MEMBERS OF THE BOARD
Madhu Chawla, OD, President
Cyd Brandvein, Vice President
Rachel Michelin, Secretary
Donna Burke
Glenn Kawaguchi, OD
Debra McIntyre, OD
Mark Morodomi
Maria Salazar Sperber
David Turetsky, OD
Lillian Wang, OD

CALIFORNIA STATE BOARD OF OPTOMETRY

SPECIAL MEETING NOTICE and AGENDA (TELECONFERENCE)
May 13, 2016
5:00 p.m.

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

TELECONFERENCE LOCATIONS:

Nugget Markets
Second Floor
4500 Post St.
El Dorado Hills, CA 95762

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

Cafe Europa
64 Moraga Way
Orinda, CA 94563

Panera Bread
1286 Auto Park Way
Escondido, CA 92029

Century 21 Lad
9047 Soquel Dr
Aptos, CA 95003

3301 East Main St., # 1006
Ventura, CA 93003

FULL BOARD OPEN SESSION

1. Call to Order/Roll Call and Establishment of a Quorum
2. Finding of Necessity for Special Meeting (Gov. Code, § 11125.4)
3. Discussion and Consideration of Trailer Bill 201: Registered Dispensing Opticians Move and Conceptual Amendments Regarding Citation Structure
4. Adjournment

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

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

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Rob Stephanopoulos at (916) 575-7185 or sending a written request to Robert.Stephanopoulos@dca.ca.gov. Information regarding this meeting may be found at www.optometry.ca.gov

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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

To: Board Members **Date:** May 13, 2016

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

Subject: **Agenda Item 1 – Call to Order and Roll Call/ Establishment of Quorum**

Dr. Madhu Chawla, O.D., Board President, will call the meeting to order and call roll to establish a quorum of the Board.

Madhu Chawla, O.D., President, Professional Member

Cyd Brandvein, Vice President, Public Member

Rachel Michelin, Secretary, Public Member

Donna Burke, Public Member

Glenn Kawaguchi, O.D., Professional Member

Debra McIntyre, O.D., Professional Member

Mark Morodomi, Public Member

Maria Salazar Sperber, Public Member

David Turetsky, O.D., Professional Member

Lillian Wang, O.D., Professional Member

CALIFORNIA STATE BOARD OF OPTOMETRY

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www.optometry.ca.gov

To: Board Members **Date:** May 13, 2016

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

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

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

11125.4.

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

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

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

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

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

(6) To consider license examinations and applications.

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

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

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

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting

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

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

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

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Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** May 13, 2016

From: Jessica Sieferman
Executive Officer **Telephone:** (916) 575-7184

Subject: **Agenda Item 3 – Discussion and Consideration of Trailer Bill 201: Registered Dispensing Opticians Move and Conceptual Amendments Regarding Citation Structure**

Trailer Bill (TBL) Issue 201 reflects changes the Board requested after AB 684 passed in the legislature. These changes addressed concerns regarding the following:

- Ability for respondents to redact personal identifying information prior to submitting a lease to the Board.
- Lack of strong enforcement mechanisms against registered dispensing opticians (RDOs) who violate the applicable laws.
- Requiring health plans (outside the Board's jurisdiction) to report to the Board.
- Requiring milestones to be reported, but no enforcement mechanism if milestones are not met.

The TBL is currently at the Assembly Budget Committee, chaired by Assembly Member Nazarian. The Chair and Committee staff has raised specific concerns regarding the $50,000 fine (TBL pages 9 and 12):

> (h) Notwithstanding any other law and in addition to addition to any action available to the State Board Optometry, the State Board of Optometry may issue a citation containing an order of abatement and an order to pay an administrative fine to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The administrative fine shall not exceed fifty thousand dollars ($50,000).

The concern relates to the small, independent RDOs' inability to pay such a high amount. They also believe going from the current $5,000 cap (BPC § 125.9) up to $50,000 without any structure as to what violations would constitute the high amount is not acceptable. They would like to see a more tiered structure for minor and major violations of the section. In addition, they believe the respondent's ability to pay the citation should be a factor to consider when assessing a fine.

Another concern raised is that the language does not specify whether the $50,000 cap is per violation or per investigation. One respondent could face multiple violations per investigation, but the language does not contain an "investigation cap" like BPC § 125.9. Therefore, without a clear cap, a respondent could potentially face a total fine that is much higher than the intended amount.

Staff Comments and Recommendations

Staff believes the intent of the high citation amount is to provide a strong enforcement mechanism to obtain and maintain compliance from the optical companies and the RDOs. The Board does not have authority over optical companies, and an RDO, unlike an optometrist license, is tied to the business location. If an optometrist commits egregious violations of any statutes and regulations governing the practice of optometry, the Board can revoke the individual optometrist license. That optometrist would not be able to practice anywhere in California.

However, if an RDO is revoked, the owners can continue to operate other existing RDOs and obtain additional registrations. Staff believes this is not sufficient for consumer protection.

When assessing a fine amount, pursuant to BPC § 125.9, the Executive Officer must give "due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations."

Citations are not used as punitive measures, to generate revenue or to recoup investigative costs. They are used as an enforcement mechanism to maintain compliance and deter non-compliant activities. Each fine must be evaluated based factors listed in current statute and regulation. The Board may adopt regulations similar to California Code of Regulations § 1579 (or amend the existing CCR), which provides a more detailed citation structure.

Further, respondents have the right to appeal any citation and request an informal conference and/or an administrative hearing in front of an Administrative Law Judge. The Board notifies each respondent of their rights upon serving the citation, pursuant to CCR § 1576 and § 1581, and the entire appeals process is governed by the Administrative Procedures Act.

Moreover, the citation language in the trailer bill has been heard in multiple public Board meetings. At each meeting, all stakeholders are provided materials and encouraged to attend and voice any concerns to the Board. The California Association for Dispensing Opticians (CADO), an association who presumably represent small, independent RDOs, attended these meetings and did not voice similar concerns raised by the Chair or committee staff. Conversely, when a CADO representative heard of the Committee's concerns, he voiced his support for the current language to the Executive Officer, and expressed that, while the citation amount is high, it is in the best interest of the consumer.

However, unless the current citation language changes to address the Committee's concerns, the entire section may be removed from the TBL completely. The deadline to propose amended language to the committee is Tuesday, May 17, 2016.

In order to assist the Board's discussion, staff worked with the Board's legal counsel to draft amendments that may address some of the Committee's concerns. The amendments do not address the request to tier the structure based on minor and major violations. Staff believes the factors listed in the amendments provide guidance, but still leaves flexibility for the Board to determine a more detailed structure in regulation, should it be needed.

In addition, the amendments do not address the request to add the respondent's ability to pay into a factor to consider when assessing the amount of the fine. Staff believes that assessing a fine based on the respondents' ability (or inability) to pay a fine is against public policy and the Board's consumer protection mandate. An RDO with little income and facing financial hardship may be motivated to commit the more egregious violations, and the Board Executive Officer should not assess a lower fine because of financial status. The Board Executive Officer can, however, take the ability to pay into consideration when developing reasonable payment plans for large citation amounts.

Staff believes the attached language provides more structure to the citation while still protecting California patients and consumers.

Action Requested:

After discussing the concerns raised and the attached language, please provide any edits the Board deems necessary, and vote to approve language for the Executive Officer to present to the Administration and the Committee. The Board's intent to provide a $50,000 cap per violation or per investigation should also be clarified in the language.

Attachments

1. TBL 201
2. Applicable statutes and regulations
3. Conceptual Amendment to Citation Structure

An act to amend Sections 655, 2556.1, and 2556.2 of the Business and Professions Code, relating to healing arts.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(3) The Department of Managed Health Care shall forward to the State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the

services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety ~~Code.~~ Code).

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

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

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

a health plan network, health plan, or health insurer, or (iv) permit the landlord to directly or indirectly provide furnishings and equipment in the leased space.

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

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

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

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

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

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

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

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

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

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the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:

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

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

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

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

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

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

(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered

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dispensing optician or a health plan, to the State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.

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

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

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

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

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

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

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

(h) Notwithstanding any other law and in addition to any action available to the State Board of Optometry, the State Board of Optometry may issue a citation containing an order of abatement and an order to pay an administrative fine to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The administrative fine shall not exceed fifty thousand dollars ($50,000).

SEC. 2. Section 2556.1 of the Business and Professions Code is amended to read:

2556.1. All licensed optometrists ~~in a setting with a registered dispensing optician~~ and registered dispensing opticians who are in a co-located setting shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

SEC. 3. Section 2556.2 of the Business and Professions Code is amended to read:

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

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

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

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

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

(f) Any ~~health plan, as defined in Section 655,~~ registered dispensing optician or optical company that owns a health plan that employs optometrists, subject to this ~~section~~ section, shall ~~report to the State Board of Optometry in writing that (1)~~ comply with the following milestones:

(1) By January 1, 2017, 15 percent of its locations shall no longer employ an ~~optometrist by January 1, 2017, (2)~~ optometrist.

(2) By August 1, 2017, 45 percent of its locations shall no longer employ an ~~optometrist by August 1, 2017, and (3)~~ optometrist.

(3) By January 1, 2019, 100 percent of its locations shall no longer employ an ~~optometrist by January 1, 2019. The board shall provide those reports as soon as it~~

~~receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.~~ optometrist.

(g) Any registered dispensing optician or optical company that owns a health plan that employs optometrists shall report to the board in writing the milestones in subdivision (f) within 30 days of each milestone. The board shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(h) Notwithstanding any other law and in addition to any action available to the board, the board may issue a citation containing an order of abatement and an order to pay an administrative fine to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The administrative fine shall not exceed fifty thousand dollars ($50,000).

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

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Optometrists: registered dispensing opticians: optical companies.

Existing law requires the State Board of Optometry to be responsible for the registration and regulation of nonresident contact lens sellers and dispensing opticians. Existing law authorizes a registered dispensing optician or optical company to operate, own, or have an ownership interest in a health plan, defined as a licensed health care service plan, and authorizes an optometrist, a registered dispensing optician, an optical company, or a health plan to execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist if specified conditions are contained in a written agreement. Existing law authorizes the board to inspect, upon request, an individual lease agreement and authorizes personal information, as defined, to be redacted from the lease agreement prior to submission of the lease agreement to the board. Existing law makes a violation of these provisions a crime.

This bill would, notwithstanding any other law and in addition to any action available to the board, authorize the board to issue a citation containing an order of abatement and an order to pay an administrative fine, not to exceed $50,000, for a violation of a specified section of law. The bill would also delete the authorization to redact personal information from a lease agreement, and would, therefore, expand an existing crime resulting in the imposition of a state-mandated local program.

Existing law requires any health plan, defined as a licensed health care service plan, to report to the board, among other things, that 100% of its locations no longer employ an optometrist by January 1, 2019. Existing law makes a violation of this provision a crime.

This bill would instead require a registered dispensing optician or optical company that owns a health plan to meet certain milestones, including that 100% of its locations no longer employ optometrists by January 1, 2019, and report those milestones to the board within 30 days of each milestone. The bill would also, notwithstanding any other law and in addition to any action available to the board, authorize the board to issue a citation containing an order of abatement and an order to pay an administrative fine, not to exceed $50,000, for a violation of a specified section of law. By placing new requirements on a registered dispensing optician or optical company, this bill would expand an existing crime, and would, therefore, impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

BPC § 125.9.
(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

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

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.
(Amended by Stats. 2012, Ch. 291, Sec. 1. Effective January 1, 2013.)

CCR § 1579. Citable Offenses
(a) The executive officer of the board shall assess fines for citable offenses listed in this section, provided however, in no case shall the total fines exceed $2,500 for each violation. The executive officer shall not impose any duplicate fines for the same violation.
(b) Where citations include an assessment of an administrative fine, they shall be classified according to the nature of the violation and shall indicate the classification on the face.

(c) Class "A" citations involve a person who has engaged in the practice of optometry without a current and valid license, including, but not limited to, acting in the capacity of an optometrist or performing or controlling the practice of optometry as defined in Business and Professions Code section 3041.

A class "A" citation is subject to an administrative fine in an amount not less than one thousand five hundred dollars ($1,500) and not to exceed two thousand five hundred dollars ($2,500) for each violation.

(d) Class "B" citations involve an optometrist who has either:

(1) Violated any statute or regulation which would be grounds for discipline by the Board that has caused non-physical financial harm to a person, or

(2) Has committed a violation that are grounds for issuance of a Class "C" citation and has been issued one or more prior Class "C" citations within the three (3) years immediately preceding the issuance of the citation.

A class "B" citation is subject to an administrative fine in an amount not less than five hundred dollars ($500) and not to exceed two thousand five hundred dollars ($2,500) for each violation.

(e) Class "C" citations involve an optometrist who has violated any statute or regulation which would be grounds for discipline by the Board that did not cause physical or financial harm to a person.

A class "C" citation is subject to an administrative fine in an amount not less than two hundred fifty dollars ($250) and not to exceed two thousand five hundred dollars ($2,500) for each violation.

(f) Notwithstanding the administrative fine amounts specified in subsections (c), (d), and (e), a citation may include a fine between two thousand five hundred and one dollars ($2,501) and five thousand dollars ($5,000) if one or more of the following circumstances apply:

(1) The citation involves a violation that has an immediate relationship to the health and safety of another person;

(2) The cited person has a history of two or more prior citations of the same or similar violations;

(3) The citation involves multiple violations that demonstrate a willful disregard of the law;

(4) The citation involves a violation or violations perpetrated against a senior citizen or disabled person;

(5) The citation involves fraudulent billing submitted to an insurance company, or Medi-Cal or Medi-Care programs;

(g) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedies.

CCR § 1576. Citations – Content and Service
(a) The executive officer of the board, or his/her designee, may issue a citation which may contain an administrative fine and/or order of abatement against a licensee for any violation of law which would be grounds for discipline or for violation of any regulation adopted by the board pursuant hereto.

(b) Each citation shall be in writing and shall describe, with particularity, the nature and facts of each violation specified in the citation, including a reference to the statute(s) or regulation(s) alleged to have been violated.

(c) The citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable time for abatement of the violation, or both.

(d) The citation shall inform the cited individual of the right to an informal citation conference concerning the matter and the right to an administrative hearing.

(e) The citation shall be served upon the individual personally, or by certified mail in accordance with the provisions of Section 11505(c) of the Government Code.

CCR § 1581. Contested Citations
(a) If a cited person wishes to contest the citation, assessment of the administrative fine, or order of abatement, the cited person shall, within thirty (30) days after service of the citation, file in writing a request for an administrative hearing to the executive officer regarding the acts charged in the citation, as provided for in subdivision (b)(4) of Section 125.9 of the Code.

(b) In addition to, or instead of, requesting an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, the cited person may, within thirty (30) days after service of the citation, contest the citation by submitting a written request for an informal citation conference to the executive officer or his/her designee.

(c) Upon receipt of a written request for an informal citation conference, the executive officer or his/her designee shall, within sixty (60) days, hold an informal citation conference with the cited person. The cited person may be accompanied and represented at the informal citation conference by an attorney or other authorized representative.

(d) If an informal citation conference is held, the request for an administrative hearing shall be deemed to be withdrawn and the executive officer or his/her designee may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued, at the conclusion of the informal citation conference. If affirmed or modified, the citation originally issued shall be considered withdrawn and an affirmed or modified citation, including reason for the decision, shall be issued. The affirmed or modified

citation shall be mailed to the cited person and his/her legal counsel, if any, within ten (10) days from the date of the informal citation conference.

(e) If a cited person wishes to contest an affirmed or modified citation, the person shall, within thirty (30) days of his or her notification, file in writing a request for an administrative hearing to the executive officer regarding the acts charged in the affirmed or modified citation, in accordance with subdivision (b)(4) of Section 125.9 of the Code.

This is a DRAFT document prepared by the Executive Officer and Board Legal Counsel in an attempt to address the Assembly Budget Committee concerns. This has NOT been discussed with or opined on by the Board. After seeing this language during the May 13, 2016 meeting, the Board may decide to approve all, some or none of the language below.

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

A) The gravity of the violation
B) The good faith of the cited person or entity
C) The history of previous violations of the same or similar nature.
D) Evidence that the violation was or was not willful.
E) The extent to which the cited person or entity has cooperated with the board's investigation.
F) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.
G) Any other factors as justice may require.

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

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

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

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

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

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

(e) Administrative fines collected pursuant to this section shall be deposited in the Registered Dispensing Opticians Fund. It is the legislative intent that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

CALIFORNIA STATE BOARD OF OPTOMETRY

Memo

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To: Board Members

Date: May 13, 2016

From: Madhu Chawla, OD
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 4 – Adjournment**