer Affairs, Which May Include Updates Pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters

Discussion: <https://youtu.be/kh2E6JBsneU?t=2293>

A. Substance Abuse Committee Updates to DCA Uniform Guidelines (DCA Deputy Director Chris Castrillo)

Mr. Castrillo presented on the Substance Abuse Coordination Committee (SACC). He noted that there is a statutory requirement to review SACC #4 – drug testing frequency. After SACC meetings, it was decided to keep the testing requirements the same, but with added text to approve alternative testing locations. There has been a policy addition to allow healing arts boards to lower the drug testing frequency to not less than 24 times a year if the licensee receives no less than 50% direct supervision (mostly for pharmacy). The SACC committee reported these decisions back to the Legislature. The SACC committee will look at other standards and will convene throughout 2019.

B. Implementation of Contact Lens/Spectacle Lens Dispenser Occupational Analysis (Heidi Lincer, Ph.D., Chief - Office of Professional Examination Services)

Dr. Heidi Lincer presented this item. She explained that the Office of Professional Examination Services (OPES) provides consulting services to DCA's boards, bureaus, and committees; as well as, regulations, professional guidelines and standards related to licensure examinations. She provided an overview of the occupational Analysis (OA) process. The Board's optometry occupational Analysis is complete; OPES is writing the report. Next week, OPES will develop the laws and regulations outline. Review of the national examination, from which the optometry OA will be compared, will begin March 2019.

Dr. Lincer explained that the contact lens occupational analysis is in process; OPES is currently working with the Board and has been successful in recruiting Subject Matter Experts (SMEs) for upcoming workshops.

Staff also noted that recruiting for spectacle lens dispensers would begin within the next few months.

Dr. Chawla, Dr. Wang, and Ms. Garcia discussed whether the examination for compact lens dispensers should be modified to their scope of practice. Drs. Chawla and Wang would like them to be tested to the highest level. Dr. Kawaguchi is concerned that the examination not become a barrier to entry but rather consumer protection.

Public Comment: None.

8. Update from Representative of the Department of Consumer Affairs and Discussion on Department of Consumer Affairs Salary Study (DCA Deputy Director Chris Castrillo)

Discussion: <https://youtu.be/kh2E6JBsneU?t=852>

Mr. Castrillo provided a short background and noted that the Director has opened-up lines of communication with DCA/Board meetings; he is very focused on collaboration. He announced that the

DCA annual report is up on DCA's website. He explained that DCA continues to support [AB 2138](#) which affects all DCA's boards and bureaus. DCA has issued a draft timeline of July 2020 Implementation date for this bill.

He noted that mandatory Board Member training is now available. Ms. Murphy will have staff send out reminders for training.

Discussion: <https://youtu.be/kh2E6JBsneU?t=1551>

Mr. Castrillo provided an update to the Executive Officer Salary study. A lot of data gathering has occurred up to this point. Initial interviews with Executive Officers have been conducted to identify themes and challenges. DCA's consultant has sent a comprehensive survey to all the Executive Officers. By the end of February, a draft report will be available, and the final study report will be available during the first week of March.

Public Comment: None.

9. Update, Discussion and Possible Action Regarding Board Committee Reports

A. Dispensing Optician Committee

Discussion: <https://youtu.be/kh2E6JBsneU?t=5788>

Ms. Murphy shared that the fingerprint hold issue is currently becoming caught up. She reported that 540 letters were sent out to which Staff received about a 50 percent response rate. Of those that failed to respond, a second notice has gone out. Their license is delinquent, and Staff is drafting a letter to go to employers.

Ms. Garcia reported that the Dispensing Opticians Committee reviewed several issues, including the fingerprint delinquency issue; a discussion on the RDO Disciplinary Guidelines and the implementation of AB 2138.

Public Comment: None.

B. Practice and Education Committee

Discussion: <https://youtu.be/kh2E6JBsneU?t=5978>

Dr. Chawla reported that the majority of course providers are sending complete and thorough application packages. The Committee is seeing an increase in the number of surgical presentations which can be educational if there is a didactic portion; however, it poses a problem when presentation material is not included.

Dr. Chawla reported on the concern about course providers who send out certificates stating: "approval pending." Licensees receive these and think that they have obtained credit, only to find out when audited that they are short credits. The Board has discussed placing a list of approved courses on the Board's website. The Board is studying and trying to mimic how COPE handles their approval process.

Ms. Qasmi explained that there is confusion among some licensees about how much continuing education is required for licensure. Ms. Murphy assured that this item will come back on an agenda for further discussion with research and regulatory language at the March 8th PEC meeting.

Additionally, Members and Staff discussed providing approval numbers for every topic/course versus approving an event. This is for auditing purposes.

Ms. Murphy announced that as part of the remedy, regulatory language could make it unlawful to pass out certificates that say: "approval pending."

Public Comment: None.

C. Consumer Protection Committee

Discussion: <https://youtu.be/kh2E6JBsneU?t=6937>

Mr. Morodomi reported that a percentage of the action group related to the Disciplinary Guidelines are being delayed due to the new work regarding the Uniform Standards Related to Substance Abuse. The delay is expected to last three to six months.

Public Comment: None.

10. Update and Possible Action on 2019 Legislation Impacting the Practice of Optometry

Discussion: <https://youtu.be/kh2E6JBsneU?t=5193>

A. Assembly Bill 156 (Voepel) – Eye care: remote assessment

Policy Analyst Marc Johnson reported on [AB 156](#). The Board has received word from the author that this is a 2-year bill, and it may be dropped altogether. Mr. Johnson noted staff will continue to monitor the issue.

B. Optometry and Optician Fund Merger – Staff research

Mr. Johnson reported that there are different issues with keeping the Registered Dispensing Optician (RDO) and optometry program funds separate. This creates somewhat of a disconnect in reporting and planning. Mr. Johnson presented some existing legislative solutions. Board Staff used text from [AB 177](#) as a template for how to merge the two programs funds. Ms. Murphy announced that if staff is not successful in getting this introduced more quickly, an author will be sought.

Public Comment: None.

11. Update, Discussion and Possible Action Regarding Potential Regulations Implementing AB 443 Specific to Immunization Training Programs

Discussion: <https://youtu.be/kh2E6JBsneU?t=7144>

Mr. Johnson presented on [AB 443](#) which relates to the Board's scope of practice. The bill authorizes optometrists who are certified to use therapeutic pharmaceutical agents to administer immunizations if they meet certain requirements. It also authorizes the Board to charge a fee of up to \$50 for licensees to obtain the certification. The Board discussed the proposed regulatory language and elements of the required form.

Ms. Michelin noted that when this is rolled out and ODs can apply for this certification it is extremely important for the form to be available on BreEZe.

David Turetsky moved to approve the proposed regulatory text in 16 CCR Section 1572 and Section 1524 with amendments in Section 1524 to delete d, e, and f, from the text and any other text that is no longer valid; and to approve the form that has been submitted with amendments to delete the requirement for applicants to have places of practice listed; and to amend the fee section to just have fee without parentheses or check or money order; and to direct staff to submit the text in corporate form to the Director of Consumer Affairs and to the Business of Consumer Services and Housing Agency for review and if no adverse comments are received authorize the Executive Officer to take all steps necessary to initiate the rulemaking process and any non-substantive changes to the packet and set the matter for Hearing. Dr. Wang seconded.

Bill Howe with the California Optometric Association noted two technical observations and that the Board may consider amending its motion. One observation is that of complying with record keeping requirements; there is not any documentation that an optometrist can give the Board. The second observation is that of providing appropriate form for certification which is redundant. The COA does not know if the form needs these two items.

Recess for lunch was taken at 2:10 p.m. Board resumed at 2:40 p.m.

Bonnie Delatoire, Continuing Education Director with Marshall B Ketchum University, questioned whether optometrists who want to take the national pharmacy-based immunization program will be able to receive a retro-active certification once the form is completed. The Board Members agreed that these optometrists will be able to receive their certification.

Dr. Turetsky withdrew his motion. Dr. Kawaguchi asked that the Practice and Education Committee take up the issue of obtaining CE credit for the immunization certification as a future agenda item; Board agrees.

Madhu Chawla moved to direct the Executive Officer to work with Legal Counsel to finalize the text and form of the Application for Immunization Certification. Rachel Michelin seconded. The Board voted unanimously (10-0) 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				

12. Review, Discussion, and Consideration of Requirements for Board's Implementation of AB 2138 (Chapter 995), Statutes of 2018, Chiu; Denial of Applications Based Upon Criminal Convictions) and Possible Action to Approve Implementing Regulations

Discussion: <https://youtu.be/kh2E6JBsneU?t=12756>

Legal Counsel Hamilton reported on the proposed text for Board's implementation of AB 2138 and made several recommendations. Staff was directed by the Board to continue work on developing this regulation, preferring option one for application review and rehabilitation criteria.

Public Comment: None.

13. Future Agenda Items

Discussion: <https://youtu.be/kh2E6JBsneU?t=13404>

Board members had no future agenda items.

Public Comment: None.

14. Adjournment

The meeting was adjourned at 3:55 pm.


ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Representatives of the Department of Consumer Affairs
SUBJECT	Agenda Item #5 - Update by Representative(s) of the Department of Consumer Affairs, Which May Include Updates Pertaining to the Department's Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters

- A. Review and Discussion of Completed Executive Officer Salary Study
- B. Update on Substance Abuse Coordination Committee's Revisions of Uniform Standards

Occupational
Analysis Overview
and Status of
Projects

Heidi Lincer, Ph.D.,
Chief
February 1, 2019



Office of Professional
Examination Services



Provides:

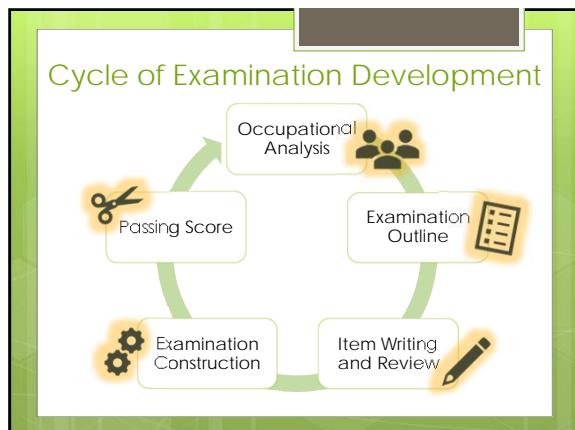
- Professional consulting services in examination validation and development to DCA's boards, bureaus, and committees
- Recommendations based on regulations, professional guidelines and technical standards related to licensure examinations

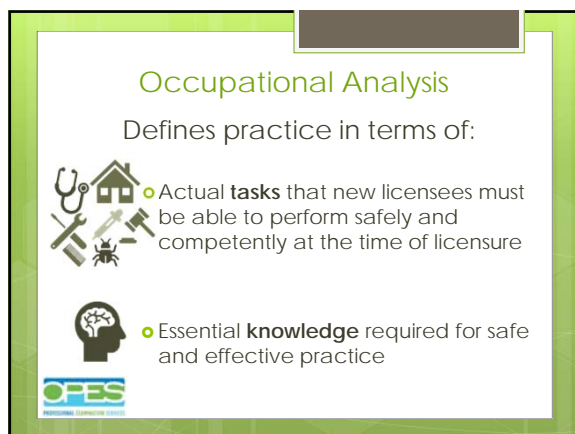


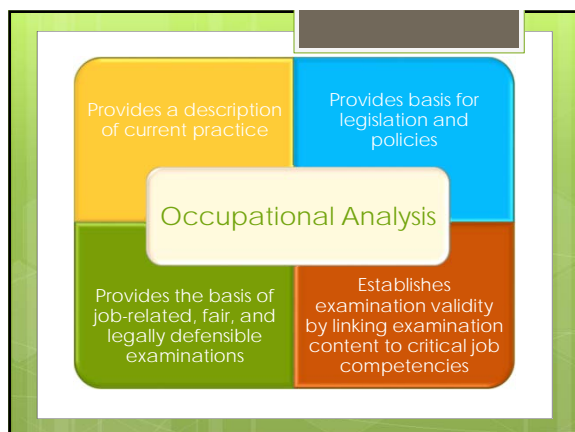
Licensure Examinations

- Must provide a reliable method for identifying practitioners who are able to practice safely and competently
- Focus on **entry-level** tasks and knowledge important for **public protection**








SAFE

UNSAFE







OA Process

-  • Conduct SME telephone interviews and research on the profession
-  • Develop Task and Knowledge statements with SMEs
-  • Develop and administer OA survey
-  • Analyze survey data and demographics
-  • Review survey results with SMEs
-  • Develop examination content outline with SMEs

Achieving Valid Results


 SMEs of diverse practice backgrounds are critical to ensure validity


 Board recruits sufficient number of representative SMEs

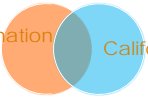

 OPES facilitates process and ensures psychometric standards are met

←————→




Status of Projects

- **Optometry OA**
 - Completed; report in progress
 - Last step to develop Law and Regulations Examination Outline – February 2019
 - Exams based on new outline – October 2019
- **Review of National Examination (NBEO)**
 - Compare CA OA results with National OA
 - Review against psychometric standards
 - Scheduled to start in March 2019





National examination California practice



Status of Projects

- **Contact Lens Dispenser OA**
 - Workshops scheduled for February and April 2019
 - Need SMEs who perform breadth of profession
- **Spectacle Lens Dispenser OA**
 - Scheduled to start in July 2019
 - If time permits, preliminary work will be done in CLD workshops



ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer
SUBJECT	Agenda Item #6 – Executive Officer's Report

- A. Strategic Plan Update
- B. Enforcement Program
- C. Examination and Licensing Programs
- D. Regulatory Update
- E. Budget Update
- F. Outreach Activities

Goal 1: Licensing

The Board provides applicants and licensees a method for obtaining and maintaining license registration, business licenses, and certifications required to practice optometry in California.

Objective 1.1: Streamline the initial license and renewal process, including paperless options and synchronizing multiple license renewal dates, to improve staff efficiency and licensee compliance.	Status: COMPLETED SCD ¹ : Jan. 2019
<ul style="list-style-type: none"> • Conducts monthly meetings discussing timelines and identifying bottlenecks to better streamline the processes. • Identified and raised necessary BreEZe SIRs to improve processes, including independent transaction not requiring staff interaction and board approval (e.g., Statement of Licensure Applications). • Created SIR to generate paperless initial and synchronize certificates. • Conducted outreach informing licensees of the paperless direction of the Board. 	
Objective 1.2: Review the possibility of including continuing education requirements for both spectacle and contact lens dispenser licenses to protect consumers and maintain licensee competence.	Status: COMPLETED SCD: Dec. 2017
<ul style="list-style-type: none"> • Researched other states' continuing education (CE) requirements for Opticians. • Researched consumer complaints from other state agencies that regulate opticians. • Utilized consumer complaint reports received to research and identify any potential consumer harm. • Presented research to DOC (Dispensing Optician Committee) for consideration. • DOC recommended not pursuing continuing education requirements at this time. While continuing education is important for registrants to stay apprised of technological advances and industry standards, research indicates no immediate or apparent consumer protection need. 	
Objective 1.3: Continue monitoring and exploring opportunities to enhance BreEZe utilization (e.g. 100% continuing education compliance, usage of national database, etc.) to increase staff productivity and promote licensee compliance with continuing education requirements.	Status: COMPLETED SCD: Dec. 2017
<ul style="list-style-type: none"> • Researching BreEZe SIRs to remove the automated printing/mailing of certificates. Instead, staff working with the BreEZe team to show pdf documents on licensees' dashboards after initial/renewal/address change etc. applications are processed. • BOARD DISCUSSION: Staff recommends removing the automated remittance coupon on the bottom of renewal notices. Instead, renewal notices would direct licensees to BreEZe. • Staff has implemented new procedure at the closing of each licensing file to upload PDF certs. 	

Goal 2: Examination

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

Objective 2.1: Recruit more subject matter experts to create examination questions in order to strengthen the diversity of the test.	Status: COMPLETED ONGOING SCD: Dec. 2017
<ul style="list-style-type: none"> • Increased utilization of email, social media and newsletters. • Worked with DCA to design enticing flyer highlighting free CE opportunities. • Partnered with California Optometric Association (COA). • Provided recruitment flyers to continuing education events and other COA events. • Significantly increased SME pool. 	
Objective 2.2: Analyze the examination requirements to evaluate for competency and the validity of the examination.	Status: COMPLETED SCD: Feb. 2019
<ul style="list-style-type: none"> • Collaborated with the Office of Professional Examination Services (OPES) to conduct an occupational analysis and a linkage study. • OA/Linkage Study in Progress; OPES will present to the Board upon completion. 	
Objective 2.3: Create a budget change proposal to secure funds so the Board can perform an occupational analysis on the registered dispensing optician program in order to check for validity of the examination.	Status: COMPLETED SCD: Jan. 2019
<ul style="list-style-type: none"> • OPES and DCA Budgets presented to DOC regarding the RDO's fund condition and recommendations for proceeding with OAs for ABO and NCLE exams • Working with DCA Budgets to prepare/submit BCP Concept; final BCP due in June. 	

Objective 2.4: Consider the feasibility of developing a state law exam for opticians to verify their familiarity with California laws.	Status: IN PROGRESS SCD: Jun. 2020
<ul style="list-style-type: none"> DOC DISCUSSION: The DOC and staff identified a significant need to provide outreach to registrants about the Board, registration, and renewal requirements. In addition, the DOC is working to streamline registration processes and revise applications. Due to this need, staff recommends holding off on considering new registration requirements for one year. This will allow time for stabilizing the existing program. 	
<p align="center">Goal 3: Law and Regulation</p> <p><i>The Board works to establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost-effective practices.</i></p>	
Objective 3.1: Review federal law to identify methods that will strengthen existing California legislation regarding the sale of contact lenses and eye glasses as a means of improving enforcement and enhancing consumer protection.	Status: COMPLETED SCD: Jun. 2018
<ul style="list-style-type: none"> Made connections within the FTC regarding the Federal Eyeglass and Contact Lens laws. FTC currently working on improving the applicable sections. No staff recommendations on legislation at this time. 	
Objective 3.2: Contact members of congress and the Federal Trade Commission regarding the current 48 hour law to obtain information that would assist in closing existing loopholes.	Status: NOT STARTED SCD: Jun. 2018
<ul style="list-style-type: none"> BOARD/DOC DISCUSSION: Please clarify for staff what “loopholes” currently exist. 	
Objective 3.3: Continue prioritization for review and updates to existing statutes, legislation, and regulations, for both optometry and dispensing opticians, in order to identify whether or not they are the cause of enforcement delays and determine promulgation of new regulations.	Status: COMPLETED AND ONGOING SCD: Dec. 2018
<ul style="list-style-type: none"> DOC and Board working on regulatory amendments to create RDO Program Disciplinary Guidelines and improve existing Optometry Disciplinary Guidelines. DOC and Board approved regulatory amendments to improve applications. Board sponsored SB 1386 which includes additional enforcement provisions to hold owners accountable for standard of care within optometry practices. 	
Objective 3.4: Continue partnering with the Medical Board of California to identify potential loopholes regarding online and kiosk refraction administration to enhance consumer protection.	Status: COMPLETED AND ONGOING SCD: Dec. 2017
<ul style="list-style-type: none"> Attended the Medical Board of California (MBC) board meeting. Provided MBC with materials developed from the board's communication plan. Working closely with MBC on joint-jurisdiction enforcement matters involving online and kiosk refractions. 	
Objective 3.5: Review current methods and explore new opportunities to increase access to care (e.g. scope of practice, mobile clinics, new technology, tele-medicine).	Status: IN PROGRESS SCD: Dec. 2020
<ul style="list-style-type: none"> Established mobile clinic workgroup to develop legislation increasing access to quality optometric care to homebound patients. Full Board discussed various mobile practices with stakeholders and DCA entities in November 2017 to gain a better understanding of current methods of regulating mobile practices. Various mobile clinic stakeholders attended LRC meeting in March 2018; recommendations presented to Full Board in April 2018. 	
Objective 3.6: Review and identify existing practice requirements with regards to unnecessary licensing barriers in an effort to reduce barriers to entry, enhance consumer access to care, and maintain consumer protection.	Status: COMPLETED SCD: JAN. 2019
<ul style="list-style-type: none"> Reviewed the Little Hoover Report Researched all relevant practice requirements and identify possible licensing barriers and worked with legislature to remove barriers in AB 1708. Sponsored SB 1386 to repeal BPC § 3077 – an unnecessary license barrier that was created for the profession and for “the avoidance of the evils of competition.” 	
Objective 3.7: Explore the feasibility of proposing legislation to synchronize the expiration dates of all license types for a given individual.	Status: NOT STARTED SCD: Mar. 2020
Objective 3.8: Explore the feasibility of proposing legislation to merge the RDO and Optometry funds to stabilize the long-term Optometry fund condition.	Status: IN PROGRESS SCD: Sept. 2019
<ul style="list-style-type: none"> Approved Spot Bill language that will be included in the 2019 Assembly B&P omnibus bill. Board to review/discuss draft text during February 1st Board Meeting. Bill introduced as Assembly Bill 896, set for Committee Hearing 	

	Status: IN PROGRESS SCD: Sept. 2020
<ul style="list-style-type: none"> • Worked with legal counsel to prepare legislative amendments combining the practice acts. • LRC and Board approved legislative approval in January 2018. • Will be submitted as a legislative proposal to Senate B&P for committee omnibus bill. 	
	Status: COMPLETED AND ONGOING SCD: Dec. 2019
<ul style="list-style-type: none"> • Worked with stakeholders regarding mobile optometric practice, repealing Branch Office law, sponsoring legislation devoted to children's vision, and improving the RDO Program . 	
	Status: IN PROGRESS SCD: Dec. 2019
<ul style="list-style-type: none"> • Board proposed legislative amendments included in AB 1708 to improve inspection authority language. • Full Board heard from existing DCA inspection programs to learn best practices. • CPC held additional committee meetings reviewing available data and soliciting feedback from stakeholders on the Board's inspection program. • Full Board voted at April 2018 meeting to postpone implementation, and allow staff to compile a report about the enforcement effectiveness and cost benefit analysis of proactive inspections. 	
	Status: COMPLETED SCD: Jan. 2019
<ul style="list-style-type: none"> • Discussed during the Jan 2019 CPC Meeting, Enforcement reports that Subsequent Arrest Reports are obtained weekly, and cases are opened accordingly • Established that lag in Board review of enforcement cases due to collection of reports from other jurisdictions 	
	Status: IN PROGRESS SCD: Dec. 2019
<ul style="list-style-type: none"> • Discussed participation requirements with the FBI and DOJ • Requested assistance from the DCA • Discussed during January 2018 Director's Meeting • DOJ starting stakeholders meeting to determine project plan and resources needed. 	
	Status: IN PROGRESS SCD: Oct. 2019
<ul style="list-style-type: none"> • Discussed during the Jan 2019 CPC Meeting, Committee clarified desire to more quickly open enforcement cases against licensees disciplined by other boards, agencies and states • Staff to research potential regulations (authority of other boards) to implement self-reporting of such actions, and present findings to CPC at August 2019 committee meeting 	
	Status: COMPLETED Jan. 2018
<ul style="list-style-type: none"> • Included in Board's Sunset Bill (AB 1708) effective January 1, 2018. • As of July 1, 2018, all applicants and licensees will be enrolled in NPDB and be charged \$2 for initial applications and \$4 during renewal to support NPDB. 	
Objective 4.5: Develop proactive methods to enforce the unlicensed sale and distribution of cosmetic contact lenses.	Status: IN PROGRESS SCD: Dec. 2019
<ul style="list-style-type: none"> • Staff to research the development of a public information campaign running into Halloween • Staff to research outreach opportunities within Cosplay events (ComicCon) • Staff to research convening a public stakeholder meeting involving retailers (Ulta, Sephora), doctors and others to develop plan 	
Objective 4.6: Establish a partnership with DCA Boards and county and state organizations to identify and address unlicensed activity (e.g. contact lens sales and expired prescriptions) in an effort to protect consumers.	Status: NOT STARTED SCD: Sept. 2018

Objective 4.7: Review the corrective action for compliance (and revise if necessary) in order to deter unlicensed activity	Status: NOT STARTED SCD: Dec. 2018
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	Status: IN PROGRESS SCD: Oct. 2019
<ul style="list-style-type: none"> Consumer Protection Committee's workgroup developed recommendations for CPC consideration during March 23, 2018 and January 11, 2019 meetings Awaiting Uniform Standards Guide and AB 2138 Implementation guidance from DCA Recommendations to be considered by full Board during fall 2019 Board meeting 	
Objective 4.9: Adopt disciplinary guidelines for opticians to promote consistency and fairness with enforcement decisions and enhance consumer protection.	Status: IN PROGRESS SCD: Aug. 2019
<ul style="list-style-type: none"> Discussed multiple times during DOC meetings; held various workgroup meetings DOC workgroup proposing recommendations during April 19, 2018 DOC meeting Awaiting Uniform Standards Guide and AB 2138 Implementation guidance from DCA Recommendations to be considered by full Board during August 2019 Board meeting 	
Objective 4.10: Improve working relationships with the Attorney General's Office, Division of Investigation, District Attorneys and other Government Agencies to identify and fix enforcement bottlenecks and streamline enforcement processes.	Status: IN PROGRESS SCD: Dec. 2019
<ul style="list-style-type: none"> Working with DAG Liaison to streamline processes, update transmittal memos, and improve communication throughout all AG Offices Met with Northern Area Commander at DOI to discuss concerns and improve investigation quality; requesting additional meetings with Southern Area Commander and the Division Chief 	
Objective 4.11: Develop and implement a new inspection program using best practices from other existing programs within DCA.	Status: IN PROGRESS SCD: Dec. 2019
<ul style="list-style-type: none"> Researched existing programs and presented information during Dec. 2017 CPC meeting Inspection "tools" being discussed/developed during March 23, 2018 meeting Full Board voted at April 2018 meeting to postpone implementation, and allow staff to compile a report about the enforcement effectiveness and cost-benefit analysis of proactive inspections. 	
Goal 5: Outreach <i>The Board proactively educates, informs and engages consumers, licensees, students and other stakeholders on the practice of optometry and the laws and regulations which govern it.</i>	
Objective 5.1: Review and educate licensees about the scope of practice for optometric assistants, opticians, RDOs, CLDs and SLDs to mirror the letter and chart sent to optometrists clarifying privileges for specific licensing certifications to enhance consumer protection.	Status: IN PROGRESS SCD: July 2019
<ul style="list-style-type: none"> Content developed as part of Spring 2018 Newsletter Next Steps: Develop Scope of Practice FAQ 	
Objective 5.2 Educate practitioners about current federal law regarding contact lens prescription release (48-hour law).	Status: NOT STARTED SCD: Sept. 2018
BOARD/DOC DISCUSSION: Please clarify for staff what "loopholes" currently exist.	
Objective 5.3 Educate licensees and registrants about advertising requirements (e.g. free eye exams, free 2nd pair of glasses, etc.) to avoid misleading the public and reduce licensee confusion.	Status: COMPLETED SCD: May. 2018
<ul style="list-style-type: none"> Content developed as part of Spring 2018 Newsletter DCA finalizing Spring 2018 Newsletter for publication in late April. 	
Objective 5.4 Educate the public on how to adequately fill contact lens prescriptions based on expiration dates and quantity limits to increase awareness and enhance consumer protection.	Status: NOT STARTED SCD: Apr. 2019
Objective 5.5 Develop a public relations campaign to educate unlicensed sellers regarding contact lens distribution laws to mitigate future violations, therefore protecting consumers.	Status: NOT STARTED SCD: Dec. 2018

Objective 5.6 Promote BreEZe’s online renewal capability to licensees to decrease manual entries and improve staff efficiency.	Status: COMPLETED AND ONGOING
<ul style="list-style-type: none">Increased social media usage to specifically promote BreEZeDistributed courtesy emails to those up for renewal with link to BreEZeReplaced paper applications on Board’s website with links to BreEZeWorking with stakeholders to promote BreEZe	
Objective 5.7 Develop a communication plan utilizing technology to communicate more effectively with stakeholders, patients, and licensees.	Status: COMPLETED
<ul style="list-style-type: none">Communications plan adopted by the BoardCurrently implementing; developing videos, articles, op-edsSocial Media: Facebook, TwitterNew DCA License Lookup for mobile devicesDCA Blog: Glaucoma Awareness Month, O’s for the EyesConsumer Connection Magazine (O’s for the Eyes included)	
Objective 5.8 Develop a communication plan to raise awareness of the importance of children’s vision health and wellness.	Status: COMPLETED
<ul style="list-style-type: none">Communications plan adopted by the BoardCurrently implementing; developing videos, brochures, op-edsVideo: Children’s Vision Screenings: A False Sense of SecurityArticle: For Some Kids, Four Eyes Than TwoBrochure: Kids Eye Health is Not Child’s Play (Attachment 3)Reaching out to high profile “YouTubers” to solicit support for #ShowOffYourFrameGame	
Objective 5.9 Conduct an in depth review the Board’s website and update information for consumers, licensees, and registrants.	Status: IN PROGRESS SCD: Aug. 2019
<ul style="list-style-type: none">Completed committee review of website and updated informationDeveloping various FAQs for licensees/registrantsWebsite re-design initiated March 2019 to elevate presence of Optician Program, and bring new, more relevant communication to the top of the homepage	
Goal 6: Organizational Effectiveness <i>The Board works to develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board’s provision of programs and services.</i>	
Objective 6.1: Provide customer service training for staff to improve communication with stakeholders.	Status: COMPLETED SCD: Jan. 2019
<ul style="list-style-type: none">Board management encourages customer service training for staff; staff to complete training at least every two years.	
Objective 6.2: Investigate technology options for conducting committee and special meetings to broaden access to stakeholders and consumers.	Status: COMPLETED SCD: Sep. 2019
<ul style="list-style-type: none">Held various committee and stakeholder meetings using WebEx and provided call-in numbers for stakeholders throughout the US to participate in stakeholder meetings.Broadcasted DOC meetings using Facebook Live.	
Objective 6.3: Provide teambuilding training or exercises to Board members to improve Board functioning.	Status: COMPLETED AND ONGOING SCD: Mar. 2018
<ul style="list-style-type: none">Rather than specific teambuilding training or exercises, Board members opted for lunches and dinners during various meetings.	
Objective 6.4: Provide teambuilding exercises between Board members and staff to improve relationships.	Status: COMPLETED AND ONGOING SCD: Jun. 2018
<ul style="list-style-type: none">Rather than specific teambuilding training or exercises, Board members opted for coffee breaks, lunches and dinners during various meetings.	
Objective 6.5: Improve communication and build relationships between the Governor’s office, legislators, and the Board to effectively achieve the Board’s objectives.	Status: COMPLETED SCD: Sep. 2019
<ul style="list-style-type: none">Board staff held various meetings with legislatures regarding Board sponsored legislation and legislative proposals for omnibus bill consideration.Children’s Vision Workgroup participated in various meetings with author’s office.	

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer Prepared by Cheree Kimball, Lead Enforcement Analyst
SUBJECT	Agenda Item #6B: Enforcement Program

Enforcement Goals

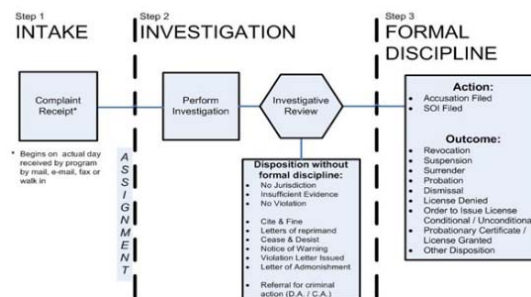
During the February 1, 2019 Board Meeting, Board President Cyd Brandvein requested that Enforcement Staff review enforcement goals.

Enforcement Performance Measures

In 2010, the Department of Consumer Affairs (DCA) launched the [Consumer Protection Enforcement Initiative](#) (CPEI) (Attachment 1) with the goal of reducing the average enforcement completion timeline across DCA's healing arts boards.

DCA worked with Boards and Bureaus to develop targets for specific sections of the overall enforcement process. To help track and share the progress towards these targets, DCA developed [Enforcement Performance Measures](#) (Attachment 2) which are reported quarterly to DCA and made available to the public on the [DCA website](#).

Figure 1. Proposed Macro Process for DCA Enforcement



Definitions of the above steps are:

- ▶ **Intake:** This step begins on the actual day the complaint is received by the program, as opposed to when the complaint is date-stamped. Intake also includes acknowledgement of a complaint. It does NOT include jurisdictional review.
- ▶ **Assignment:** The point at which the investigation process begins. This includes assignment to any individual, regardless of job classification.
- ▶ **Investigation:** After assignment, collection and verification of facts to determine jurisdiction and potential violations of law, regardless of who performs it.
- ▶ **Formal Discipline:** Any administrative action that could affect the issuance or status of the professional's license.

Defined Macro Processes

Intake: PM2 of the Enforcement Performance Measures Report measures the number of days between when a case is received until it is either assigned to an analyst for investigation or closed as non-jurisdictional. For CBO, the target average for Intake is 7 days.

Investigation: PM3 measures the number of days between when a case is received until it is closed, but only for those cases that are not referred to the Office of the Attorney General (OAG) for disciplinary action. For these cases, the time tracked may include a desk investigation conducted by the assigned analyst, a field investigation conducted by DOI, and a review by an Expert Witness. For CBO, the target average for Investigation is 90 days.

Formal Discipline: PM4 measures the number of days between when a case is received until it is closed, but only for those cases that are referred to the OAG for disciplinary action. For these cases, the time tracked may include a desk investigation conducted by the assigned analyst, a field investigation conducted by DOI, a review by an Expert Witness, transmittal of case materials to the OAG office, the full administrative discipline process, and Board review and consideration of the decision in the matter, staff time to process the Board ordered decision, and the time between the order date and effective date of the final decision. For CBO, the target average for Formal Discipline is 540 days.

Quarterly Performance Measure Reports

[Quarterly Performance Measure Reports](#) (Attachment 3) were published by DCA to its website from 2010 until December 2017, when DCA took a hiatus from producing the reports.

DCA has recently started collecting this data again and has broken the data down into subsections of the macro processes. For example, PM4 is broken down to reflect the average number of days that the cases spent in intake, investigation, at the OAG, and, once a draft decision has been received, the time between when the draft is received and when the decision is effective. This will allow us to assess where cases are spending the most time so we can work more directly and effectively on reducing overall case times.

The Plan

Once the new Quarterly Performance Measure Report data is compiled, we will analyze the data to determine where delays in the process may be occurring and what steps can be implemented to reduce or eliminate those delays. Then we will set specific and measurable goals for the reduction of those delays.

Enforcement Statistics

So that statistics for the third quarter can be included, the Enforcement Statistics Report & Charts will be provided during the first week of April.



CONSUMER PROTECTION ENFORCEMENT INITIATIVE

"A Systematic Solution to a Systemic Problem"

The Department of Consumer Affairs (DCA) is the umbrella agency that oversees 19 healing arts boards that protect and serve California consumers. The healing arts boards regulate a variety of professions from doctors and nurses to physical therapists and optometrists. These licensees are some of the best in the country and provide excellent care to Californians on a daily basis. However, when a licensee violates the laws that govern his or her profession, enforcement action must be taken to protect the public.

In recent years some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. In fact, some boards take an average of three years to investigate and prosecute these cases; this is an unacceptable timeframe that could put consumers' safety at risk.

DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on these cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas:

- Administrative Improvements
- Staffing and IT Resources
- Legislative Changes

Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months.

I. Administrative Improvements

During the review of the enforcement process, DCA worked with the boards to identify areas that could be improved administratively to better coordinate broad enforcement objectives, improve the services provided to the healing arts boards, and establish streamlined enforcement processes and procedures that can be used by all boards. The following are some of the efforts that emerged from those discussions:

“365 Project”

DCA’s Division of Investigation (DOI) embarked on a project in 2009 to strategically focus on cases that were one year or older. DOI worked closely with boards to identify the cases upon which they should focus their resources. This project has produced impressive results, and in 2009 the DOI closed 50% more cases than the comparable period in 2008.

Delegation of Subpoena Authority

One of the initial administrative changes implemented by DCA was delegating subpoena authority to each executive officer as a tool to gather evidence and interview witnesses. DCA’s Legal Office conducted subpoena training for board staff, and this authority has started being exercised by boards. We expect to see increased use of subpoenas as a result of this change, and boards will be able to pursue cases that they otherwise would not have pursued.

Process Improvement

DCA and the boards are working to identify best practices for a number of enforcement processes and procedures, such as complaint intake, handling of anonymous complaints, vote by email protocols, and adjudication procedures. This effort will take advantage of the most effective practices utilized by the various boards, and entities in other states, and will ultimately shave time off all aspects of the enforcement process.

Enforcement Academy

DCA’s Strategic Organization, Leadership, & Individual Development Division is developing enhanced training programs for enforcement staff. The enforcement academy will teach investigators and other enforcement staff key skills used in complaint intake, investigation procedures, case management, database use, and other areas. Never before has DCA offered such a comprehensive enforcement training program. An initial training was offered in November 2009, and the full enforcement academy will begin its regular cycle in April 2010.

Deputy Director for Enforcement and Compliance

DCA established an executive level position that reports to the Director and is responsible for regularly examining each board’s enforcement program to monitor enforcement performance and compliance with all applicable requirements. This position monitors performance measures so that boards’ enforcement programs can be continuously assessed for improvement.

Performance Expectations with Other Agencies

DCA has been working with the Attorney General’s Office and the Office of Administrative Hearings (OAH) to establish performance agreements that will expedite the prosecution of cases. DCA and the AG’s Office are developing expectations for filing accusations, setting settlement conferences, and filing continuance requests. Further, DCA is working with OAH to establish timelines for setting cases for hearings, which, once implemented, could reduce a case timeline by months.

II. Enhancing Enforcement Resources

There are 36 licensing entities under the DCA (of which are 19 healing arts boards) and, with a few exceptions, all of these programs share the resources of the Department, from Division of Investigations (DOI), to Personnel to IT Support. While the healing arts boards fall under the umbrella of DCA they are separate semi-autonomous groups overseen by board members appointed by the Governor and the Legislature. Additionally, all of the licensing entities under DCA are special fund agencies funded exclusively through fees collected through licensees with no general fund support.

Enforcement Staff

DCA's review of the enforcement process identified a need for more focused staff resources in the areas of investigations and complaint intake. The majority of DCA's licensing entities share the resources of DCA's overburdened DOI. Annually, DOI's 48 investigative staff members receive over 1,300 cases, in topics ranging from nurses to repossessioners to smog check stations. Having so many investigations performed by DOI has resulted in a number of problems, including loss of control over the investigation by the boards, a lack of investigators with expertise in specific licensing areas, and excessive caseloads. These problems have led to excessive turn-around times and growing backlogs. Through the 365 Project, the DOI has worked with boards to reduce the case backlog, but the current structure has revealed a need for more significant changes.

In order to increase accountability in the investigative process, DCA is working to provide boards with the authority to hire non-sworn investigators to be housed within each board. This will enhance boards' control over investigations, allow for more appropriate workload distribution, and enable investigators to develop expertise. Additionally, to coincide with process improvement efforts, some boards will increase complaint intake staff. DCA is seeking a total of approximately 140 new enforcement positions (full year equivalent) across all healing arts boards. The vast majority of these positions are investigators and investigative supervisors, and the remainder is mostly complaint intake staff. In addition to increasing staffing, DCA will ensure that staff are properly trained, monitored, and assessed so that cases are expedited as quickly as possible.

Because DCA's boards are special fund agencies, new positions will not place a drain on the General Fund and boards will pay for new staff with existing resources or with fee increases where necessary. The number of positions requested is a result of an individual assessment of each board, and assumes workload savings associated with DCA's current process improvement efforts. The Governor's Budget includes the initial phase-in of these positions beginning July 2010.

Create a New Licensing and Enforcement Database

DCA's current licensing and enforcement database systems are antiquated and impede the boards' ability to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. The CPEI relies on advanced workflow capabilities and cross-entity external system communications that the aging system's technology cannot provide.

The implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. DCA intends to procure a Modifiable Commercial Off-The-Shelf (or “MOTS”) enterprise licensing and enforcement case management system. DCA’s research has shown various MOTS licensing and enforcement systems exist that can provide intelligent case management to reduce enforcement and licensing turnaround times, detailed performance measurements, increased data quality, advanced configurability, and robust web presences for public self-service.

The Governor’s Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-11.

III. Statutory Changes: Putting Consumers First

Each board within DCA has a statutory mandate to hold consumer protection as its paramount objective. Over the years, boards' enforcement authorities have been slow to keep up with legal trends and changes in the professions regulated, and due process protections have grown to protect licensees above consumers. DCA believes that now is the time to re-align consumer protection laws so that they place public protection first. In 2010, the DCA will pursue legislation to help boards carry out their critical missions of protecting consumers.

Increased Suspension Authority

One of the most important roles that professional licensing boards do to protect consumers is preventing potentially dangerous individuals from practicing. The CPEI would strengthen the boards' ability to do this in a number of ways, including authorizing the DCA Director to issue an order for a licensee to cease practice or restrict practice, upon the request of a board executive officer. This authority is necessary in the most egregious cases because the standard enforcement process can take a year to complete, at best, and even the expedited process in existing law (interim suspension order) can take months to complete. This proposal would also seek the statutory authority to revoke or deny a license to an individual for acts of sexual misconduct with a patient or conviction as a felony sex offender. Additionally, the CPEI would provide for the automatic suspension of convicted felons for the duration of their sentence.

Increased Access to Critical Information

The CPEI would make improvements to the information that boards receive, so they can investigate possible violations of law. Specifically, it would prohibit the use of a gag clause in a civil settlement that would prohibit consumers or their legal counsel from filing a complaint with the appropriate board. Regulatory gag clauses are explicitly prohibited in legal malpractice settlements and there have been numerous court decisions that describe a compelling public interest in voiding regulatory gag clauses in other professions. The Center for Public Interest Law notes that the inclusion of gag clauses is an alarmingly pervasive practice that thwarts the ability of boards to carry out their consumer protection mission. The CPEI would also require court officials to report to the healing arts boards convictions and felony charges filed against the boards' licensees, and expand reporting by employers and supervisors regarding individuals who were suspended or terminated for cause.

Adequate access to medical records can shave months off the process to investigate a licensee. Medical records are used by healing arts boards' to determine whether a licensee caused harm to a patient. Any delay in an investigation of a licensee may result in a potentially dangerous licensee continuing to practice. Thus, it is essential that healing arts boards have quick access to medical records. The CPEI gives all of the healing arts boards the authority to inspect and copy, as applicable, any documents and records relevant to an investigation. In cases where a licensee fails to cooperate with an investigation, the CPEI provides boards with additional authorities to ensure compliance.

Enforcement Process Efficiencies

DCA proposes to remove unnecessary workload and costs from the enforcement process. This can be done by streamlining the appeal process for citations, permitting boards to contract with collection agencies to retrieve unpaid fines and fees, authorizing executive officers to sign default decisions and certain stipulated settlements, and allowing licensees to agree to stipulated settlements before a formal accusation is filed. These are relatively small changes that could result in significant workload savings.

Efficiency and accountability will also be improved by establishing a deadline for the Department of Justice (DOJ) to notify healing arts boards of arrests and convictions of licensees, which would greatly improve the board's ability to pursue cases in a timely manner. Additionally, it requires DOJ to serve accusations, default decisions and set hearing dates within a specified period of time.

Licensing Fees

Lastly, DCA is seeking to tie the maximum licensing fee amounts to the Consumer Price Index to keep up with inflation and ensure the boards have the resources to adequately run their enforcement programs.



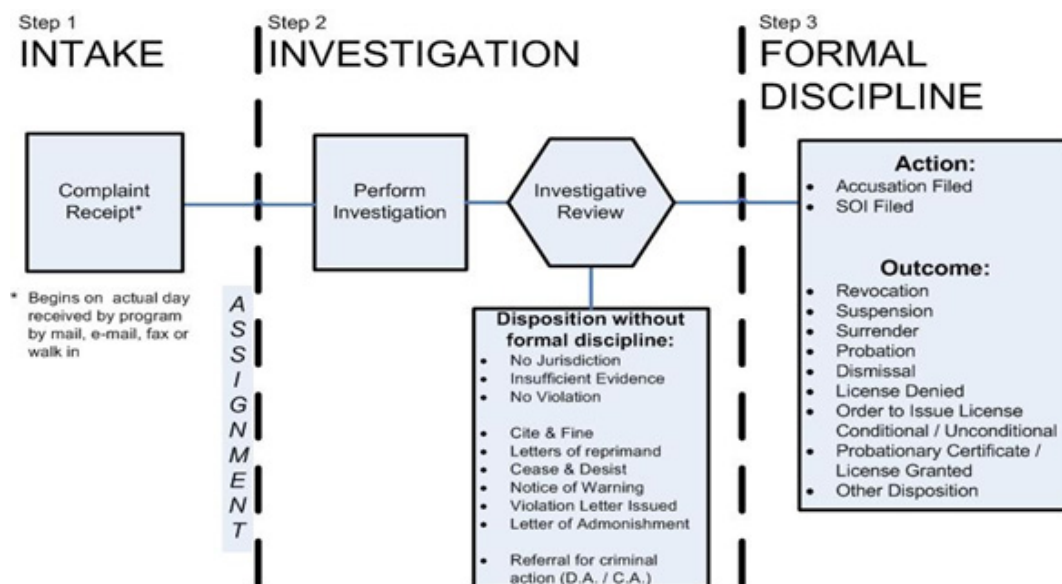
Enforcement Performance Measure Baseline Report – Overview

Background

To ensure that DCA and its stakeholders can review DCA's progress in meeting its enforcement goals and targets, DCA has developed an easy- to-understand, transparent system of accountability – performance measures. The performance measures are critical, particularly during the current climate of budget constraint and economic downturn, for demonstrating that DCA is making and will continue to make the most efficient and effective use possible of its resources. Performance measures are linked directly to an agency's mission and vision, strategic objectives, and strategic initiatives.

DCA's measures for enforcement are based on the macro enforcement process. This will allow DCA to report on its progress with a consistent set of definitions. Figure 1 below displays the Macro Process for DCA Enforcement.

Figure 1. Proposed Macro Process for DCA Enforcement



Definitions of the above steps are:

Intake: This step begins on the actual day the complaint is received by the program, as opposed to when the complaint is date-stamped. Intake also includes acknowledgement of a complaint. It does NOT include jurisdictional review.

Assignment: The point at which the investigation process begins. This includes assignment to any individual, regardless of job classification.

Investigation: After assignment, collection and verification of facts to determine jurisdiction and potential violations of law, regardless of who performs it.

Formal Discipline: Any administrative action that could affect the issuance or status of the professional's license.

The Measures

The areas that DCA has chosen to measure are the following.

Cycle Time: The amount of time (e.g., hours, days, or months) required to complete a business process.

Efficiency: An assessment of the cost to produce and deliver a product or service.

Volume: A simple tally of units of work (e.g., number of phone calls received; number of complaints received; number of letters written, etc.).

Customer Service: Consumer satisfaction with service received.

The specific enforcement measures are as follows:

Volume

Number of complaints received

Intake Cycle Time

Average number of days to complete complaint intake

Cycle Time of Closed Cases Not Resulting in Formal Discipline

Average number of days to complete the intake and investigation steps of the enforcement process, for closed cases not resulting in formal discipline

Cycle time of Closed Cases Resulting in Formal Discipline

Average number of days to complete the enforcement process (intake, investigation, and formal discipline steps) for those cases closed at the discipline stage

Intake & Investigation Efficiency

Average cost of Intake and Investigation of complaints

Customer Satisfaction

Consumer satisfaction with the service received during the enforcement process

Initial Contact Cycle Time (Probation Monitoring)

Average number of days from the date a probation monitor is assigned to a probationer to the date the monitor makes first contact

Violation Cycle Time (Probation Monitoring)

Average number of days from the time a violation is reported to a program, to the time the assigned probation monitor responds.

It is important to note that this is the Department's first attempt in more than 15 years to demonstrate performance using consistent measures and definitions of business processes. Therefore, it is likely that the numbers reported contain some irregularities. However, we believe overall that the numbers displayed are a faithful representation of current performance.

First Quarter Baseline Report

The performance measure reports on this website represent each board, bureau, and program's baseline report. A baseline report is a report on a program's **initial** level of performance, upon which future performance will be measured. ***This baseline report and subsequent reports represent a snapshot of each program's performance for a designated time period. Judgments or business decisions about actual performance cannot be made until the programs have undergone several reporting cycles (i.e., at least a year).***

The reporting period for this baseline report is the first quarter of Fiscal Year 2010/11 (July 2010 – September 2010). Each board, bureau, and program was asked to set initial performance **targets**, or specific levels of performance against which actual achievement is compared. As an example, a **target** of an average of 540 days for the cycle time of formal discipline cases has been set by the Director.

Please also note that:

This first baseline report does not include data on the efficiency (cost) or customer service measures. These measures will not be reported on until each program has gathered sufficient data and received enough responses from consumers on customer satisfaction surveys to be sufficient statistically.

While the numbers reported in the volume measure represent only complaints received during the first quarter, those reported in the investigative cycle times reflect investigations closed in the quarter, many of which were received prior to July 2010. This explains, in part, why some of the investigative cycle times shown are lengthy.

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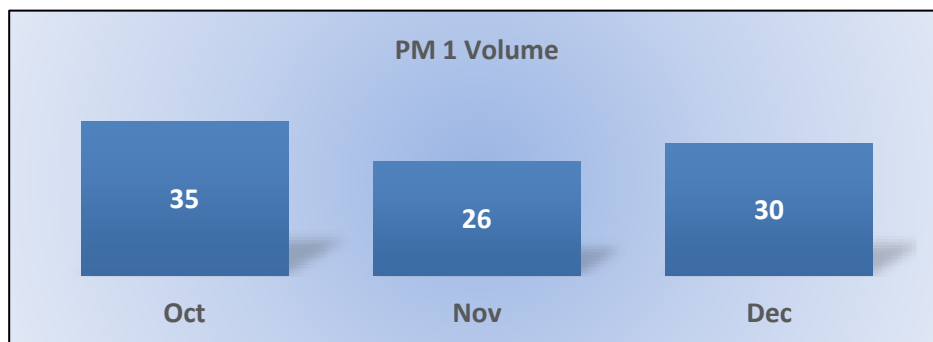
Enforcement Performance Measures

Q2 Report (October - December 2017)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

PM1 | Volume

Number of complaints and convictions received.

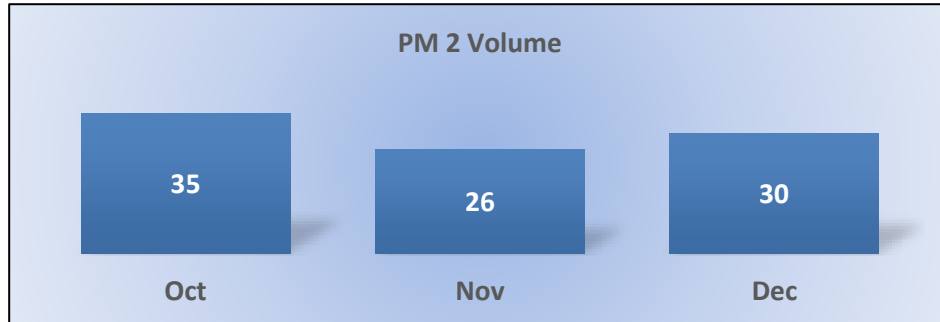


Total Received: 91 | Monthly Average: 30

Complaints: 76 | Convictions: 15

PM2 | Intake – Volume

Number of complaints closed or assigned to an investigator.



Total: 91 | Monthly Average: 30

PM2 | Intake – Cycle Time

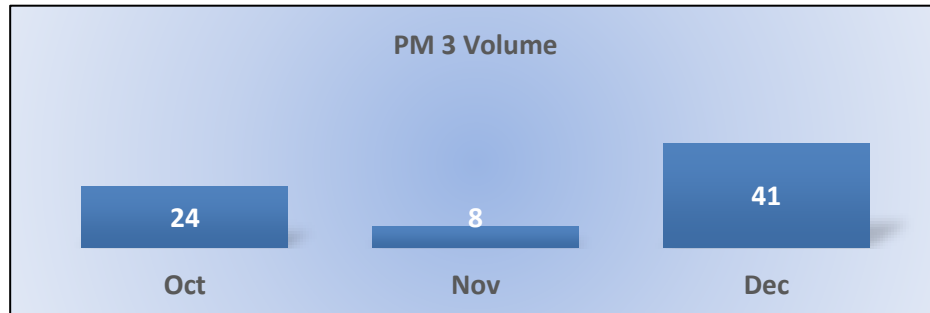
Average number of days from complaint receipt, to the date the complaint was closed or assigned to an investigator.



Target Average: 7 Days | Actual Average: 1 Day

PM3 | Investigations – Volume

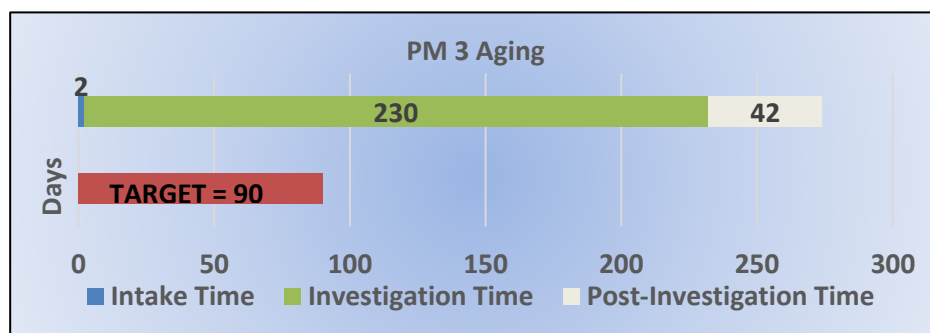
Number of investigations closed (not including cases transmitted to the Attorney General).



Total: 73 | Monthly Average: 24

PM3 | Investigations – Cycle Time¹

Average number of days to complete the entire enforcement process for cases not transmitted to the Attorney General.
(Includes intake and investigation)

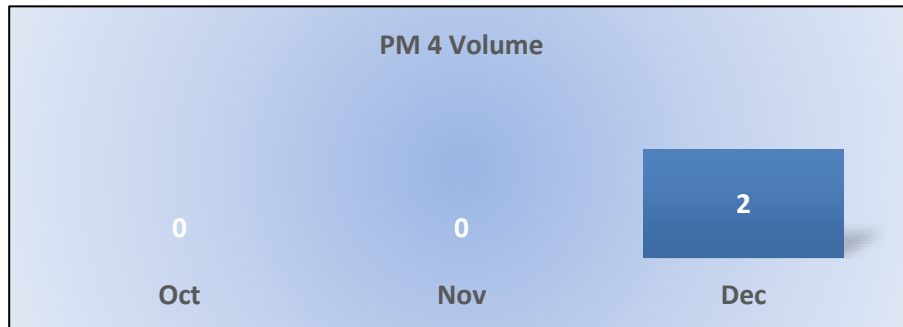


Target Average: 90 Days | Actual Average: 252 Days

¹ Due to rounding, there might be small discrepancies between the PM3 "Actual Average", and the sum of the individual case stages (i.e., Intake time + Investigation time + Post-Investigation time).

PM4 | Formal Discipline – Volume

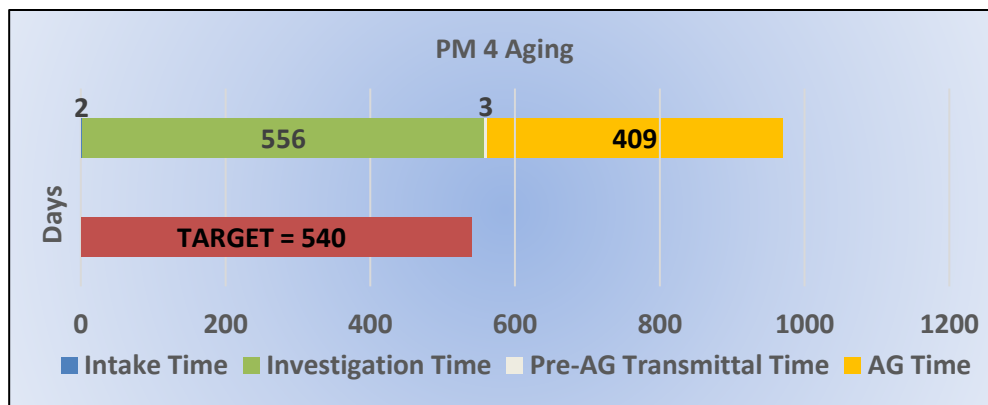
Cases closed after transmission to the Attorney General for formal disciplinary action. This includes formal discipline, and closures without formal discipline (e.g., withdrawals, dismissals, etc.).



Total: 2 | Monthly Average: 1

PM4 | Formal Discipline – Cycle Time²

Average number of days to close cases transmitted to the Attorney General for formal disciplinary action. This includes formal discipline, and closures without formal discipline (e.g., withdrawals, dismissals, etc.).



Target Average: 540 Days | Actual Average: 970 Days

² Due to rounding, there might be small discrepancies between the PM4 "Actual Average", and the sum of the individual case stages (i.e., Intake time + Investigation time + Pre-AG Transmittal time + AG time).

PM7 | Probation Intake – Volume

Number of new probation cases.

No new probationers were assigned for monitoring this quarter.

PM7 | Probation Intake – Cycle Time

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

No new probationers were assigned for monitoring this quarter.

PM8 | Probation Violation Response – Volume

Number of probation violation cases.

The Board did not have any probation violations this quarter.

PM8 | Probation Violation Response – Cycle Time

Average number of days from the date a violation of probation is reported,
to the date the assigned monitor initiates appropriate action.

The Board did not have any probation violations this quarter.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #6D – Executive Officer’s Report: Regulatory Update

Current regulations in process:

Staff is currently working with Legal Counsel on the following regulatory issues:

1. Implementation of AB 2138. This will be reviewed as part of Agenda Item #10.
2. Implementation of AB 443. This will be reviewed as part of Agenda Item #11.
3. Optometry Disciplinary Guidelines. Work is ongoing. It is anticipated these will be ready for Consumer Protection Committee review by Fall 2019, with Board review to follow.
4. Dispensing Optician Disciplinary Guidelines. These were reviewed by the Dispensing Optician Committee at the [March 15, 2019 meeting](#). Staff is continuing work on revisions and it is anticipated these will be ready for Dispensing Optician Committee final approval in Fall 2019.

Additionally, regulatory actions approved prior to 2018 are being researched by staff and will be updated at a future Board meeting.

Continuing Education (CE) regulations:

The Board’s continuing education regulations are set out in [Title 16, California Code of Regulations §1536](#). Based upon discussion and direction from the Practice and Education Committee (PEC) and the Board, staff has held meetings and begun reviewing regulations relevant to CE. At the [March 8, 2019 PEC meeting](#), several areas were identified by the PEC:

1. Further refinement to potentially match the COPE model of course listings.
2. CE approval criteria and length of approvals.
3. Requirement of course number on CE course certificates distributed by provider.

Based on the above, staff has identified several sections of CCR §1536 which could potentially be revised or amended:

- Subsection (a): potential definition to disallow repeat courses
- Subsection (b)(1): allowing live webinars and defining what constitutes a live course (i.e. interactive with the instructor, requiring a test component, etc.)

- Subsection (b)(4): further definition of CE credit for attending a Board meeting
- Subsection (b)(7): allowing up to 16 hours of CE credit to fully recognize licensee participation in the Board's 2-day Subject Matter Expert workshops
- Subsection (c): allowing 25 hours of alternative methods for CE instead of 20
- Subsection (f): defining a length of time a course is approved by the Board (18 months, two years, etc.)
- Subsection (h)(4): defining categories of optometric education submitted by the licensee on their CE certification
- Subsection (h)(7): requiring course approval numbers provided by the Board
- Removal of the term "certificate provided by the Board" since the Board does not provide such certificates

Staff intends to research and develop proposed regulatory language, and present to the PEC and/or the LRC no later than fall of 2019.

Section 100 regulatory changes:

At the direction of the Executive Officer, staff has determined a number of non-substantive changes can be made to the Board's regulations without requiring Board approval or the customary rulemaking process. These changes can include deletion of obsolete text, statutory references and sections of regulations which no longer have statutory authority, and can be made under the "Section 100" process within the Administrative Procedures Act. This type of regulatory review has not been performed since 2009. Board approval is not required for these changes as they are considered non-substantive and do not change the effect of any regulation. Staff intends to file the Section 100 action in April and the changes should be in effect 30 days after filing, provided the Office of Administrative Law approves the action.

The changes include:

1. Deletion of Article 2.5 (Free and Sponsored Health Care Events) and associated forms. Authority for these events was removed from statute by Assembly Bill 512 (Rendon, Chapter 111, Statutes of 2013) which became effective on January 1, 2018.
2. Amending the header of Division 13.5 of Title 16 of the California Code of Regulations to change "Registered Dispensing Opticians of the Medical Board of California" to "Registered Dispensing Opticians of the California State Board of Optometry". This reflects the changes brought by AB 684 (Alejo, Chapter 405, Statutes of 2015).
3. Deletion of references to the Medical Board of California within §§1399.201, 1399.203, 1399.204 and 1399.274 and references to 'Executive Director' or 'Chief of Licensing' throughout, which CSBO does not have. This reflects the changes brought by AB 684.

4. Deletion of Article 8 (Optician Dispensing Education Programs) and associated §§1399.280- 1399.285. This Article and its sections were deleted as a change without regulatory effect, filed August 16, 1990, and published in California Code of Regulations Register 90, No. 42. However, the article name and all subsection titles still appear in the regulations, despite being repealed in 1990.

Attachments:

1. Text of CCR §1536
2. Explanatory Statement from Section 100 rulemaking package

§ 1536. Continuing Optometric Education; Purpose and Requirements.
16 CA ADC § 1536 OFFICIAL CALIFORNIA CODE OF REGULATIONS

Title 16. Professional and Vocational Regulations
Division 15. State Board of Optometry
Article 6.5. Continuing Optometric Education (Refs & Annos)

16 CCR § 1536

§ 1536. Continuing Optometric Education; Purpose and Requirements.

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the license expiration date. Such course work shall be subject to Board approval. Up to eight hours of course work may be in the area of patient care management or ethics in the practice of optometry. Business management courses are not accepted by the Board.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of continuing optometric education every two years in order to renew his or her license. Thirty-five of the required 50 hours of continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (e).

(c) Up to 20 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self study through correspondence or an electronic medium.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

(4) A full day's in person attendance at a California State Board of Optometry Board meeting as verified by the Board. Every two hours of open session equates to one hour of credit, up to a maximum of four credit hours.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, the American Heart Association, or other association approved by the Board. Up to four credit hours shall be granted for this course.

(6) Any continuing education course approved for category 1 of the American Medical Association or category 1A of the American Osteopathic Association Continued Medical Education credits that contributes to the advancement of professional skill and knowledge in the practice of optometry.

(7) Participation as a subject matter expert in the creation of the Board's California Laws and Regulation Examination. Subject matter experts will receive one hour of continuing education credit for each hour attending a Board sponsored workshop, not to exceed eight credits per renewal cycle.

(d) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education courses officially sponsored or recognized by any accredited school or college of optometry.

(2) Continuing optometric education courses provided by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education courses approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education).

(f) Other continuing optometric education courses approved by the Board as meeting the criteria set forth in paragraph (g) below, after submission of the Continuing Education Course Approval Application (Form CE-01, Rev. 5/16), hereby incorporated by reference, course schedule, topical outline of subject matter, and curriculum vitae of all instructors or lecturers involved, to the Board not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

(g) The criteria for judging and approving continuing education courses by the Board for continuing optometric education credit will be determined on the following basis:

(1) Whether the program is likely to contribute to the advancement of professional skills and knowledge in the practice of optometry.

(2) Whether the instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this State. Certification of continuing optometric education course attendance shall be submitted by the licensee to the Board upon request, and shall contain the following minimal information:

(1) Name of the sponsoring organization.

(2) Name, signature, practice address, and license number of the attending licensee.

(3) Subject or title of the course.

- (4) Number of continuing optometric education hours provided for attending the course.
- (5) Date the course was provided.
- (6) Location where the course was provided.
- (7) Name(s) and signature(s) of the course instructor(s).
- (8) Such other evidence of course content or attendance as the Board may deem necessary.

Use of a certificate of course completion provided by the Board is recommended for any continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the Board upon request.

The Board will also recognize and utilize the Association of Regulatory Boards in Optometry's online Optometric Education (OE) Tracker system as proof of continuing education course attendance.

(i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the two years immediately preceding the license expiration date.

(2) Any licensee who is renewing an active license for the first time, if he or she graduated from an accredited school or college of optometry less than one year from the date of initial licensure.

(3) Those licensees as the Board, in its discretion, determines were unable to complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

(j) The Board, in its discretion, may exempt from the continuing optometric education requirements of this section licensees who for health reasons or other good cause cannot meet these requirements. Licensees requesting an exemption shall complete a Continuing Education Exemption Request (Form CE-E, Rev 2/2016) and submit it, along with all required supporting information, to the Board for its consideration at least thirty (30) days prior to the expiration of the license.

(1) The Board may deny a request for exemption but at its discretion may grant the licensee an extension of up to one year to obtain the necessary continuing optometric education.

(2) A licensee whose requests for an exemption is denied and an extension is not granted shall otherwise comply with the provision of this section.

(k) The Board may conduct an audit of any licensee's attendance of a continuing optometric education course as a means of verifying compliance with this section.

(l) Licensees that are glaucoma certified pursuant to BPC section 1571 shall be required to complete 10 hours of glaucoma specific optometric continuing education every license renewal period. These 10 hours shall be part of the required 35 hours on the diagnosis, treatment and management of ocular disease.

Note: Authority cited: Section 3059, Business and Professions Code. Reference: Section 3059, Business and Professions Code.

HISTORY

1. New section filed 2-21-89; operative 3-23-89 (Register 89, No. 10).
2. Amendment of subsections (a) and (d), new subsection (d)(3), and amendment of subsections (e), (f), (f)(2), (f)(4), (g), (g)(8), (h)(2), (h)(3) and (i), and new subsection (j) and amendment of Note filed 5-8-96; operative 6-7-96 (Register 96, No. 19).
3. Amendment filed 12-22-2004; operative 1-21-2005 (Register 2004, No. 52).
4. Amendment of section and Note filed 5-18-2011; operative 6-17-2011 (Register 2011, No. 20).
5. Amendment of subsection (c)(4), new subsections (c)(6)-(7), amendment of subsections (f) and (g)(1), repealer of subsection (i)(2), subsection renumbering, new subsection (i)(3)-(j)(2) and (l) and subsection relettering filed 11-9-2016; operative 1-1-2017 (Register 2016, No. 46).

This database is current through 3/15/19 Register 2019, No. 11

16 CCR § 1536, 16 CA ADC § 1536

California Board of Optometry
Section 100. Changes Without Regulatory Effect
Explanatory Statement

The California State Board of Optometry (CSBO) is proposing the following Section 100 changes to Title 16 of the California Code of Regulations (CCR). Authority for these changes is provided by Business and Professions Code (BPC) section 3025 and Title 1 CCR section 100. These proposed changes do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision. The following sets forth the rationale for each proposed change to explain why it is a “change without regulatory effect”:

- 1. Delete the entire Article 2.5 of Division 15 of Title 16 of the California Code of Regulations, including §§1508; 1508.1; 1508.2; 1508.3; Form “Registration of Sponsoring Entity under Business and Professions Code Section 901” – Form 901-A (DCA/2016 revised), incorporated by reference into §1508.1; and Form “Request for Authorization to Practice Without a California License at a Sponsored Free Health-Care Event” - Form 901-B (OPT/2011), incorporated by reference into §1508.2.**

Rationale: Assembly Bill 512 (Rendon, Chapter 111, Statutes of 2013), which became effective January 1, 2018, repealed the authorizing and referencing statute of BPC section 901 for Article 2.5. Removing this article, article sections, and forms incorporated by reference will make the regulations consistent with the repeal of the statute and remove references to a program which is no longer in effect. CSBO has no discretion to adopt a change which differs in substance from the proposed changes.

- 2. Amend Header Division 13.5 of Title 16 of the California Code of Regulations to change “Registered Dispensing Opticians of the Medical Board of California” to “Registered Dispensing Opticians of the California State Board of Optometry”.**

Rationale: Assembly Bill 684 (Alejo, Chapter 405, Statutes of 2015), effective January 1, 2016, transferred the registered dispensing optician program from the jurisdiction of the Medical Board of California and placed it under the jurisdiction of the CSBO. (See, BPC §3023.1). As part of BPC section 2550.1, all references to “Medical Board” or “Board of Medical Examiners” are to mean “State Board of Optometry”. Replacement of references in the regulations to the Medical Board of California with the CSBO will make the regulation consistent with current law. CSBO has no discretion to adopt a change which differs in substance from the proposed change.

- 3. Amend §1399.201 of Article 1 of Division 13.5 of Title 16 of the California Code of Regulations.**

Rationale: Assembly Bill 684 (Alejo, Chapter 405, Statutes of 2015), effective January 1, 2016, transferred the registered dispensing optician program from the jurisdiction of the

Medical Board of California and placed it under the jurisdiction of the CSBO. (See, BPC §3023.1). As part of BPC section 2550.1, all references to “Medical Board” or “Board of Medical Examiners” are to mean “State Board of Optometry”. Replacement of references to the Medical Board of California (MBC) and MBC’s address with CSBO will make the regulation consistent with current law. CSBO has no discretion to adopt a change which differs in substance from the proposed changes.

4. Amend §1399.203 of Article 1 of Division 13.5 of Title 16 of the California Code of Regulations.

Rationale: Assembly Bill 684 (Alejo, Chapter 405, Statutes of 2015), effective January 1, 2016, transferred the registered dispensing optician program from the jurisdiction of the Medical Board of California and placed it under the jurisdiction of the CSBO. (See, BPC §3023.1). As part of the bill, all references to “Medical Board” or “Board of Medical Examiners” are to mean “State Board of Optometry” (BPC §2550.1). Replacement of references to the MBC with CSBO will make the regulation consistent with current law.

Addition of the word ‘Medical’ into §1399.203(g) clarifies that it is the Medical Board, not the CSBO, who issues a physician and surgeon’s license in California.

CSBO has no discretion to adopt a change which differs in substance from the proposed changes.

5. Amend §1399.204 of Article 1 of Division 13.5 of Title 16 of the California Code of Regulations.

Rationale: Assembly Bill 684 (Alejo, Chapter 405, Statutes of 2015), effective January 1, 2016, transferred the registered dispensing optician program from the jurisdiction of the Medical Board of California and placed it under the jurisdiction of the CSBO. (See, BPC §3023.1). CSBO does not have an executive ‘director’ of the Board but rather an executive ‘officer’ (See, BPC §3014.6). Additionally, CSBO does not have a ‘chief of licensing’; these functions are performed by the executive officer or his or her designee. (Id.) Correction of these references make the regulation consistent with current law and Board operations. CSBO has no discretion to adopt a change which differs in substance from the proposed changes.

6. Amend §1399.274 of Article 7 of Division 13.5 of Title 16 of the California Code of Regulations.

Rationale: As explained in the rationale in number 5, above, CSBO does not have a chief of licensing; these functions are performed by the executive officer or his or her designee. Correction of these references make the regulation consistent with current law and Board operations. CSBO has no discretion to adopt a change which differs in substance from the proposed changes.

7. Delete Header of Article 8 of Division 13.5 of Title 16 of the California Code of Regulations and Titles of §§ 1399.280 – 1399.285.

Rationale: This Article and its sections were deleted as a change without regulatory effect, filed August 16, 1990, and published in California Code of Regulations Register 90, No. 42. However, the article name and all subsection titles still appear in the regulations, despite being repealed in 1990. This is a change without regulatory effect to the “text published in the [CCR]” pursuant to Title 1 CCR section 100.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Jessica Swan, Administrative Analyst
SUBJECT	Agenda Item #6E: Budget Update

Current status:

During the February 1, 2019 Board Meeting, members questioned the trend in the Attorney General (AG) line item on the budget from the 2015-16 FY through the 2017-2018 FY. Based on the excerpt of data, it appeared that the fees were trending higher year-over-year.

Summary:

In meeting with our Budget Analyst, Marie Reyes, staff discussed this trend. Reyes provided an historical record dating back to the 2013-14 FY. As shown in Figure 1.1 below, the AG line item is closer to the Budget Stone in the 2013-14FY. The fees for the next two fiscal years trend down and then in the 2016-17 FY the fees trend back towards the Budget Stone.

Cheree Kimball, the Enforcement Lead, explained that in mid-2015 Jessica Sieferman was promoted to Executive Officer. This meant only two analysts were working in the Enforcement Unit, Kimball and Rob Stephanopoulos. Around this same time, the Board was preparing to launch the new BreZze system to make processing more efficient. A managerial decision was made to prioritize the enforcement analysts' focus on testing the system to prepare for the launch. Thus, only high priority cases were being processed through the unit during this time.

In November of 2016, Matt McKinney was hired to replace Sieferman on the enforcement team and in early 2017, Kellie Flores joined to replace Stephanopoulos who had been promoted to Assistant Executive Officer in February 2016. With the Enforcement Unit being fully staffed and the Breeze system then being utilized, more cases were sent to the AG's office. This resulted in the 2016-17 FY AG line item beginning to trend in the direction of the Budget Stone.

Additionally, through a search of the Board files, the 2011-12 FY expenditure projection was found. This shows the AG line item for the 2010-11 FY was the closest to the Budget Stone than any other year we available. This report also projects this line item for the 2011-12 FY to be at \$154,000. This further indicates that the fluctuation exhibited in the 5 fiscal years shown in Figure 1.1 with the lowest point in 2015-16 was an

anomaly which resulted from various staffing changes and priority shifting within the Enforcement Unit during that time.

Figure 1.1 – Historical Record of AG Expenditures for Optometry and RDO Fund

FY	13/14	14/15	15/16	16/17	17/18
Optometry					
AG	\$ 195,500	\$ 149,353	\$ 74,589	\$ 107,998	\$ 157,025
- Atty Hours	1114.00	837.00	418.75	604.75	*
- Legal Asst Hours	51.00	48.50	24.25	43.25	*
OAH	\$ 13,079	\$ 32,318	\$ 18,605	\$ 25,890	\$ 35,850
RDO					
AG	\$ 37,838	\$ 44,521	\$ 26,501	\$ 45,675	\$ 73,842
- Atty Hours	216.75	252.00	148.50	189.50	
- Legal Asst Hours	8.25	10.50	6.75	70.00	
OAH		\$ 128	\$ 1,470	\$ -	\$ -

Attachments:

1. Board of Optometry FY 2018-19 Expenditure Projection
2. Board of Optometry FY 2011-12 Expenditure Projection

**BOARD OF OPTOMETRY - 0763
BUDGET REPORT
FY 2011-12 EXPENDITURE PROJECTION**

January 31, 2012

OBJECT DESCRIPTION	FY 2010-11		FY 2011-12				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES	EXPENDITURES	STONE	EXPENDITURES	SPENT	TO YEAR END	BALANCE
(MONTH 13)	1/31/2011	2011-12	1/31/2012				
PERSONNEL SERVICES							
Salary & Wages (Staff)	369,139	216,090	459,572	203,560	44%	394,115	65,457
Statutory Exempt (EO)	76,385	43,903	80,347	46,418	58%	80,473	(126)
Temp Help Reg (Seasonals)	53,541	29,587	3,628	22,582	622%	42,720	(39,092)
Temp Help (Exam Proctors)							0
Board Member Per Diem	4,800	2,300	7,353	1,100	15%	3,200	4,153
Committee Members (DEC)							0
Overtime							0
Staff Benefits	203,802	117,505	255,446	108,489	42%	176,203	79,243
Salary Savings		0	(17,974)	0	0%		(17,974)
TOTALS, PERSONNEL SVC	707,667	409,385	788,372	382,149	48%	696,711	91,661
OPERATING EXPENSE AND EQUIPMENT							
General Expense	11,041	7,839	418	9,271	2218%	11,000	(10,582)
Fingerprint Reports	6,451	2,320	5,306	4,029	76%	9,600	(4,294)
Minor Equipment	707	707	1,800	0	0%	800	1,000
Printing	7,783	3,047	7,852	3,709	47%	7,400	452
Communication	5,016	2,125	6,116	2,133	35%	4,300	1,816
Postage	16,289	6,226	16,381	8,238	50%	17,000	(619)
Insurance			0				0
Travel In State	18,842	6,878	27,314	9,993	37%	20,000	7,314
Travel Out-of-State			0				0
Training	1,210	140	1,099	1,039	95%	2,000	(901)
Facilities Operations	62,591	62,039	58,676	112,449	192%	112,449	(53,773)
Utilities			0				0
C & P Services - Interdept.	9,576	0	2,943	12	0%	50	2,893
C & P Services - External			0	46,955		46,955	(46,955)
DEPARTMENTAL SERVICES:							0
Departmental Pro Rata	78,415	46,646	87,958	52,261	59%	87,958	0
Admin/Exec	99,951	58,254	101,357	56,863	56%	101,357	0
Interagency Services	0	0	146	0	0%	0	146
IA w/ OER	21,864	21,864	0	27,720		27,720	(27,720)
DOI-ProRata Internal	3,397	2,217	4,017	2,344	58%	4,017	0
Public Affairs Office	7,221	4,501	6,821	3,979	58%	6,821	0
CCED	4,695	2,737	4,871	4,152	85%	4,871	0
INTERAGENCY SERVICES:							0
Consolidated Data Center	1,356	7,000	31,639	505	2%	1,000	30,639
DP Maintenance & Supply	4,983	98	1,009	115	11%	1,000	9
Central Admin Svc-ProRata	60,194	30,097	77,237	38,619	50%	77,237	0
EXAM EXPENSES:							0
Exam Supplies			0				0
Exam Freight	0	0	484	0	0%	0	484
Exam Site Rental							0
C/P Svcs-External Expert Administrative		150		150		150	(150)
C/P Svcs-External Expert Examiners	0	0	25,703	0	0%		25,703
C/P Svcs-External Subject Matter	15,354	4,475		8,781		8,781	(8,781)
ENFORCEMENT:							0
Attorney General	209,968	88,535	229,055	45,208	20%	154,000	75,055
Office Admin. Hearings	27,050	11,450	37,930	8,566	23%	28,000	9,930
Court Reporters	1,158	373		436		1,000	(1,000)
Evidence/Witness Fees	17,234	12,529	35,921	2,178	6%	7,000	28,921
DOI - Investigations		0	0			0	0
Major Equipment	0	0	0			0	0
Special Items of Expense							0
Other (Vehicle Operations)							0
TOTALS, OE&E	692,346	382,247	772,053	449,705	58%	742,466	29,587
TOTAL EXPENSE	1,400,013	791,632	1,560,425	831,854	107%	1,439,177	121,248
Sched. Reimb. - Fingerprints	(6,834)	(6,834)	(6,000)	(5,049)	84%	(6,000)	0
Sched. Reimb. - Other	(4,780)	(4,780)		(3,085)			0
Unsched. Reimb. - Investigative Cost Recover	(31,332)	(31,332)		(28,132)			0
Unsched. Reimb. - ICR - Prob Monitor	(100)	(100)		(1,247)			0
NET APPROPRIATION	1,356,967	748,586	1,554,425	794,342	51%	1,433,177	121,248
SURPLUS/(DEFICIT):							7.8%

**BOARD OF OPTOMETRY - FUND 0763
BUDGET REPORT
FY 2018-19 EXPENDITURE PROJECTION**

Projected FM 7

OBJECT DESCRIPTION	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19				
	ACTUAL EXPENDITURES (MONTH 13)	ACTUAL EXPENDITURES (MONTH 13)	ACTUAL EXPENDITURES (PRELIM 12)	BUDGET STONE 2018	CURRENT YEAR EXPENDITURES (Prelim 04)	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONNEL SERVICES								
Salary & Wages (Staff)	376,903	427,127	430,734	513,000	278,199	54%	478,000	35,000
Statutory Exempt (EO)	65,840	80,790	86,159	82,000	48,164	59%	91,360	(9,360)
Temp Help Reg (907)	45,724	43,559	36,302	41,000	13,915	34%	35,000	6,000
Board Member Per Diem	7,400	13,200	10,400	7,000	4,400	63%	8,800	(1,800)
Overtime	2,348	626	0	0	0	-	0	0
Staff Benefits	215,717	257,881	279,182	352,000	182,062	52%	317,618	34,382
TOTALS, PERSONNEL SVC	713,932	823,183	842,776	995,000	526,741	53%	930,778	64,222
OPERATING EXPENSE AND EQUIPMENT								
General Expense	9,573	11,875	13,257	16,000	28,433	178%	34,000	(18,000)
Fingerprint Report	4,879	3,397	3,315	5,000	2,299	46%	4,000	1,000
Minor Equipment	1,146	0	9,220	2,000	0	0%	500	1,500
Printing	6,624	12,713	13,476	8,000	6,433	80%	11,028	(3,028)
Communications	2,799	2,800	2,593	5,000	554	11%	2,731	2,269
Postage	10,456	7,388	8,659	11,000	2,921	27%	5,842	5,158
Insurance	0	10	3,067	0	0	-	0	0
Travel In State	32,431	39,122	28,263	8,000	6,085	76%	12,170	(4,170)
Travel, Out-of-State	589	886	0	0	0	-	4,786	(4,786)
Training	983	1,383	895	1,000	0	0%	1,000	0
Facilities Operations	111,534	112,237	114,026	59,000	74,643	127%	113,000	(54,000)
C & P Services - Interdept.	97	0	41	89,000	29,426	33%	58,853	30,147
C & P Services - External	11,118	28,771	86,075	49,000	47,053	96%	90,000	(41,000)
DEPARTMENTAL SERVICES:								
Office of Information Services	243,808	265,050	255,110	286,000	166,833	58%	286,000	0
Administration Services	127,865	129,497	138,961	163,000	95,083	58%	163,000	0
Interagency Services w/ Office of Professional Examination Services	17,160	22,080	43,566	0	-	-	0	0
Division of Investigation - Internal	2,949	2,760	3,840	5,000	2,917	58%	5,000	0
Communications Division	8,000	19,261	8,640	11,000	6,417	58%	11,000	0
Program and Policy Review Division	0	654	10,560	15,000	8,750	58%	15,000	0
INTERAGENCY SERVICES:								
Consolidated Data Centers	614	179	5,807	5,000	0	0%	0	5,000
Information Technology	3,378	2,565	246	1,000	959	96%	1,747	(747)
EXAM EXPENSES:								
C/P Svcs-External Expert Examiners	0	1,705	1,614	21,000	0	0%	0	21,000
C/P Svcs-External Subject Matter	1,844	2,755	3,346	0	0	-	3,000	(3,000)
ENFORCEMENT:								
Attorney General	74,589	107,998	157,025	237,000	119,124	50%	204,213	32,787
Office Admin. Hearings	18,605	25,890	35,850	38,000	40,537	107%	81,074	(43,074)
Court Reporters	1,072	1,609	2,638	0	300	-	600	(600)
Evidence/Witness Fees	1,520	500	1,199	16,000	20	0%	40	15,960
DOI - Investigations	0	0	236,577	21,000	0	0%	21,000	0
TOTALS, OE&E	794,928	803,085	1,187,867	1,072,000	638,787	60%	1,129,583	(57,583)
TOTAL EXPENSE	1,508,860	1,626,268	2,030,643	2,067,000	1,165,528	56%	2,060,361	6,639
Sched. Reimb. - Fingerprints	(4,966)	(4,459)	(5,390)	(6,000)	(2,499)	42%	(6,000)	0
Sched. Reimb. - Other	(2,350)	(2,820)	(1,175)	0	(1,880)	-	-	0
NPDB Application Fee	0	0	(1,260)	0	(9,200)	-	-	0
Probation Monitoring Fee - Variable	(9,700)	(4,500)	(5,900)	0	(2,950)	-	-	0
Unsched. Reimb. - Investigative Cost Recove	(22,875)	(10,093)	(15,225)	0	(2,950)	-	-	0
Unsch. - DOI ICR Administrative Case	(32)	0	(500)	0	0	-	-	0
Internal Distributed Costs	0	0	0	(86,000)	0	0%	(86,000)	0
NET APPROPRIATION	1,468,937	1,604,396	2,001,193	1,975,000	1,146,048	58%	1,968,361	6,639
SURPLUS/(DEFICIT):								0.3%



News from the NBE O

National Center of Clinical Testing in Optometry (NCCTO): Updates for the August 2019 -July 2020 Administration Cycle

The Part III Clinical Skills Examination and Injections Skills Examination schedule is available for the August 2019 - July 2020 administration. Registration opened for both examinations on February 15, 2019.

New Slit Lamps for the Part III CSE

The NBE O will be replacing the slit lamps used for the Part III Clinical Skills Examination (CSE ®) beginning August 1, 2019 with the *Haag-Streit BI900*. More information about this slit lamp can be found in the 2020 Site Information and Equipment List for the CSE on our website [here](#). Candidates are encouraged to familiarize themselves with the features of this model.

Part III CSE Orientation Video

Beginning August 1, 2019, during the Part III CSE on-site orientation Candidates will have the choice to view the Orientation Video or spend their time practicing with the equipment. The Orientation Video is available on our website [here](#). Candidates are encouraged to view the video as well as the Evaluation Forms, Candidate Guide, and Site Information List before arriving at the NCCTO as these materials address questions they may have about their exam day.

LSPE Registration Now Open

Registration for the new Laser and Surgical Procedures Examination (LSPE™) is now open. This exam consists of both a computer-based testing (CBT) portion and a clinical skills portion. LSPE is comprised of a Laser section and a Surgical section allowing candidates to register for either one or both portions of the examination. Candidates eligible to sit for this examination include optometric 4th-year students, residents, or practitioners. For more information about LSPE click [here](#).

About the NBE O

Established in 1951, the NBE O is an independent, non-governmental, non-profit organization whose examinations are universally accepted for optometric licensure in the United States and accepted internationally. The NBE O's mission is to serve the public and profession of optometry by developing, administering, scoring and reporting results of valid examinations that assess competence.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, CSBO Executive Officer
SUBJECT	Agenda Item #7. Board Attendance Annual Conference of the Association of Regulatory Boards of Optometry

On March 6th, Ms. Murphy and President Brandvein received an invitation from Susy Yu, liaison to the Association of Regulatory Boards of Optometry. Ms. Yu provided registration information for the 100th ARBO Annual Meeting in St. Louis, Missouri. Members and staff of Regulatory Boards of Optometry in the United States, Canada, Australia, and New Zealand are invited to attend. The ARBO Annual Meeting provides a forum for keeping up-to-date with regulatory issues. The meeting seeks to spawn interaction among regulatory colleagues discussing hot topics and shared concerns in the regulatory community.

CSBO archived documents show that at one-time the Board planned and authorized the attendance of two people for the annual ARBO meeting. In recent years, the approval of professional conference attendance has received greater scrutiny by DCA's Fiscal Office. Our current budget allots for the expenditure of funds for the attendance of one individual. Ms. Murphy is planning to attend. With the presence of new Board leadership, staff suggests additionally sending the next president or another Board Member whose interests align with the 2019 ARBO meeting agenda.

Meeting Registration and Travel: The registration fee for the 2019 meeting is \$500 for both voting and non-voting delegates. If registration for two individuals is completed before May 18th, 2019—the second individual will have meeting fees waived. Board staff has submitted to DCA's Fiscal an initial request to allow the expenditure of Optometry Fund revenues for this second participant. The Board would expend approximately \$2400.00

Board Action:

President Brandvein asked that the matter be brought to the Board for discussion as to the value of Board Member attendance and a vote to approve the expenditure of funds.



**Association of Regulatory Boards of Optometry
2019 Annual Meeting**

June 16-18, 2019
Four Seasons Hotel
St. Louis, Missouri

"Looking Back, Seeing Ahead—20/20 Vision for the Next Century"

PRELIMINARY MEETING AGENDA

(session times and titles are subject to change)

SUNDAY, JUNE 16, 2019

8:00 am-12:00 pm *Registration and Morning Breakouts*

Plenary Session:

- | | |
|----------|--|
| 12:30 pm | <ul style="list-style-type: none">• Call to Order• Statement of Quorum• Missouri Board of Optometry Welcome• Adoption of Agenda• President's Report• Executive Director's Report• Secretary-Treasurer's Report• Approval of 2018 Annual Meeting Minutes• Judicial Council/Resolutions Committee Report• Nominating Committee Report |
| 1:30 pm | Presentation of John D. Robinson Founder's Award |
| 1:45 pm | Board Member Training |
| 2:45 pm | <i>Break</i> |
| 3:00 pm | OE TRACKER Committee Report |
| 3:20 pm | COPE Committee Report |
| 3:40 pm | National Board of Examination Review Committee (NBERC) Report |
| 4:00 pm | Contemporary Issues Committee Report |
| 4:15 pm | Member Board Breakout Session |
| 5:30 pm | Recess: <i>Dinner on your own.</i> |

MONDAY, JUNE 17, 2019

Plenary Session:

7:30—8:30 am *Registration and Breakfast Buffet*

8:30 am **Call to Order**

Statement of Quorum

Resolutions Committee Report

Finance/Budget Committee Report

9:00 am **National Board of Examiners in Optometry Presentation I**

9:45 am **Regulatory Legal Update**

10:45 am *Morning Break*

11:00 am **Member Regulatory Stories**

12:00-1:00 pm *Lunch*

Plenary Session:

1:00 pm **National Board of Examiners in Optometry Presentation II**

1:45 pm **Telemedicine/Telehealth Presentation**

2:45 pm **ARBO Member Executive Committee Report**

3:00 pm *Afternoon Break*

3:15 pm **Future of Optometry Regulation Presentation**

4:00 pm **Member Board Reports and Discussion**

5:00 pm **Nominating Committee Report – Final**
Remarks from Board of Directors Nominees

5:30 pm **Recess**

5:30-7:30 pm **President's Reception and 100 Year Anniversary Celebration**

TUESDAY, JUNE 18, 2019

Plenary Session:

7:30—8:30 am *Breakfast Buffet*

8:30 am **Call to Order**

Statement of Quorum

8:45 am **Adoption of 2020 Calendar Year Budget**

9:00 am ***ARBO Board of Directors Election:***

- 4-Year Term Director Position for a Member Board Executive
(*Dr. Susy Yu, not eligible for re-election*)

9:30 am **Resolutions Committee Report – Final**

9:45 am **Industry Presentations**

10:15 am *Morning Break*

10:30 am **Introduction of 2019-2020 ARBO Officers**

10:45 am **Regulation in the News**

11:45 am **Accreditation Council on Optometric Education (ACOE) Report**

12:00 pm **Old Business**

12:15 pm **New Business**

12:30 pm **Adjournment sine die**

Join Us For:

2020 ARBO Annual Meeting – June 21-23, 2020 in Alexandria, Virginia (near Washington, DC)

2021 ARBO Annual Meeting – June 20-22, 2021 in Newport Beach, California (near Anaheim)

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
SUBJECT	Agenda Item #8 – FULL BOARD CLOSED SESSION

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

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Ruby Garcia, Chair Prepared by Natalia Leeper, RDO Coordinator
SUBJECT	Agenda Item #9A – Dispensing Optician Committee Report

The Dispensing Optician Committee, chaired by Ms. Garcia met on March 15, 2019 in Burbank and discussed the following items:

1. Unregistered Population

Committee members discussed Optometric Assistants (the job function of these workers and comparisons to the Board's current registrant populations). The committee discussed concerns that registrants who receive disciplinary action from the Board may abandon their CLD, SLD or RDO registration and continue basic job functions working as an unregulated Optometric Assistant. The committee discussed the Contact and Spectacle Lens Dispenser occupational analyses, and would like to understand the feasibility of an Optometric Assistant Occupational Analysis. The committee felt that analyzing Optometric Assistants would help to determine if this unregistered population should be regulated under the Board's Optician Program. The committee has deemed this issue a priority, and would like to receive comment from the Board as to its interest in considering a committee proposal for addressing the lack of direct regulation of Optometric Assistants.

2. Implementation of Assembly Bill 2138

Legal Counsel Mina Hamilton and Deputy Attorney General Anahita Crawford provided draft regulatory language for review and comment. In discussing the criteria for substantially related crimes, professional members of the committee explained the optician work environment, occurrences of isolated patient interaction, the need to maintain confidentiality in patient interactions, and the accessibility of credit card and insurance information. Staff suggested that in light of the reports by professional members, the Committee consider additional criteria, namely fiscal dishonesty, child abuse, convictions as a sex offender, assault and/or battery, and crimes including lewd conduct. No additions were made to the criteria; the Committee deferred to the Board's discretion in enumerating those crimes considered substantially related. For the Optician Program, the Committee voted to recommend use of the same language option preferred by the Board at the February 1, 2019 meeting. In reviewing criteria to evaluate rehabilitation, the Committee directed staff to incorporate repeated similar or

multiple related prior convictions as potential evidence of the absence of rehabilitation. Legal Counsel and staff will continue to work on the implementation.

3. Update and Discussion of Draft Disciplinary Guidelines

The Committee reviewed the latest draft of the Optician Disciplinary Guidelines. Staff will continue to research and update the guidelines and bring back to the Committee at a future meeting.

4. Discussion of Committee Priorities

Committee members identified top priorities:

- Continued work on Optician Program Disciplinary Guidelines
- Research into the unregistered population – guidance from Board, review of job postings, history of exemption for practice under the direct supervision of a licensed Optometrist, New York state statutes and regulations prohibiting any unregistered practice, and a potential BCP for an Occupational Analysis on unregistered Optometric Assistants.
- To address its fourth statutorily-mandated charge, the Committee will prioritize a comprehensive review of needed optician regulatory changes.
- The Committee reaffirmed the need for Outreach and for staff to begin development of messaging, strategy, tactics and timeline (in consultation with DCA's Office of Public Affairs) to implement the communication plan approved by the Board in 2017.
- The Committee also expressed interest in discussing Optician Program fees and their relationship to earning potential within the profession.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Evan Gage, Assistant Executive Officer
SUBJECT	Agenda Item #9B: Practice and Education Committee Report

The Practice and Education Committee (PEC), chaired by Dr. Madhu Chawla, met on March 8, 2019 via teleconference and discussed the following items:

1. Continuing Education Course Approval Requests Pursuant to Title 16, California Code of Regulations (CCR) § 1536

The PEC determined thirty-two (32) of the thirty-four (34) courses submitted met the criteria set forth in CCR § 1536 and were issued approvals. Two courses were denied, as the PEC determined not enough information was submitted to warrant approval, namely that Curricula Vitae for the instructors were not provided.

Staff has sent letters to the providers identifying the deficiencies and will review the applications when all materials are received.

2. Update and Discussion and Possible Action on Staff Research Regarding CE Approval Criteria, CE Posting Format, CE Provider Qualifications, and Regulatory Changes to CE Requirements for Optometrists

PEC considered whether live webinars should be acceptable for CE units. Of concern was whether a live webinar could guarantee meaningful interactive participation by the attendee, and whether a remote attendee might have to fulfill additional requirements, such as taking an online quiz, to complete the course. Staff will continue its review of the practices of other Boards and Bureaus within DCA to ascertain best practices.

Starting with courses approved at the March 8, 2019 PEC meeting, staff will assign unique individual identifiers to each course that is approved for CE credit. The identifier is assigned upon approval of a course, and therefore would not be provided on the original application.

A list of approved courses will be posted on the Optometry website in a searchable .pdf document. Staff reviewed the COPE model for posting approved coursework and may be able to include more information (course description, etc.) in the future, to more closely mirror the COPE format.

PEC requests that the CE course identifier be printed on the certificate given to the attendee upon completion of the course. Staff advises that we can certainly ask providers to print the identifier on the certificates, and providers may agree without any further discussion, but to require this would likely require a regulatory change. For the same reason, staff is unable to make changes to the course approval application itself, because the form as it stands is incorporated by reference into current regulations. In the meantime, staff will request further information from providers on a voluntary basis.

PEC directs staff to seek regulatory authority later to require it.

Discussion over the qualifications of a provider to produce coursework in a particular specialty ended in consensus that providers are already experts in their fields, and that to require further qualifications or proof thereof would be vexatious and redundant.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry
FROM	Shara Murphy, Executive Officer prepared by Evan Gage, Assistant Executive Officer
SUBJECT	Agenda Item #9C: Legislation and Regulation Committee Report

The Legislation and Regulation Committee (LRC), chaired by Rachel Michelin, met on March 8, 2019 via teleconference and discussed the following items:

1. AB 896 (Low)– Optician Fund Merger: Board of Optometry: The Board is sponsoring this bill. No direction from LRC was deemed necessary since it was determined that staff can move forward based on April 2018 Board direction. Staff has drafted a letter of support and will provide further background information as the bill proceeds through the Legislature.

2. Children’s Vision: Through discussions with major stakeholders (i.e. Kaiser, California Teachers Association, and the California School Nurses Organization), staff learned that language from SB 402 would again face intense opposition. Staff met several times with previous Children’s Vision authors and a target list of six additional legislators; no interest was expressed in the approved bill language or in authoring a spot bill to enable working with major stakeholders. Based on this, staff has determined that Children’s Vision would best advance through direct negotiation with opposition during the 2019 Legislative session.

Kristine Schultz of California Optometric Association (COA) emphasized that Children’s Vision is still a priority for COA and renewed their support of efforts to find a workable legislative solution. Staff continues to work with Kaiser and CSNO to produce consensus bill language that: (1) requires greater communication to parents about the impacts of vision impairment, (2) relays the import of comprehensive eye exams, and (3) improves follow-up rates with optometrists after vision screenings. With the intention of engaging new legislative champions who are interested in working collaboratively, staff and major stakeholders are planning a legislative staff briefing in the fall of 2019, with the goal of bill introduction in the 2020 Legislative session.

Staff was directed to convene the Children’s Vision Workgroup to further develop consensus bill language and strategy that should be shared with the full Board.

3.) AB 613 (Low)- Professions and vocations: regulatory fees: Staff recommends supporting this bill. LRC recommended a support position and that it go to the full Board at the April 5, 2019 meeting.

4.) AB 458 (Nazarian)- Homebound Senior Vision Care : LRC directs staff to hold this item until text is in print, since it is currently a spot bill without Board-specific language. LRC directs staff to send the approved text to the full Board for consideration instead of sending it back to LRC.

5.) AB 1467 (Salas)- Optometrists: scope of practice: delegation of services agreement – Staff is recommending a watch position for this bill. COA advises LRC that the bill will not be well-developed enough to bring it to the April 2019 Board Meeting. LRC recommended a support position and that it go to the full Board at the April 5, 2019 meeting.

6.) Implementation of AB 2138 – Informational update only. LRC to consider whether Board should receive Board-approved language alongside DCA-drafted language in case CSBO language differs materially from what DCA suggests for other Boards and Bureaus.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #10A: Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 458 (Nazarian): Optometrists: home residence certification (as amended March 19, 2019)

Current status:

In Assembly Business and Professions Committee. Hearing date not set.

Link to current version of the bill:

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

Summary:

The Board voted at its April 20, 2018, meeting to accept the proposed statutory amendments to [BPC § 3070.1](#) to expand optometric care for homebound patients, and referred the issue to the LRC. During its [June 29, 2018 meeting](#), the LRC voted to recommend to the full board to pursue legislation dealing solely with the previously approved language regarding homebound care. The full Board then endorsed this approach at the August 3, 2018 public meeting and directed staff to engage with the Legislature on this issue. In January 2019, staff was able to obtain Assembly Member Adrin Nazarian as an author for the bill, and has provided the author's office with the text approved by the Board.

As currently written, this bill would prohibit an optometrist from engaging in the practice of optometry at any home residence without a home residence certificate, 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 certificate by submitting an application to the board and paying applicable fees, and would establish a process for the issuance and renewal of home residence certificates, including prescribing application, renewal, and delinquency fees.

Additionally, the bill would require an optometrist, before engaging in the practice of optometry at a health facility, residential care facility, or, in the case of a certified home residence optometrist, home residence, to comply with certain requirements, including providing a patient's records to the patient's referring primary care provider and providing the patient with a consumer notice that includes, among other things, an authorization to release the patient's medical information to the board for specified purposes, including investigating complaints and conducting the board's enforcement duties. The bill would also require the optometrist to provide a patient's records to the

patient's referring primary care provider. Finally, this bill would also make an optometrist's license subject to suspension or revocation if the optometrist solicits, or has a solicitor solicit on behalf of the optometrist, optometry services by telephone.

The Board is the sponsor of this bill, and staff has also worked with the author's office to produce a fact sheet on the bill and has provided a list of potential stakeholders. Fiscal and workload impact to the Board have not been determined, but is expected to be absorbable.

The LRC reviewed the issue at the March 8, 2019 public meeting, but the actual text of the bill was not finalized by the meeting, with the spot bill of AB 458 being used as the legislative vehicle. The LRC did not make a determination on the bill pending receipt of the final text from the author's office, with the final vote at the discretion of the Board. The LRC also directed staff to listen to opposition for any amendments as the process continues; so far no opposition has been noted.

Suggested Board Action:

Review and possible support for the bill, with direction to the Executive Officer to inform the Legislature of this position.

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 458

Introduced by Assembly Member Nazarian

February 11, 2019

An act to amend ~~Section 6701~~ Sections 3070.1, 3097, and 3152 of the Business and Professions Code, relating to ~~engineers~~ healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 458, as amended, Nazarian. ~~Professional engineers~~. Optometrists: home residence certification.

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 prohibit an optometrist from engaging in the practice of optometry at any home residence without a home residence certificate, 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 certificate by submitting an application to the board and paying applicable fees, and would establish a process for the issuance and renewal of home residence certificates, including prescribing application, renewal, and delinquency fees.

The bill would require an optometrist, before engaging in the practice of optometry at a health facility, residential care facility, or, in the case of a certified home residence optometrist, home residence, to comply with certain requirements, including providing a patient's records to the patient's referring primary care provider and providing the patient with a consumer notice that includes, among other things, an authorization to release the patient's medical information to the board for specified purposes, including investigating complaints and conducting the board's enforcement duties. The bill would also require the optometrist to provide a patient's records to the patient's referring primary care provider.

Existing law makes an optometrist's license subject to suspension or revocation if the optometrist solicits or sends a solicitor from house to house.

This bill would also make an optometrist's license subject to suspension or revocation if the optometrist solicits, or has a solicitor solicit on behalf of the optometrist, optometry services by telephone.

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.

~~Existing law, the Professional Engineers Act, provides for the licensure and regulation of professional engineers by the Board for Professional Engineers, Land Surveyors, and Geologists. Existing law defines the term "professional engineer" for purposes of that act.~~

~~This bill would make nonsubstantive changes to that definition.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

- 1 *SECTION 1. Section 3070.1 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 *3070.1. (a) For purposes of this section, the following terms*
- 4 *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 dwelling of a person who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition.

(b) (1) An optometrist shall not engage in the practice of optometry at a home residence without a home residence certificate. 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 certificate, 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 certificate to an optometrist certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3. A certified home residence optometrist shall meet the requirements in subdivision (c).

(2) A home residence certificate shall expire on the same date the licensee's optometry license expires. A certified home residence optometrist may renew the certificate 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 certificate in order to engage in the practice of optometry at a home residence.

(b)

1 (c) An optometrist *certified as a therapeutic pharmaceutical*
2 *agent or a certified home residence optometrist* may engage in the
3 practice of optometry at any health facility or residential care
4 ~~facility~~ *facility, and an optometrist certified as a home residence*
5 *optometrist may engage in the practice of optometry at any health*
6 *facility, residential care facility, or home residence*, provided that
7 all of the following requirements are satisfied:

8 (1) The optometrist maintains a primary business office, separate
9 from the health ~~facility~~ *or facility*, residential care facility, *or home*
10 *residence*, that meets all of the following requirements:

11 (A) Is open to the public during normal business hours by
12 telephone and for purposes of billing services or access to patient
13 records.

14 (B) Is licensed to the optometrist or the employer of the
15 optometrist as a local business with the city or county in which it
16 is located.

17 (C) Is registered by the optometrist with the Board of Optometry.

18 (D) Is owned or leased by the optometrist or by the employer
19 of the optometrist.

20 (E) Is not located in or connected with a residential dwelling.

21 (2) The optometrist maintains or discloses patient records in the
22 following manner:

23 (A) Records are maintained and made available to the patient
24 in such a way that the type and extent of services provided to the
25 patient are conspicuously disclosed. The disclosure of records shall
26 be made at or near the time services are rendered and shall be
27 maintained at the primary business office specified in paragraph
28 (1).

29 (B) The optometrist complies with all federal and state laws
30 and regulations regarding the maintenance and protection of
31 medical records, including, but not limited to, the federal Health
32 Insurance Portability and Accountability Act of 1996 (42 U.S.C.
33 Sec. 300gg).

34 (C) Pursuant to Section 3007, the optometrist keeps all necessary
35 records for a minimum of seven years from the date of service in
36 order to disclose fully the extent of services furnished to a patient.
37 Any information included on a printed copy of an original
38 document to a patient shall be certified by the optometrist as being
39 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 facility's, residential care ~~facility's~~ facility's, or home residence'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.

(F) The optometrist provides a patient's records to the patient's referring primary care provider.

(3) 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~~, facility, or home residence.

~~(e)~~
(d) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health ~~facility~~ or facility, residential care ~~facility~~ facility, or home residence shall not be required to comply with Section 3070 with regard to providing notification to the board of each ~~facility~~ or health facility, residential care ~~facility~~ facility, or home residence at which ~~he or she~~ the optometrist practices.

(e) (1) Before engaging in the practice of optometry at a health facility, residential care facility, or home residence, an optometrist shall 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.

(C) An authorization to release the patient's medical information 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.

(D) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, and other violations of the act.

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

(f) The board may promulgate regulations to conduct quality assurance reviews for optometrists engaging in the practice of optometry at any health facility, residential care facility, or home residence.

SEC. 2. Section 3097 of the Business and Professions Code is amended to read:

3097. ~~The sending of~~ The solicitation of optometry services by an optometrist directly, or by having a solicitor ~~from~~ solicit optometry services on behalf of the optometrist, house to house ~~or the soliciting from house to house by the holder of an optometrist license or by telephone~~ constitutes a cause to revoke or suspend his or her the optometrist's license.

SEC. 3. 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).

1 (h) The application fee for a certificate to perform lacrimal
2 irrigation and dilation shall not exceed fifty dollars (\$50).

3 (i) The application fee for a certificate to treat glaucoma shall
4 not exceed fifty dollars (\$50).

5 (j) The fee for approval of a continuing education course shall
6 not exceed one hundred dollars (\$100).

7 (k) The fee for issuance of a statement of licensure shall not
8 exceed forty dollars (\$40).

9 (l) The fee for biennial renewal of a statement of licensure shall
10 not exceed forty dollars (\$40).

11 (m) The delinquency fee for renewal of a statement of licensure
12 shall not exceed twenty dollars (\$20).

13 (n) The application fee for a fictitious name permit shall not
14 exceed fifty dollars (\$50).

15 (o) The renewal fee for a fictitious name permit shall not exceed
16 fifty dollars (\$50).

17 (p) The delinquency fee for renewal of a fictitious name permit
18 shall not exceed twenty-five dollars (\$25).

19 (q) The fee for a retired license shall not exceed twenty-five
20 dollars (\$25).

21 (r) The fee for a retired license with volunteer designation shall
22 not exceed fifty dollars (\$50).

23 (s) The biennial renewal fee for a retired license with volunteer
24 designation shall not exceed fifty dollars (\$50).

25 (t) The application fee for a certificate to administer
26 immunizations shall not exceed fifty dollars (\$50).

27 (u) *The application fee for a home residence certificate shall*
28 *not exceed fifty dollars (\$50).*

29 (v) *The renewal fee for a home residence certificate shall not*
30 *exceed fifty dollars (\$50).*

31 (w) *The delinquency fee for a home residence certificate shall*
32 *not exceed twenty-five dollars (\$25).*

33 *SEC. 4. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *for a crime or infraction, within the meaning of Section 17556 of*
39 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SECTION 1. Section 6701 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~6701. "Professional engineer," for purposes of this chapter,~~
6 ~~means a person engaged in the professional practice of rendering~~
7 ~~service or creative work requiring education, training, and~~
8 ~~experience in engineering sciences and the application of special~~
9 ~~knowledge of the mathematical, physical, and engineering sciences~~
10 ~~in such professional or creative work as consultation, investigation,~~
11 ~~evaluation, planning, or design of public or private utilities,~~
12 ~~structures, machines, processes, circuits, buildings, equipment, or~~
13 ~~projects, and supervision of construction for the purpose of securing~~
14 ~~compliance with specifications and design for that work.~~

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AB 458, IN-HOME OPTOMETRIC CARE

ASSEMBLYMEMBER ADRIN NAZARIAN

Bill Summary:

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.

Background:

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.

Homebound seniors, while not institutionalized, are confined to their homes due to physical, psychiatric, and social limitations. Homebound seniors suffer from physical and psychiatric illnesses at a much higher rate than non-homebound elders.

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 in older adults. It can lead to a reduction in common activities such as self-care, cooking, reading, watching TV, or using their 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 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 their primary care provider for diagnosis and treatment. This provides another layer of health screening to those who may not be able to make regular visits to their primary care provider's office.

Solution:

This bill, sponsored by the California State Board of Optometry, would allow licensed Optometrists to bring much-needed vision services and testing into the home for those who need it the most: homebound senior citizens. The Board recognizes the need to promote access to quality optometric services and patients' desires to receive quality care outside traditional brick and mortar practice locations.

With advancements in treating ocular disease with therapeutics, and the availability of portable instruments and equipment, Optometrists have the ability to provide a more comprehensive eye examination in a home setting than in the past. Additionally, further definition in statute of optometric care in a home setting and requiring registration with the Board will help to uphold the Board's primary mandate of protecting consumers.

This change would increase access to Optometric care for a critically underserved population, including but not limited to the elderly, mentally and physically disabled. Without these services, these impacted



AB 458, IN-HOME OPTOMETRIC CARE

ASSEMBLYMEMBER ADRIN NAZARIAN

individuals are unable to obtain proper eye care, which reduces their quality of life and decreases their standard of living. This change would help to increase access to much needed vision services, while maintaining strong consumer protection standards.

Support:

California State Board of Optometry
(Sponsor)

Opposition:

None on file

Staff Contact:

Emellia Zamani
916-319-2046
Emellia.Zamani@asm.ca.gov

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #10B: Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 613 (Low): Professions and vocations: regulatory fees (as introduced February 14, 2019)

Current status:

In Assembly Business and Professions Committee. Hearing date not set.

Link to current version of bill:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB613

Summary:

AB 613, as currently written, would authorize each board within the Department of Consumer Affairs (DCA) – such as the California State Board of Optometry – to increase every four years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index (CCPI) for the preceding four years, subject to specified conditions and approved by the Director of DCA. The bill does not prohibit the Board from raising fees through the normal regulatory and/or legislative process; the bill would simplify the process for making small increases tied to inflation. The author, Assembly Member Evan Low, requested the Board review the bill.

Currently, the Board's fees are set out in [Business and Professions Code §3152](#) and implemented into regulation via [California Code of Regulations Title 16 §1524](#). If AB 613 were in effect today, and the Board met the specified conditions—a fee increase of 10.8% could be enacted. Fees for initial Optometry application could be raised to \$304.70 (from \$275); while combined initial application and registration fees for Spectacle Lens Dispensers could be raised to \$387.80 (from \$350). Because of the uncertain nature of the CCPI and overall economic forecasting, it is unclear how much additional revenue this bill would add to the Board's budget in future years; no workload impact is expected.

Suggested Board Action:

The LRC reviewed the bill at the March 8, 2019 meeting and recommends a 'support' position by the Board with direction to the Executive Officer to inform the Legislature of this position.

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:

1 SECTION 1. Section 101.1 is added to the Business and
2 Professions Code, to read:

3 101.1. (a) Notwithstanding any other law, no more than once
4 every four years, any board listed in Section 101 may increase any
5 fee authorized to be imposed by that board by an amount not to
6 exceed the increase in the California Consumer Price Index, as
7 determined pursuant to Section 2212 of the Revenue and Taxation
8 Code, for the preceding four years in accordance with the
9 following:

10 (1) The board shall provide its calculations and proposed fee,
11 rounded to the nearest whole dollar, to the director and the director
12 shall approve the fee increase unless any of the following apply:

13 (A) The board has unencumbered funds in an amount that is
14 equal to more than the board's operating budget for the next two
15 fiscal years.

16 (B) The fee would exceed the reasonable regulatory costs to the
17 board in administering the provisions for which the fee is
18 authorized.

19 (C) The director determines that the fee increase would be
20 injurious to the public health, safety, or welfare.

21 (2) The adjustment of fees and publication of the adjusted fee
22 list is not subject to the Administrative Procedure Act (Chapter
23 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
24 Title 2) of the Government Code.

25 (b) For purposes of this section, "fee" includes any fees
26 authorized to be imposed by a board for regulatory costs. "Fee"
27 does not include administrative fines, civil penalties, or criminal
28 penalties.

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OFFICE OF ASSEMBLYMEMBER

Evan Low

TWENTY-EIGHTH ASSEMBLY DISTRICT
CHAIR, BUSINESS & PROFESSIONS COMMITTEE

ASSEMBLY BILL 613: Regulatory Fee Adjustments by CPI

SUMMARY

AB 613 authorizes certain 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.

BACKGROUND

Approximately three dozen regulatory boards and bureaus are under the jurisdiction of the DCA, licensing myriad occupations and professions such as physicians, contractors, barbers, and automotive repair dealers. Each of these boards is funded almost entirely through the collection of fees from licensees, with no General Fund allocations being made to any boards or bureaus.

PROBLEM

Each board's licensing fee structure is specific to that entity's practice act—some fees are specifically prescribed in statute, while others are contained in regulations. Currently, a board seeking to increase its fees will either have to seek legislation or go through the full Administrative Procedures Act to do so. Because both of these processes are cumbersome, the habit of many boards is to delay addressing revenue shortfalls until their special funds are no longer healthy enough to support ongoing operations. By then, the proposed fee adjustment follows such a prolonged period of time that the resulting increase is significant. This creates substantial uncertainty for licensees and causes even the most necessary fee adjustments to become controversial.

SOLUTION

AB 613 would allow for a regulatory board to adjust its fees administratively, without going through legislative or regulatory procedures, in proportion to CPI increases.

The Consumer Price Index, simplified, is a tool used to statistically approximate the purchasing power of a dollar as it changes over time due to inflation and other economic factors. Changes in CPI can be used to calculate the change in market value for a specific monetary figure between two dates. For example, services worth \$10 in 2009 are estimated to now cost \$11.92 in 2019.

By allowing boards to easily adjust fees by an amount that simply conforms with CPI, boards are able to make modest, regularly scheduled changes to what they charge licensees, which will promote healthier fund conditions without the need for formal rulemaking. The impact of changes in fees would be less significant for licensees, and the effects of inflation will cease to be a factor in future deficiencies in boards' special funds.

For many boards, fee adjustments are necessitated not only due to inflation over the years, but because program workload has substantially changed or other factors have significantly altered the balance between fee revenue and board expenses. For these fee adjustments, boards would fully retain the authority to go through their existing process for increasing fees they currently charge to licensees. However, those increases should remain lower overall due to the boards' ability grow revenue gradually through CPI-linked adjustments over time.

SUPPORT

Support list in formation.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #10C: Update, Discussion and Possible Action Regarding Assembly Bill 896 (Low): Registered Dispensing Opticians: dispensing opticians Fund: Optometry Fund (as introduced February 20, 2019)

Current status:

In Assembly Business and Professions Committee. Expected to be heard in Committee on April 2, 2019. Link to current version of the bill:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB896

Summary:

The Board's 2017-2020 Strategic Plan, as outlined in Strategic Goal #3.8, sets out the goal of exploring the feasibility of proposing legislation to merge the RDO and Optometry funds. At the February 1, 2019 public meeting, the Board was presented with potential text to combine the Optometry and Registered Dispensing Optician (RDO) funds into a single fund for accounting purposes. Board staff successfully obtained Assembly Member Evan Low as the author for the bill.

The Board is the sponsor of this bill. As currently written, 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 proposed bill will assist Board staff and Budgets in fiscal tracking and planning for the RDO program, and assists the stabilization of the Board's fund condition. Other than minor process changes, the bill is expected to have no fiscal or workload impact on the Board, as RDO operations are already fully integrated into Board operations.

The LRC reviewed the bill at the March 8, 2019 meeting. Staff had recommended a support position be taken on the bill, and the LRC determined that existing Board direction was sufficient for such a position. A support letter was sent to the author on March 11, 2019, and staff will continue to monitor and support the bill as it moves through the Legislative process.

Suggested Board Action:

No further Board action is necessary unless additional changes or amendments are proposed.

ASSEMBLY BILL

No. 896

Introduced by Assembly Member Low

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 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 896, as introduced, Low. Registered Dispensing Opticians: dispensing opticians Fund: Optometry Fund.

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.

Vote: majority. 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 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.
- 27 (21) Veterinary Medical Board Contingent Fund.

- (22) Vocational Nursing and Psychiatric Technicians Fund.
- (23) Electronic and Appliance Repair Fund.
- (24) Dispensing Opticians Fund.
- (25) Acupuncture Fund.
- (26) Physician Assistant Fund.
- (27) Board of Podiatric Medicine Fund.
- (28) Psychology Fund.
- (29) Respiratory Care Fund.
- (30) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
- (31) Board of Registered Nursing Fund.
- (32) Animal Health Technician Examining Committee Fund.
- (33) State Dental Hygiene Fund.
- (34) State Dental Assistant Fund.
- (35) Structural Pest Control Fund.
- (36) Structural Pest Control Eradication and Enforcement Fund.
- (37) Structural Pest Control Research Fund.
- (38) Household Movers Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) ~~This section shall become operative on July 1, 2018. This section shall be repealed on July 1, 2022.~~

SEC. 2. Section 205 is added to the Business and Professions Code, to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
- (2) California Architects Board Fund.
- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery and Funeral Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (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.

SEC. 3. Section 205.2 is added to the Business and Professions Code, to read:

205.2. Whenever any reference is made in any provision of this code to the "Dispensing Opticians Fund," it means the Optometry Fund. All moneys within the Dispensing Opticians Fund shall be deposited into the Optometry Fund by July 1, 2022. On July 1, 2022, the Dispensing Opticians Fund shall be abolished.

SEC. 4. Section 655 of the Business and Professions Code is amended 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

1 employed by a health plan as a clinical director for the health plan
2 pursuant to Section 1367.01 of the Health and Safety Code or to
3 perform services related to utilization management or quality
4 assurance or other similar related services that do not require the
5 optometrist to directly provide health care services to enrollees.
6 In addition, an optometrist serving as a clinical director may not
7 employ optometrists to provide health care services to enrollees
8 of the health plan for which the optometrist is serving as clinical
9 director. For the purposes of this section, the health plan's
10 utilization management and quality assurance programs that are
11 consistent with the Knox-Keene Health Care Service Plan Act of
12 1975 (Chapter 2.2 (commencing with Section 1340) of Division
13 2 of the Health and Safety Code) do not constitute providing health
14 care services to enrollees.

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

17 (3) The Department of Managed Health Care shall forward to
18 the State Board of Optometry any complaints received from
19 consumers that allege that an optometrist violated the Optometry
20 Practice Act (Chapter 7 (commencing with Section 3000)). The
21 Department of Managed Health Care and the State Board of
22 Optometry shall enter into an Inter-Agency Agreement regarding
23 the sharing of information related to the services provided by an
24 optometrist that may be in violation of the Optometry Practice Act
25 that the Department of Managed Health Care encounters in the
26 course of the administration of the Knox-Keene Health Care
27 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
28 1340) of Division 2 of the Health and Safety Code).

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

35 (1) (A) The practice shall be owned by the optometrist and in
36 every phase be under the optometrist's exclusive control, including
37 the selection and supervision of optometric staff, the scheduling
38 of patients, the amount of time the optometrist spends with patients,
39 fees charged for optometric products and services, the examination

1 procedures and treatment provided to patients and the optometrist's
2 contracting with managed care organizations.

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

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

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

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

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

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

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

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

19 (9) The optometrist shall not be precluded from collecting fees
20 for services that are not included in a health plan's products and
21 services, subject to any patient disclosure requirements contained
22 in the health plan's provider agreement with the optometrist or
23 that are not otherwise prohibited by the Knox-Keene Health Care
24 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
25 1340) of Division 2 of the Health and Safety Code).

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

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

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

1 (C) If the health plan is the landlord, the termination of the
2 provider agreement between the health plan and the optometrist,
3 in accordance with the Knox-Keene Health Care Service Plan Act
4 of 1975 (Chapter 2.2 (commencing with Section 1340) of Division
5 2 of the Health and Safety Code).

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

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

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

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

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

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

38 Any financial information contained in the lease submitted to a
39 regulatory entity, pursuant to this paragraph, shall be considered
40 confidential trade secret information that is exempt from disclosure

1 under the California Public Records Act (Chapter 3.5 (commencing
2 with Section 6250) of Division 7 of Title 1 of the Government
3 Code).

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

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

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

21 (g) Any violation of this section constitutes a misdemeanor as
22 to such person licensed under Chapter 7 (commencing with Section
23 3000) of this division and as to any and all persons, whether or
24 not so licensed under this division, who participate with such
25 licensed person in a violation of any provision of this section.

26 (h) (1) Notwithstanding any other law and in addition to any
27 action available to the State Board of Optometry, the State Board
28 of Optometry may issue a citation containing an order of
29 abatement, an order to pay an administrative fine, or both, to an
30 optical company, an optometrist, or a registered dispensing optician
31 for a violation of this section. The administrative fine shall not
32 exceed fifty thousand dollars (\$50,000) per investigation. In
33 assessing the amount of the fine, the board shall give due
34 consideration to all of the following:

35 (A) The gravity of the violation.

36 (B) The good faith of the cited person or entity.

37 (C) The history of previous violations of the same or similar
38 nature.

39 (D) Evidence that the violation was or was not willful.

1 (E) The extent to which the cited person or entity has cooperated
2 with the board's investigation.

3 (F) The extent to which the cited person or entity has mitigated
4 or attempted to mitigate any damage or injury caused by the
5 violation.

6 (G) Any other factors as justice may require.

7 (2) A citation or fine assessment issued pursuant to a citation
8 shall inform the cited person or entity that if a hearing is desired
9 to contest the finding of a violation, that hearing shall be requested
10 by written notice to the board within 30 days of the date of issuance
11 of the citation or assessment. If a hearing is not requested pursuant
12 to this section, payment of any fine shall not constitute an
13 admission of the violation charged. Hearings shall be held pursuant
14 to Chapter 5 (commencing with Section 11500) of Part 1 of
15 Division 3 of Title 2 of the Government Code.

16 (3) The board shall adopt regulations to implement a system for
17 the issuance of citations, administrative fines, and orders of
18 abatement authorized by this section. The regulations shall include
19 provisions for both of the following:

20 (A) The issuance of a citation without an administrative fine.

21 (B) The opportunity for a cited person or entity to have an
22 informal conference with the executive officer of the board in
23 addition to the hearing described in paragraph (2).

24 (4) The failure of a licensee to pay a fine within 30 days of the
25 date of assessment, unless the citation is being appealed, may result
26 in disciplinary action being taken by the board. Where a citation
27 is not contested and a fine is not paid, the full amount of the
28 assessed fine shall be added to the fee for renewal of the license.
29 A license shall not be renewed without payment of the renewal
30 fee and fine.

31 (5) Notwithstanding any other law, if a fine is paid to satisfy an
32 assessment based on the finding of a violation, payment of the fine
33 shall be represented as satisfactory resolution of the matter for
34 purposes of public disclosure.

35 (i) Administrative fines collected pursuant to this section shall
36 be deposited in the ~~Dispensing Opticians~~ *Optometry* Fund. It is
37 the intent of the Legislature that moneys collected as fines and
38 deposited in the fund be used by the board primarily for
39 enforcement purposes.

1 SEC. 5. Section 2545 of the Business and Professions Code is
2 amended to read:

3 2545. (a) Whenever any person has engaged, or is about to
4 engage, in any acts or practices which constitute, or will constitute,
5 an offense against this chapter, the superior court in and for the
6 county wherein the acts or practices take place, or are about to
7 take place, may issue an injunction, or other appropriate order,
8 restraining the conduct on application of the State Board of
9 Optometry, the Medical Board of California, the Osteopathic
10 Medical Board of California, the Attorney General, or the district
11 attorney of the county.

12 The proceedings under this section shall be governed by Chapter
13 3 (commencing with Section 525) of Title 7 of Part 2 of the Code
14 of Civil Procedure.

15 (b) (1) Any person who violates any of the provisions of this
16 chapter shall be subject to a fine of not less than one thousand
17 dollars (\$1,000) nor more than two thousand five hundred dollars
18 (\$2,500) per violation. The fines collected pursuant to this section
19 from licensed physicians and surgeons shall be available upon
20 appropriation to the Medical Board of California for the purposes
21 of administration and enforcement. The fines collected pursuant
22 to this section from licensed optometrists and registered dispensing
23 opticians shall be deposited into the Optometry Fund ~~and the~~
24 ~~Dispensing Opticians Fund, respectively,~~ and shall be available
25 upon appropriation to the State Board of Optometry for the
26 purposes of administration and enforcement.

27 (2) The Medical Board of California and the State Board of
28 Optometry shall adopt regulations implementing this section and
29 shall consider the following factors, including, but not limited to,
30 applicable enforcement penalties, prior conduct, gravity of the
31 offense, and the manner in which complaints will be processed.

32 (3) The proceedings under this section shall be conducted in
33 accordance with the provisions of Chapter 5 (commencing with
34 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
35 Code.

36 SEC. 6. Section 2546.9 of the Business and Professions Code
37 is amended to read:

38 2546.9. The amount of fees prescribed in connection with the
39 registration of nonresident contact lens sellers is that established
40 by the following schedule:

1 (a) The application fee for a nonresident contact lens seller shall
2 be a minimum of one hundred fifty dollars (\$150) and shall not
3 exceed two hundred dollars (\$200).

4 (b) The initial registration fee shall be a minimum of two
5 hundred dollars (\$200) and shall not exceed three hundred dollars
6 (\$300).

7 (c) The renewal fee shall be a minimum of two hundred dollars
8 (\$200) and shall not exceed three hundred dollars (\$300).

9 (d) The delinquency fee shall be a minimum of fifty dollars
10 (\$50) and shall not exceed seventy-five dollars (\$75).

11 (e) The fee for replacement of a lost, stolen, or destroyed
12 registration shall be twenty-five dollars (\$25).

13 (f) The State Board of Optometry may periodically revise and
14 fix by regulation the fees specified in subdivisions (a), (b), (c), and
15 (d), and these revised fees shall not exceed the reasonable
16 regulatory cost.

17 (g) The fees collected pursuant to this chapter shall be deposited
18 in the ~~Dispensing Opticians~~ Optometry Fund, and shall be
19 available, upon appropriation, to the State Board of Optometry for
20 the purposes of this chapter.

21 SEC. 7. Section 2556.2 of the Business and Professions Code
22 is amended to read:

23 2556.2. (a) Notwithstanding any other law, subsequent to the
24 effective date of this section and until January 1, 2019, any
25 individual, corporation, or firm operating as a registered dispensing
26 optician under this chapter before the effective date of this section,
27 or an employee of such an entity, shall not be subject to any action
28 for engaging in conduct prohibited by Section 2556 or Section 655
29 as those sections existed prior to the effective date of this bill,
30 except that a registrant shall be subject to discipline for duplicating
31 or changing lenses without a prescription or order from a person
32 duly licensed to issue the same.

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

36 (c) This section shall not apply to any business relationships
37 prohibited by Section 2556 commencing registration or operations
38 on or after the effective date of this section.

39 (d) Subsequent to the effective date of this section and until
40 January 1, 2019, nothing in this section shall prohibit an individual,

1 corporation, or firm operating as a registered dispensing optician
2 from engaging in a business relationship with an optometrist
3 licensed pursuant to Chapter 7 (commencing with Section 3000)
4 before the effective date of this section at locations registered with
5 the Medical Board of California before the effective date of this
6 section.

7 (e) This section does not apply to any administrative action
8 pending, litigation pending, cause for discipline, or cause of action
9 accruing prior to September 1, 2015.

10 (f) Any registered dispensing optician or optical company that
11 owns a health plan that employs optometrists, subject to this
12 section, shall comply with the following milestones:

13 (1) By January 1, 2017, 15 percent of its locations shall no
14 longer employ an optometrist.

15 (2) By August 1, 2017, 45 percent of its locations shall no longer
16 employ an optometrist.

17 (3) By January 1, 2019, 100 percent of its locations shall no
18 longer employ an optometrist.

19 (g) Any registered dispensing optician or optical company that
20 owns a health plan that employs optometrists shall report to the
21 State Board of Optometry in writing as to whether it has met each
22 of the milestones in subdivision (f) within 30 days of each
23 milestone. The State Board of Optometry shall provide those
24 reports as soon as it receives them to the director and the
25 Legislature. The report to the Legislature shall be submitted in
26 compliance with Section 9795 of the Government Code.

27 (h) (1) Notwithstanding any other law and in addition to any
28 action available to the State Board of Optometry, the State Board
29 of Optometry may issue a citation containing an order of
30 abatement, an order to pay an administrative fine, or both, to an
31 optical company, an optometrist, or a registered dispensing optician
32 for a violation of this section. The administrative fine shall not
33 exceed fifty thousand dollars (\$50,000). In assessing the amount
34 of the fine, the board shall give due consideration to all of the
35 following:

36 (A) The gravity of the violation.

37 (B) The good faith of the cited person or entity.

38 (C) The history of previous violations of the same or similar
39 nature.

40 (D) Evidence that the violation was or was not willful.

1 (E) The extent to which the cited person or entity has cooperated
2 with the board's investigation.

3 (F) The extent to which the cited person or entity has mitigated
4 or attempted to mitigate any damage or injury caused by the
5 violation.

6 (G) Any other factors as justice may require.

7 (2) A citation or fine assessment issued pursuant to a citation
8 shall inform the cited person or entity that if a hearing is desired
9 to contest the finding of a violation, that hearing shall be requested
10 by written notice to the board within 30 days of the date of issuance
11 of the citation or assessment. If a hearing is not requested pursuant
12 to this section, payment of any fine shall not constitute an
13 admission of the violation charged. Hearings shall be held pursuant
14 to Chapter 5 (commencing with Section 11500) of Part 1 of
15 Division 3 of Title 2 of the Government Code.

16 (3) The board shall adopt regulations to implement a system for
17 the issuance of citations, administrative fines, and orders of
18 abatement authorized by this section. The regulations shall include
19 provisions for both of the following:

20 (A) The issuance of a citation without an administrative fine.

21 (B) The opportunity for a cited person or entity to have an
22 informal conference with the executive officer of the board in
23 addition to the hearing described in paragraph (2).

24 (4) The failure of a licensee to pay a fine within 30 days of the
25 date of assessment, unless the citation is being appealed, may result
26 in disciplinary action being taken by the board. Where a citation
27 is not contested and a fine is not paid, the full amount of the
28 assessed fine shall be added to the fee for renewal of the license.
29 A license shall not be renewed without payment of the renewal
30 fee and fine.

31 (5) Notwithstanding any other law, if a fine is paid to satisfy an
32 assessment based on the finding of a violation, payment of the fine
33 shall be represented as satisfactory resolution of the matter for
34 purposes of public disclosure.

35 (i) Administrative fines collected pursuant to this section shall
36 be deposited in the ~~Dispensing Opticians~~ *Optometry* Fund. It is
37 the intent of the Legislature that moneys collected as fines and
38 deposited in the fund be used by the board primarily for
39 enforcement purposes.

1 SEC. 8. Section 2567 of the Business and Professions Code is
2 amended to read:

3 2567. (a) ~~The provisions of Article 19 (commencing with~~
4 ~~Section 2420) and Article 20 (commencing with Section 2435) of~~
5 ~~Chapter 5 which are not inconsistent or in conflict with this chapter~~
6 ~~apply to the issuance and govern the expiration and renewal of~~
7 ~~certificates issued under this chapter. All fees collected from~~
8 ~~persons registered or seeking registration under this chapter shall~~
9 ~~be paid into the Dispensing Opticians Optometry Fund, and shall~~
10 ~~be available, upon appropriation, to the State Board of Optometry~~
11 ~~for the purposes of this chapter. Any moneys within the Contingent~~
12 ~~Fund of the Medical Board of California collected pursuant to this~~
13 ~~chapter shall be deposited in the Dispensing Opticians Optometry~~
14 ~~Fund. Any moneys within the Dispensing Opticians Fund collected~~
15 ~~pursuant to this chapter shall be deposited in the Optometry Fund.~~

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

19 SEC. 9. Section 2568 of the Business and Professions Code is
20 amended to read:

21 2568. The board shall report to the Controller at the beginning
22 of each month for the month preceding the amount and source of
23 all revenue received by it pursuant to this chapter, and shall pay
24 the entire amount thereof to the Treasurer for deposit in the
25 ~~Dispensing Opticians Fund, which fund is created to carry out the~~
26 ~~provisions of this chapter. Optometry Fund.~~

O



March 11, 2019

The Honorable Evan Low
California State Assembly
State Capitol, Room 4126
Sacramento, CA 95814

RE: Support for Assembly Bill 896

Dear Assembly Member Low:

As the Executive Officer of the California State Board of Optometry (Board), I write on behalf of the Board in strong support of Assembly Bill (AB) 896, relating to Registered Dispensing Opticians: dispensing opticians Fund: Optometry Fund.

As you know, 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 and would make various related conforming changes. The proposed bill will assist Board staff and Budgets in fiscal tracking and planning for the Registered Dispensing Opticians (RDO) program, and assists the stabilization of the Board's fund condition.

The Board is pleased to sponsor and support this bill and appreciates your efforts in authoring this legislation. We look forward to working with you as the bill moves forward in the process.

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

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #10D: Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 1467 (Salas): Optometrists: Scope of Practice: delegation of services agreement (as introduced February 22, 2019)

Current status:

In Assembly Business and Professions Committee. Hearing date not set.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1467

Summary:

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.

The intent of the bill, according to the text in Section 1, is to authorize ophthalmologists to enter into agreements for the delegation of services by ophthalmologists to optometrists that will increase the two professions' collaboration in the treatment of patients. Additionally, according to text, delegation of service agreements between ophthalmologists and optometrists will improve access to quality vision care, and provide options for screening and early diagnosis of systemic diseases.

This bill is sponsored by the California Optometrists Association (COA) and has been referred to the Assembly Business and Professions Committee. COA indicates the bill is a starting point and further refinement of the text is expected. Fiscal and workload impact to the Board is unclear, but required registration of the MOUs with the Board, possible changes in Board regulations, and the potential for additional enforcement could increase costs to the Board.

Action requested:

The LRC reviewed the bill at the March 8, 2019 meeting and recommends a 'support' position with direction to the Executive Officer to inform the Legislature of this position.

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.

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ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mina Hamilton, Legal Counsel
SUBJECT	Agenda Item #11 – Review, Discussion, and Possible Action on Implementing Regulations for Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018)

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	Mina Hamilton
SUBJECT	Agenda Item #12 – Review, Discussion, and Possible Action on Implementing Regulations for Assembly Bill 443 (Salas, Chapter 549, Statutes of 2017)

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
SUBJECT	Agenda Item #13 - Election of Board Officers

A. President

a. Mark Morodomi – Candidate Statement

I was surprised but honored that one of the professional members of this board nominated me.

For my candidate statement, I would like to provide this list of reminders to myself for the next year if I were to serve as Board President. Remember to:

- Rely. Rely on the expertise of the professional members for knowledge about the practice of optometry and opticianry
- Continue. Continue to have the Board committees and work groups do the heavy lifting on board initiatives so that we can tap into the skills and ideas of all the board members in developing state wide policy
- Support. Work to support the Executive Officer in the smooth running of the board operations, including advocating for needed resources from the Department
- Be Vigilant. Always be vigilant of the protection of the consumer
- Remove Obstacles. Access to eye care, particularly for children and seniors, is a mission of the board, that includes ensuring that archaic laws or our own regulations are not obstacles
- Listen First. The presiding officer at the board meeting is like an orchestra conductor. I want hear all the parts of the symphony, the strings, horns, . . . even the bongo drums.

b. Maria Salazar-Sperber – Candidate Statement

KEY SKILLS AND EXPERIENCE

- Ability to manage large membership association; oversees organizational operations, planning, finances, policy and program development and member and community relations.

- Capable of understanding complex policy issues and establishing best strategies to further an organization's long-term and short-term goals.
- Experience with developing a legislative package that aligns with an organization's vision, executing that package effectively and in a manner that preserves the organization's integrity.
- Ability to cultivate and maintain positive working relationships with a variety of associations, legislators, key staff and administrators.
- Values varied opinions and perspectives; ability to establish common ground

It is an honor to be nominated for President, California State Board of Optometry. With each year on the board, I have learned to be an effective contributor and to appreciate each person's perspective when debating issues before the board. I value comradery and hope to continue building trust and communication among the board members and staff.

Our board has a content rich strategic plan and a forward-thinking legislative agenda, which demonstrates our commitment to public service. With my legislative background as well as my experience as an attorney and tenured board member, I believe I can make significant progress on our goals in the upcoming year. I hope to build on the past 3 years and ensure that the board provides the requisite leadership and service to meet our goals.

As a board member, I have been an active participant on the Legislative and Regulatory Committee, the Mobile Clinic Advisory Committee and am the current chair of the Public Relations Committee. Participating on each of these committees has given me the opportunity to learn the board process and become familiar with the goals and scope of the board. The work of Legislative and Regulatory Committee resulted in the introduction of AB 458 (Nazarian) pertaining to Homebound Senior Vision Care and AB 896 (Low) pertaining to the dispensing optician fund. The Board also continues to work diligently toward the Children's Vision Bill becoming a reality. Additionally, the Board website is in the queue for an update with the Department of Consumer Affairs and we are currently developing short informational videos to encourage vision screening. My participation on each committee contributed to my becoming an effective, more informed board member and I look forward to using my experience next year to further our mission of consumer advocacy.

Cultivating a culture of teamwork and mutual respect among staff and board members is important to empower the Board of Optometry to continue moving forward. I have developed a strong working relationship with the board staff which will ensure that we will work together collaboratively and effectively. In

my capacity as president of the Friends of the Crisis Nursery, an auxiliary of the Sacramento Children's Home, we successfully raised over \$250,000 within 2 years to ensure the viability of the crisis nursery program in Sacramento County. We also healed long standing strife between the Friends' board and the Sacramento Children's Home, which has resulted in unmatched fundraising and wide spread community support.

As the Executive Director for the American Academy of Pediatrics, California Chapter 1, I was responsible for facilitating the development of the chapter strategic plan, managing the chapter finances, facilitating board meetings, representing the Chapter at the national level and building chapter membership, among other duties. During my tenure, the chapter grew by 17%, our finances improved from a significant deficit to a \$60,000 profit and we successfully collaborated with NAMI California to present our findings on pediatric mental health in California at the NAMI Conference in 2018. AAP, California Chapter 1 also revised their bylaws to adhere to current law, brought implicit bias training to our board retreat, and generated a \$23,000 profit from our continued medical education conference for the first time in 5 years. My experience as the executive director the American Academy of Pediatrics makes me especially well positioned to lead the California State Board of Optometry.

Finally, in my new role as a legislative advocate for the California Hospital Association, I am familiar with the legislative process and feel comfortable managing the legislative package as outlined by the Board.

We have a lot to accomplish as a board that is committed to protecting the public; I would appreciate the opportunity to lead our agenda next year.

Thank you for your consideration. I respectfully request your support.

B. Vice-President

a. Glenn Kawaguchi – Candidate Statement

It's been an honor to serve on the Board of Optometry, and I would appreciate the opportunity to serve you as Vice President.

During my tenure on the Board, we've been working through large improvements. This year, we will continue to work through challenges that industry change presents. I believe that I am the right candidate for the following reasons:

1. I watch and listen attentively. While this is a simple claim, I believe that this foundation allows me success in my profession and for the Board.
2. I approach consumer eye care with a belief that we must put their best interests first. Even when issues brought before us are complicated, I always ask myself what decisions will put the consumer first.

3. I am a leader for change. Due to technology, the eye care industry is rapidly changing. Consumers are often unaware of the pros and cons of the newest offerings. The Board has a responsibility to stay abreast of what is happening and proactively respond to it so consumers are protected. Thank you for considering me for Board Vice President.

b. Lillian Wang OD – Candidate Statement

I was appointed to the California State Board of Optometry in 2014. During my tenure on the Board, I have seen its impact and importance to the people in the state of California. As a member of the Board, I deal with the intricacies of policy development, advocating consumer interests, and enforcing laws to protect the public. Since my appointment to the State Board in 2014, I was elected Secretary of the State Board from 2015-2016 and have been appointed to numerous committees and work groups, each listed below:

- Legislation and Regulation Committee, which is responsible for recommending legislative and regulatory priorities to the Board. Recent significant issues addressed by this committee include the Expanded Scope of Practice for Optometrists Bill SB622 passed in 2015, on-line refractions, mobile clinics, and the 2016 Sunset Review for Optometry.
- Practice and Education Committee, which advises the Board staff on matters relating to optometric practice, including standards of practice, scope of practice issues, and the approval of continuing education courses.
- National Board of Examiners in Optometry (NBEO) workgroup, which endeavors to open communications and resolve disputes and conflicts with the NBEO in regards to issues with the NBEO exams parts I, II and III.
- Foreign Graduate workgroup, which is tasked to meet with stakeholders and accredited schools and colleges of optometry to provide legislation recommendations to the Board regarding creating a pathway for foreign graduates to become licensed in California.
- Executive Officer Search Committee, which was tasked with nominating a new executive officer for the Board.
- Mobile Clinics Workgroup, which resulted in the introduction of legislation for home visits and which continues to explore the intricacies of mobile clinics as a whole.

As a Board, we have overseen or participated in major issues, such as SB684 and the drafting of our most current Strategic Plan. During my tenure on the Board, I have established a network throughout the state on issues paramount to the optometric field. I have contacts at numerous optometry schools, where we discussed the possibility of creating an accelerated optometry program for foreign graduate optometrists in the western United

States. I have established contacts outside of California with the NBEO in order to create a more cooperative and transparent relationship. This network is essential to staying in touch with the current issues and developments in optometry, which I can then share with the other members of the Board.

I have been on faculty at the University of California School of Optometry for the past 19 years. As a member of the faculty I have an intimate knowledge of academia and have been able to open communications on multiple topics with all the schools of optometry within and outside of California. As the only member of the Board on faculty at a university, I am able to bring a different point of view to discussions of the Board, address current issues and conflicts that arise within optometry schools and assist in increasing transparency within the NBEO. Having chaired and been an active member on a myriad of committees, I have worked extensively with other health care providers, students, opticians and administrators, which has provided me with a wealth of information and insight that supports and advances the work that I am able to do on the Board.

As Vice President I would like to encourage open discussion and respectful interactions amongst the members of the Board. Each one of us brings a different point of view that is essential to reaching the goal for better consumer protection for the people of California. On the horizon we still have many issues to accomplish, and I know that with teamwork and thoughtful consideration, we will be able to fulfill our purpose.

My dedication and experience through the Board, as well as academia have given me a solid foundation and skills that will help me to be an effective Vice President.

C. Secretary

a. Martha “Ruby” Garcia CLD/SLD – Candidate Statement

I am committed to open, respectful and responsible work. The keys to positive work is having the accountability to deliver accessible and reliable information for Board Members.

I am excited about the possibilities of contributing communication that will help expand our efforts toward consumer protection.

Thank you for the opportunity

b. Debra McIntyre OD – Candidate Statement

As a professional member of the Board of Optometry since March 2016, I've been able to both familiarize myself with the various issues we contend with and to become more comfortable with format in which we operate. I feel that, since my participation so far has been largely peripheral, I can contribute more by becoming more involved in our organization. The role of Secretary of the Board would allow me to express other leadership skills which have been underutilized thus far. My analytic skills and objectivity will be an asset to the Board. I look forward to continued service in a fuller capacity.

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
SUBJECT	Agenda Item #14 – Future Agenda Items

With help from previous management, staff was able to locate lists from 2017. Though Board files were searched, staff continues to search for a list of more recently requested future agenda items.

- Continuing Education Requirements for Registered Dispensing Opticians, Registered Spectacle Lens Dispensers, and Registered Contact Lens Dispensers
- Emerging Technologies and the Impact it has on Consumers and the Profession
- Legislative and Regulatory Committee Recommendations on statutory changes to the Practice Act
- Pre-Accusation Settlements – Identification of Statutes
- Control over scope of practice – what other states are doing
- Staff Outreach at CE Events

ISSUE MEMORANDUM

DATE	April 5, 2019
TO	Members, California State Board of Optometry (CSBO)
FROM	President Cyd Brandvein
SUBJECT	Agenda Item #15 - Adjournment