



ISSUE MEMORANDUM

DATE	October 22, 2021
TO	Legislation and Regulation Committee
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5: Update, Discussion, and Possible Action on Rulemaking Packages

Action Requested: This agenda item is intended to update the committee on the status of previously approved regulatory actions; currently, the Board has eight approved. Staff requests committee discussion and direction on the prioritization of regulatory packages for completion in 2022.

Background: As a result of staff shortages since late 2019, the policy analyst has been performing many duties normally done by the administrative analyst and receptionist and has not been able to devote consistent time to processing regulatory packages. However, the Board now has a new administrative analyst and reception duties have been shared with other staff members.

Each regulatory changes require multiple steps prior to becoming law. These steps take 12-18 months at a minimum; and many things can affect that timeline. To begin the process, the Board compiles a voluminous initial rulemaking package for Department of Consumer Affairs (DCA) review. The package consists of text approved by the Board in a public meeting, an Initial Statement of Reasons, the Notice of Proposed Rulemaking, and other supporting documents. In particular, the Initial Statement of Reasons—the core document justifying the changes—is lengthy and averages 20-30 pages. DCA edits and reviews these documents. Also, the package receives multiple reviews and approvals from the Business, Consumer Services, and Housing Agency. At each round of review, board staff is responsible for drafting edits, researching state economic and workforce data, and responding to inquires that enable approvers to understand the work of the Board.

Once these rounds of approval are complete, board staff submits the package to the Office of Administrative Law (OAL) that performs a brief, cursory review before publication of the package for a 45-day public comment period. Once the 45-day period ends, the Board will review comments and respond. If comments necessitate changes to the language, DCA will review these changes; and the package will be released for an additional 15-day public comment period.

At the conclusion of the 15-days, the Board must hold a public meeting to approve the final order of adoption for text. Board staff will complete the final submission package and seek approval from DCA. After that second round of approval from DCA, staff may submit the regulatory package to OAL for approval or denial. If approved, the regulatory

changes become law within 2-3 months of approval. If not approved, OAL may request changes or deny the package, which can re-start the process.

For a detailed flowchart of this process, please refer to the graphic below, which details the rulemaking process.

Discussion:

Set out below is the current list of approved regulatory actions. Please refer to the attachments for approved text and a background memo for each regulatory change.

Staff-identified Regulatory Priorities

1. Optometry Continuing Education Regulations (Amend §1536)

Approved by the Board at the August 14, 2020 public meeting, and minor updates to the text were made at the August 31, 2021 public meeting.

Subject: This proposal would make a series of changes to §1536, including allowing all 50 continuing education units to be taken online provided the courses meet certain conditions, an increase in self-study hours to 25, a better definition of self-study hours and additional requirements for CE providers. Changes were also made to forms incorporated by reference into the section.

Comment: The initial rulemaking package is complete and sent to DCA Legal for review.

2. Implementation of AB 896 (Adopt §§1583 – 1586)

Approved by the Board at the May 21, 2021 public meeting.

Subject: This proposal will implement AB 896 (Low, Chapter 121, Statutes of 2020), which would allow nonprofit charitable organizations to provide mobile optometry services to patients and receive reimbursement by Medi-Cal. It requires the Board to develop a registry for mobile optometry offices and a consumer notice to be provided to patients. The statute requires regulations to be implemented by January 1, 2022.

Comments: Assembly Bill 1534 (Assembly Committee on Business and Professions) – approved by the Governor on October 7, 2021 and effective January 1, 2022, extends the regulatory implementation date to January 1, 2022 and adds authority for the Board to require registration of individual mobile optometric units by each non-profit.

Staff is currently revising the previously approved text to incorporate these changes as authorized by statute and will present to the LRC early next year.

Legislative or Statutory Implementation Required

1. Implementation of AB 443 (Amend §1524; Adopt §1527)

Approved by the Board at the October 25, 2019 public meeting. The rulemaking package is complete and the 45-day public notice period concluded on April 13, 2021.

Two non-substantive comments were received. This proposal is pending further action by the Board (see below in comments).

Subject: This proposal would implement AB 443, which allows a TPA-licensed optometrist to administer immunizations provided the applicant meets certain conditions and training.

Comments: Assembly Bill 691 (Chau), signed into law on October 8, 2021 and effective January 1, 2022, codifies most provisions of this rulemaking package into law. Staff is consulting with Legal Counsel to determine if the package is still required.

2. Implementation of AB 458 (Adopt §1507.5 and Amend §1524)

Approved by the Board at the May 21, 2021 public meeting.

Subject: This proposal will implement AB 458 (Nazarian, Chapter 425, Statutes of 2019), which allows an optometrist to engage in the practice of optometry at a home residence, provided they meet specific requirements and submit an application to the Board and pay specified fees. The optometrist would also be required to provide a consumer notice to a patient.

Comment: The rulemaking package is currently under staff preparation for submission to DCA and Agency for pre-file approval with OAL.

Other Board-approved Regulatory Actions

1. Optometry Disciplinary Guidelines (Amend §1575)

The full Board approved the regulatory text and Guidelines incorporated by reference at the October 25, 2019, public meeting.

Subject: 2019 Update of existing Optometry Board Disciplinary Guidelines. The changes include updates to enforcement processes; terminology used, and implementation of changes made by the Substance Abuse Coordination Committee in fall 2019.

Comment: The rulemaking package has not been started.

2.. Optician Program Omnibus Regulatory Changes (Amend §§ 1399.200 – 1399.285)

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

Subject: This proposal makes minor changes to the existing optician program regulations, limited to placing current initial registration and renewal forms (used with the BreZE system), align current fees with the statute and make other non-substantive changes. These changes would not affect any existing operations or modify any current processes.

Comment: Assembly Bill 1534 (Assembly Committee on Business and Professions) approved by the Governor on October 7, 2021 and effective January 1, 2022, will necessitate changes to the optician program regulations.

The rulemaking package has not been started. Staff will be meeting with Legal Counsel in the coming month to review necessary changes to text that will then need approval from the Board during a public meeting.

3. Dispensing Optician Disciplinary Guidelines (Amend §1399.273)

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

Subject: The Optician Guidelines are used to impose discipline including conditions of probation for licensees that address the violations charged and are modeled after the Optometry Disciplinary Guidelines but are modified to meet the needs of the Optician Program.

Comment: Assembly Bill 1534 (Assembly Committee on Business and Professions) – approved by the Governor on October 7, 2021 and effective January 1, 2022, will likely necessitate changes to the proposed optician disciplinary guidelines. Staff will be meeting with Legal Counsel in the coming month to review possible changes.

4. Requirements for Glaucoma Certification (Amend §1571)

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

Subject: CCR Section 1571 sets out the requirements for Glaucoma certification. Due to COVID-19, optometry schools have been offering the Grand Rounds certification program, authorized by subsection (B), online as a live course. This proposal would remove the in-person patient evaluation requirement from CCR Section 1571 (B).

Comment: The rulemaking package has not been started.

Attachment A – List of Documents:

For reference, Attachment A contains originally the approved text and background information of each regulation, divided up by tabs.

Tabs 1-3 - Optometry Continuing Education Regulations

Tabs 4-7 – Implimentaiton of AB 896

Tabs 8-10 – Implimentaiton of AB 443

Tabs 11-12 – Implimentaiton of AB 458

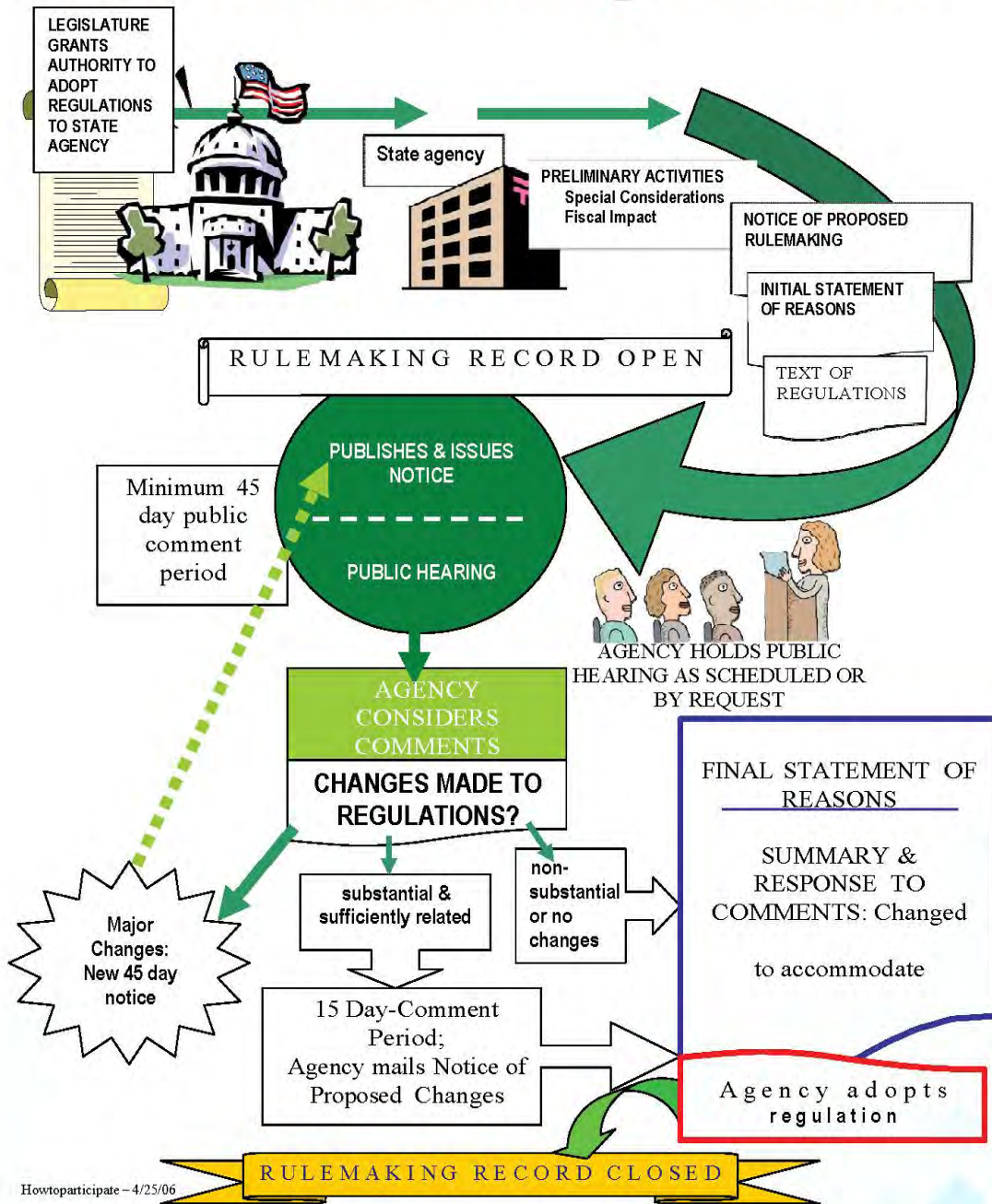
Tabs 13-15 – Optometry Disciplinary Guidelines

Tab 16-17 – Optican Omnibus Changes

Tab 18-21 – Optician Disciplinary Guidelines

Tab 22 – Requirements for Glaucoma Certification

The Rulemaking Process





ISSUE MEMORANDUM

DATE	August 27, 2021
TO	Members, California State Board of Optometry
FROM	Shara Murphy, Executive Officer Prepared by Natalia Leeper, Licensing Analyst
SUBJECT	Agenda Item #8 - Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1536 (Continuing Education Regulations)

Summary/History:

In 2019, the Board approved a series of changes to CCR Section 1536 (“Continuing Optometric Education; Purpose and Requirements”). In response to the COVID-19 coronavirus epidemic, staff proposed further changes including the reinstatement of online courses as live instruction, an increase in self-study hours to 25, and additional requirements for CE providers. At the May 15, 2020 Board meeting, the Board approved these changes and made others, but sent the regulation to the Practice and Education Committee for further discussion. The Practice and Education Committee then recommended a series of changes that were subsequently approved at the August 21, 2020 Board meeting.

The regulatory rulemaking package to implement these changes is complete and is pending review by Legal Counsel before a public comment period, however, the Practice and Education committee is recommending additional changes, detailed below.

Action Requested:

Approve text of Title 16, California Code of Regulations Section 1536, and Form CE-01 incorporated by reference into the regulation. If approved, staff will continue the regulatory rulemaking process to put into law, which will take 12-14 months to complete.

Suggested motion:

“I move to approve proposed changes to Title 16, Section 1536 and the Form CE-01 incorporated by reference into the section as presented and discussed here today; and delegate authority to the Executive Officer to alter and modify the text and Form CE-01 as needed upon recommendation by Legal Counsel prior to submission to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review; and if no adverse comments are received authorize the Executive Officer to set the matter for hearing.”

Proposed Changes to Section 1536 (Attachment A)

The PEC made the following changes to the text, which are underlined for new text and ~~strikethrough~~ for deleted text and highlighted in **yellow**.

Subsection (f)(3): Staff added additional categories for continuing education courses. Dr. Wang and Dr. Chawla of the Practice and Education Committee expressed an interest to have additional specific categories for the course approvals. Staff requests additional discussion on these categories if needed.

Proposed Changes to Form CE-01, Rev. 8/17 (Attachment B):

This form is incorporated by reference into Section 1536. New text is underlined and changes made by staff are highlighted in yellow.

- Added a section that listed the course categories accepted by the Board in a checklist format.
- Added a section that listed the live course options for ensuring participant interaction.
- Removed the question listed on the second page that requested the applicant list the category they were applying for.
- Changed the language of the Course Instructor Information to attachments instead of a sheet of paper for additional instructors.

California State Board of Optometry

Amend Section 1536 of Article 6.5 of Division 15 of Title 16 of the California Code of Regulations as follows:

New text is underlined, existing text which is removed is ~~strikethrough~~.

§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~~ 25 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. Any course which is offered pursuant to this section must include a test component to determine the licensee's understanding and knowledge of the course. For the purposes of this section, "self-study" means a form of learning that does not offer participatory interaction between the licensee and the instructor during the instructional period. This may be accomplished via the following methods:

(A) Audio or video pre-recorded teleconferences, webinars, seminars, podcasts, broadcasts or lectures via the internet.

(B) CD-ROMs played on a computer.

(C) Digital video discs.

(D) Books or materials as part of an independent or home study program.

(E) Programs or applications on a data-enabled device, such as a computer, tablet, or cellular phone specifically designed for this purpose.

(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~~ substantiated 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~~ twelve credits per renewal cycle.

(d)(1) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(2) All remaining hours shall be obtained through live and interactive course study. For purposes of this section, live and interactive course study is defined as:

(A) In-person lectures, in-person workshops, in-person demonstrations, or in-person classroom studies which allow participatory interaction between the licensee and the instructor during the instructional period; or

(B) Lectures, webinars, workshops or audio or video conferences delivered via the internet or computer networks which allow participatory interaction between the licensee and the instructor presenting the content during the instructional period. Any course which is offered pursuant to section (d)(2)(B) which is not live shall not qualify under this section.

(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 Western Association of Schools and Colleges 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~~ activities 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~~ 5/20), hereby incorporated by reference) course schedule, topical outline of subject matter, credit hours desired for approval, educational category, learning objectives, 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.

(1) Course approvals shall be valid for two years from the date as approved by the Board. Each individual course shall be assigned a course approval number by the Board. This approval number is required to be listed on the completion certificate.

(2) The approved provider shall not use the Board's letterhead, seal, or logo on any course certificates, advertising, or solicitation.

(3) Continuing education courses under the following categories may be accepted as a continuing education course to be approved by the Board.

(A) Patient Care Management

(B) Systemic Related Disease

(C) Any categories as required by Section 3059(e) of the Business and Professions Code.

(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, dates and places of the course, course completion certificates, and attendance as the Board requires, for a period of at least ~~three~~ four 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.

(9) Course approval number as assigned by the Board, if applicable.

(10) Whether the course was pre-recorded or live.

Use of a A certificate of course completion provided by the Board is recommended required 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. A licensee shall maintain all course completion certificates or applicable records on file which are used for renewal purposes for a period of four (4) years from the license renewal date and shall provide these records to the Board upon request or in the event of an audit.

(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.

(m) A licensee may not repeat for credit the same course more than once within the two-year renewal timeframe.

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



CONTINUING EDUCATION COURSE APPROVAL APPLICATION

\$50 Mandatory Fee

Pursuant to California Code of Regulations (CCR) §[1536](#), the Board will approve continuing education (CE) courses after receiving the applicable fee, the requested information below and it has been determined that the course meets criteria specified in CCR §1536(g). Course approvals shall be valid for two years from the date approved by the Board.

In addition to the information requested below, please attach a copy of the course schedule, a detailed course outline or presentation materials (e.g., PowerPoint presentation), and course learning objectives. Applications must be submitted 45 days before the course presentation date. **Please type or print clearly.**

Course Title	Course Date	Course Hours
_____	_____	_____
Course Category (Select One) <input type="checkbox"/> <u>Treatment and Management of Ocular Disease</u> <input type="checkbox"/> <u>Glaucoma</u> <input type="checkbox"/> <u>Child abuse Detection</u> <input type="checkbox"/> <u>Patient Care Management</u>	<input type="checkbox"/> <u>Clinical Optometry</u> <input type="checkbox"/> <u>Systemic Related Disease</u> <input type="checkbox"/> <u>Ethics in the Practice of Optometry</u> <input type="checkbox"/> <u>Elder Abuse Detection</u>	

Course Provider Contact Information

Provider Name		
_____	_____	_____
First	Last	Middle
Provider Mailing Address		
Street _____	City _____	State ___ Zip _____ Phone _____
Provider Email Address _____		
Will the proposed course be open to all California licensed optometrists?		<input type="checkbox"/> YES <input type="checkbox"/> NO
Do you agree to maintain and furnish to the Board and/or attending licensee such records of course content, dates and places of the course, course completion certificates and attendance as the Board requires, for a period of at least three <u>four</u> years from the date of course presentation?		<input type="checkbox"/> YES <input type="checkbox"/> NO
<u>Pursuant to CCR §1536 (c)(1), will the course be self-study?</u>		<input type="checkbox"/> YES <input type="checkbox"/> NO
<u>If self-study, will a test component be required to determine the licensee's understanding and knowledge of the course?</u>		<input type="checkbox"/> YES <input type="checkbox"/> NO



Is this a live course?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
<u>If live, please check which of these apply to your course.</u>	<input type="checkbox"/> Participation Auditing	<input type="checkbox"/> Video on Required	
	<input type="checkbox"/> In-Content Quizzes	<input type="checkbox"/> Time Logs	
	<input type="checkbox"/> Polls	<input type="checkbox"/> Post Course Test	
<u>How many credit hours are desired for approval? Pursuant to CCR §1536(d), a credit hour is defined as one classroom hour, not less than 50 minutes.</u>			_____ hours

Course Instructor Information

Please provide the information below and attach the curriculum vitae for each instructor or lecturer involved in the course. If there are more instructors in the course, please provide the requested information on a separate attachment.

Instructor Name		
_____	_____	_____
First	Last	Middle
License Number _____	License Type _____	
Phone Number () _____	Email Address _____	

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and any accompanying attachments submitted is true and correct.

Signature of Course Provider

Date



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5a - Adopt Title 16, Sections 1583, 1584, 1585, 1586 and 1587 of the California Code of Regulations (CCR); Amend CCR, Title 16, Sections 1505 and 1524 (Mobile Optometric Offices, Implementation of Assembly Bill 896 – Low, Chapter 121, Statutes of 2020

Summary:

This regulatory proposal would implement Assembly Bill 896 (Low, Chapter 121, Statutes of 2020), which was signed into law on September 24, 2020, and created a new [Business and Professions Code \(BPC\) Section 3070.2](#). The law, among other things, allows for nonprofits and charitable organizations to provide optometric services to patients regardless of the patient's ability to pay through mobile optometric offices under a new registration program within the Board. The law requires regulatory implementation by January 1, 2022.

If approval is desired, suggested motion:

“I move to approve the proposed text to adopt Title 16, Sections 1583, 1584, 1585, and 1586 and to amend Sections 1505 and 1524 of the California Code of Regulations as presented and discussed here today; to adopt proposed forms ONOP1 and QTR1 as incorporated by reference as presented and discussed here today, and direct staff to submit the text to the Office of Administrative Law for posting for a 45-day comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, making any non-substantive changes to the package and set the matter for hearing.”

Discussion:

At the February 25, 2021 meeting, the CPC noted two concerns.

The ambiguity of certain types of charity care providers and their legal status under BPC 3070.2.

BPC 3070.2(b) lists certain organizations who may be exempted, but a concern was raised that certain providers may not be exempted by the law and thus required to register with the Board, even though the apparent intention of the bill is not to require such registration by such groups. Additionally, concern was noted that optometry or optician licensees may be operating outside of the optometry practice act by providing such services since the services are not regulated by the Board under BPC 3070.2 or other provisions and not falling in the temporary practice of licensure provision.

For additional background, several providers were mentioned who may not be exempted as listed in subsection (b). Staff contacted several of the providers and reviewed their websites to determine their current operating models as basic information for the CPC. The information is informational only and not a determination of actual legal status.

- [Project Homeless Connect](#)

According to staff with Project Homeless Connect, they are a nonprofit with a fiscal sponsor, Community Initiatives, which is a 501(c)(3). They provide services with the help of provider partners, many of whom are medical professionals, who volunteer their time.

- [Veterans Stand Down](#)

Veterans stand down are typically one to three-day events organized by Community-Based Veterans Services Organizations, Non-Profit Organizations, and County Veterans Service Offices in cooperation with a variety of state, federal, and private agencies. Staff was unable to determine specifics on these events.

- [Healing California](#)

According to staff with Healing California, 40 optometrists and 21 opticians are registered in their volunteer system and they operate as a 501(c)(3).

- [California Vision Foundation](#)

It appears the California Vision Foundation operates as a 501(c)(3).

Due to statutory limitations and the requirement of implementation by January 1, 2021, staff requests Board direction on further areas of research within this issue.

The definition of a mobile optometric office.

Current law under BPC Section 3070.2 explicitly says “trailer, van or other means of transportation”. The CPC has noted the future of optometric care probably does not involve a large van with optometric equipment; it will probably be a portable unit that can be carried in a vehicle and taken out and set up in space. Legal Counsel has determined the definition of “other means of transportation” could not be refined in regulation to mean a “unit” or something similar, nor could existing wording be used to register individual sets of optometry equipment.

Proposed Text - Amend Title 16, Sections 1505 and 1524; Adopt Title 16, Sections 1583, 1584, 1585, 1586 and 1587 of the California Code of Regulations (CCR); (Attachment A):

Amend Section 1505 – Notification of Intention to Engage in Practice

Adds a requirement that an optometrist will comply with notice requirements in BPC 3070.2 via a statement of licensure.

Amend Section 1524 - Fees

Adopts a fee of \$2,632.00 for owner and operator application, \$2,632.00 for a biennial renewal and a delinquent fee of \$150.00. The fees may be subject to modifications as the rulemaking process continues.

Adopt Section 1583 – Registration Requirements.

As required by BPC Section 3070.2, this proposed section sets out registration requirements, the initial application “Form ONOP1, 04-21[New]” incorporated by reference and requires a fingerprint background check for the application’s responsible officers. Additionally, this section sets out requirements for reporting changes and grounds for abandonment of the application. The applicant must meet all requirements as set out by statute and provide all information as requested by the ONOP1 application. Upon successful completion of the application, the owner and operator will be issued a “certificate to operate” mobile optometric offices.

Adopt Section 1584 – Certificate to Operate a Mobile Optometric Office

As required by BPC Section 3070.2, this proposed section sets out various operating requirements for the certificate:

- A two-year renewal period for the certificate and requirements to renew, including various certifications of compliance;
- What happens if the certificate expires;
- Requirements for response to any inquiry by the Board within 14 days;
- Disciplinary actions may be taken against the owner and operator or the optometrist directing the medical operations.

Adopt Section 1585 – Fingerprints and Background Checks Required

This proposed section sets out requirements for responsible individuals, as listed on the ONOP1 form, to undergo a fingerprint background check as authorized by BPC Section 144. It also states a registration will not be issued until the applicants as listed on the form have cleared the background check. This process is the same as new optometry or optician applicants must complete for licensure.

Adopt Section 1586 – Reporting Requirements

As required by BPC Section 3070.2, this proposed section requires a quarterly report to be filed, via “FORM QTR1 (New 04-2021)” incorporated by reference into the section. It also sets out the quarterly deadline for submission of the form.

Adopt Section 1587 - Patient Notification and Records.

As required by BPC Section 3070.2, this proposed section sets out requirements for a patient notice, which must be provided to each patient or patient’s caregiver or guardian. It is largely based on the existing consumer notice in CCR Section 1522. The notice contains information on the optometrist who provided services, the owner and operator name and contact information, and information on how to file a complaint with the Board. Additionally, the owner and operator must retain a copy of the patient record and agree to maintain copies of all records.

Application for Registration for Ownership and Operation of Mobile Optometric Offices (Form ONOP1, 04-21[New]) – incorporated by reference into CCR Section 1583 (Attachment B)

This proposed form ONOP1 is the first step for a charitable organization to be registered with the Board. To be issued a certificate to operate mobile optometric offices, an organization must complete the form and provide the requested information. The form is broken down into various sections:

- Notice and Requirements – this section sets out various notices and requirements for the applicant.
- Section A – General Information – basic information is required, such as the organization name and address, contact person, and managing optometrist's information.
- Section B – Organization Information – requests the organization information, such as 501c3 type, TIN and whether the organization plans to not accept payment for services other than those provided to Medi-Cal beneficiaries.
- Section C – Responsible Organization Officers or Officials – requests the names and personal identifying information, including SSN/ITIN, of individuals who are responsible for the operations of the organization.
- Section D – Operating Standards and Compliant History – requires detailed information about how the organization operates. It requires a written description of services rendered, names of all optometrists who will be providing patient care, dates of operation, cities and counties served and how follow up care will be provided. It also requires a catalog of complaints received within the last three years along with detailed information on the complaint history of each, and how the complaint was resolved.
- Section E – Certification – requires the authorized representative to certify under penalty of perjury that all information is true and accurate. The form also includes a notice of personal information collection and access.

Owner and Operator Quarterly Report Form” (FORM QTR1 (New 04-2021)) (Attachment C)

This proposed form QTR1 will be used by the owner and operator to submit quarterly reports to the Board, as required by BPC Section 3070.2. This form is required to be filed on the third business day quarterly (four times a year) with the following information:

- Section A – Background Information – requests basic information such as name, contact person and managing optometrist's information.
- Section B – Additional Information Requested - As required by statute, The owner and operator are required to submit specific information about their mobile optometric office operations in that quarter:
 - A list of all visits made and information about those visits.

- A summary of any complaints received and the disposition of those complaints.
- An updated list of licensed optometrists who provided care during those visits.
- An updated and current list of optometrists available for follow-up care or who accept Medi-Cal payments.
- Section C – Certification - requires the authorized representative to certify under penalty of perjury that all information is true and accurate. The form also includes a notice of personal information collection and access.

PROPOSED TEXT

Amend Sections 1505 and 1524 and Adopt Sections 1583 to 1586 in Division 15 of Title 16 of the California Code of Regulations (CCR) to read as follows:

Article 2. Location of Practice

§ 1505. Notification of Intention to Engage in Practice.

(a) The notification of intention to engage in the practice of optometry which is required by Section 3070 of the code shall be addressed to the Board at its office in Sacramento.

(b) Such notification of intention to engage in the practice of optometry includes notifying the Board of intention to accept employment to practice optometry, the name or names of the optometrist or optometrists, or those who by law may employ an optometrist and the address or addresses of the office or offices at which the licensee will be employed. If the licensee will engage in the practice of optometry only at a mobile optometric office, then the licensee shall comply with the notice requirements in subdivision (m) of section 3070.2 of the code.

(c) Such notification of intention to engage in the practice of optometry includes notifying the Board prior to the establishment of any office or offices to practice optometry of the intention to establish such office or offices and the location or locations to be occupied.

Note: Authority cited: Section 3025, Business and Professions Code. Reference: Sections 3070, 3070.2 and 3077, Business and Professions Code.

Article 5. Application for Licensure Examination

§ 1524. Fees.

The following fees are established:

- | | |
|--|-------|
| (a) Application fee for certificate of registration as an optometrist by examination | \$275 |
| (b) Biennial renewal of a certificate of registration as an optometrist | \$425 |
| (c) Delinquency fee for failing to renew a certificate of registration timely | \$50 |

(d) Application fee for a branch office license	\$75
(e) Annual renewal of a branch office license	\$75
(f) Penalty fee for failure to renew a branch office license timely	\$25
(g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration	\$25
(h) Application fee for a fictitious name permit	\$50
(i) Annual renewal of a fictitious name permit	\$50
(1) Delinquency fee for failure to renew a fictitious name permit timely	\$25
(j) Application fee for a statement of licensure	\$40
(1) Biennial renewal of a statement of licensure	\$40
(2) Penalty fee for failure to renew a statement of licensure timely	\$20
(k) Application fee for a certificate to use therapeutic pharmaceutical agents	\$25
(l) Application fee for approval of a continuing education course	\$50
(m) Application fee for a certificate to treat primary open angle glaucoma	\$35

- (n) Application fee for a certificate to perform lacrimal irrigation and dilation \$25
- (o) Application fee for a retired license \$25
- (p) Application fee for a retired license with a volunteer designation \$50
- (q) Biennial renewal for a retired license with a volunteer designation \$50
- (r) Application fee for a certificate to operate as an owner and operator of a mobile optometric office \$2,632
- (s) Biennial renewal fee for a certificate to operate as an owner and operator of a mobile optometric office \$2,632
- (t) Delinquency fee for failure to renew a certificate to operate as an owner and operator of a mobile optometric office \$ 150

Note: Authority cited: Sections 3025, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 163.5, 3055, 3070.2, 3075, 3078, 3151, 3151.1, 3152 and 3152.5, Business and Professions Code.

Adopt Article 13 and Sections 1583, 1584, 1585 and 1586 of Division 15 of Title 16 of the California Code of Regulations (CCR) to read as follows:

Article 13. Mobile Optometric Offices

§1583 Registration Requirements for Ownership and Operation of Mobile Optometric Offices; Notice of Changes; Abandonment; Grounds for Denial

(a) An owner and operator of a mobile optometric office who wishes to offer optometric services at a mobile optometric office in this State shall register with the Board prior to offering services to the public. An owner and operator shall register with the Board and receive a certificate to operate as an owner and operator of a mobile optometric office by submitting to the Board a completed form "Application for Registration for Ownership and Operation of Mobile Optometric Offices" (Form ONOP1, 04-21[New]), which is hereby incorporated by reference, and meeting the application requirements of this section.

(b) Form ONOP1 shall be accompanied by the following:

(1) The non-refundable fee fixed by the Board pursuant to Section 1524; and,

(2) Full and complete fingerprints of the applicant's responsible officers or officials to the Board for use in conducting criminal background checks through the California Department of Justice and the Federal Bureau of Investigation, in the manner specified, and pursuant to the conditions and requirements set forth, in Section 1584. For the purposes of this section, "responsible officers or officials" means the individuals listed by the applicant on Form ONOP1 as the principal officers or officials responsible for the operations of the applicant's organization.

(c) The owner and operator of a mobile optometric office shall report to the Board in writing within fourteen (14) days any change in information provided to the Board on Form ONOP1 including, change of primary business address, responsible officers or officials, records location, and the name and license number of the optometrist responsible for directing medical operations.

(d) An applicant who fails to complete application requirements to register with the Board within one year after being notified by the Board of deficiencies in its application, shall be deemed to have abandoned the application and shall be required to file a new application and meet all registration requirements in effect at the time of reapplication.

(e) An application may be denied if an applicant fails to comply with any of the requirements of this section or Section 3070.2 of the code, or upon the grounds specified in Section 480 of the code.

Note: Authority cited: Sections 3025, 3041, 3070.2, Business and Professions Code. Reference: Sections 27, 30, 31, 142, 144, 163.5, 480, 494.5, 2544, 3041, 3041.3, 3055, 3070, 3070.1, 3070.2, Business and Professions Code.

§1584 Certificate to Operate a Mobile Optometric Office; Renewal Requirements; Grounds for Discipline; Reinstatement of Expired Certificate

(a) A certificate to operate a mobile optometric office ("certificate to operate") issued by the Board under this Article shall expire two years after the date of issuance unless renewed by the Board prior to its expiration by meeting the requirements in this section.

(b) To renew a certificate to operate, an owner and operator of a mobile optometric office shall pay the renewal fee set forth in section 1524 and certify in writing to the Board that it maintains compliance with the following requirements:

(1) Optometric services are provided to patients regardless of the patient's ability to pay;

(2) The owner and operator does not accept payment for services other than those provided to Medi-Cal beneficiaries;

(3) The medical operations of the mobile optometric office are directed by a licensed optometrist and in every phase is under the exclusive control of the licensed optometrist, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, the fees charged for optometric products and services, the examination procedures, the treatment provided to patients, and the followup care;

(4) The owner and operator of the mobile optometric office provides each patient and, if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the board in section 1587 and maintains it in the patient's medical record;

(5) Upon request by the patient's caregiver or guardian, the mobile optometric office provides a copy of the prescription made for the patient;

(6) Any person who is employed by the owner and operator of the mobile optometric office to drive or transport the vehicle possesses a valid driver's license;

(7) The owner and operator of a mobile optometric office maintains records in the manner prescribed by Section 3070.2 of the code and makes them available to the board upon request for inspection; and,

(8) A licensed optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 of the code performs all examinations at the mobile optometric office.

(c) Failure to comply with the requirements of this section renders any application for renewal of a certificate to operate incomplete and that certificate will not be renewed until the owner and operator of a mobile optometric office demonstrates compliance with all requirements.

(d) In the event an owner and operator of a mobile optometric office does not renew the certificate to operate as provided in this section, the certificate to operate expires and the owner and operator shall be considered unlicensed. An expired certificate to operate may be reinstated and renewed at any time within three years after its expiration if the owner and operator of the mobile optometric office meets the renewal requirements of this section and pays all accrued and unpaid renewal and delinquency fees in section 1524.

(e) In order to remain registered with the Board, the owner and operator of a mobile optometric office shall respond to any inquiries by the Board, submit any documents requested by the Board, provide any information requested by the Board and cooperate in any investigation conducted by the Board regarding compliance with the Board's requirements, including section 3070.2 of the code. A response to any Board inquiry or request shall be provided within fourteen (14) days of the Board's written request.

(f) Failure to comply with any of the requirements of this Article or Section 3070.2 of the code, or furnishing false, inaccurate, incomplete or misleading information to the Board is considered unprofessional conduct and grounds for disciplinary action against the certificate to operate by the Board. The Board may also take disciplinary action against the owner and operator's certificate to operate on the grounds set forth in Section 3110 of the code for unprofessional conduct committed by the optometrist directing the medical operations of the owner and operator's mobile optometric office(s). Disciplinary actions shall be conducted in accordance with Section 3092 of the code. For purposes of this section, a "disciplinary action" includes revocation, suspension, probation or public reproof.

Note: Authority cited: Sections 3025, 3041, 3070.2, 3092, 3110, Business and Professions Code. Reference: Sections 142, 144, 163.5, 480, 495, 2544, 3041, 3041.3, 3055, 3070, 3070.1, 3070.2, 3092, 3110, Business and Professions Code.

§ 1585 Fingerprints and Background Checks for Applicants to Register as an Owner and Operator of Mobile Optometric Office.

(a) Subject to subsection (b) of this section, all applicants for registration with the Board as an owner and operator of a mobile optometric office must submit fingerprints through the California Department of Justice's ("Department of Justice") electronic fingerprint submission Live Scan Service ("Live Scan").

(b) Applicants must complete the Department of Justice Form "Request for Live Scan Service," and submit fingerprinting, through Live Scan, for its responsible officers or officials. For the purposes of this section, "responsible officers or officials" means the

individuals listed by the applicant on Form ONOP1 in Section 1583 as the principal officers or officials responsible for the operations of the applicant's organization.

(c) The applicant's responsible officers or officials must take the form to a Live Scan location to have their fingerprints taken by the operator. The applicant, through its officers, will be required to pay all fingerprint processing fees payable to the Live Scan operator, including the Live Scan operator's "rolling fee," if any, and fees charged by the California Department of Justice, and the Federal Bureau of Investigation. For current information about fingerprint background checks, and Live Scan locations, individuals may visit the Attorney General's website at: <https://oag.ca.gov/fingerprints>.

(d) Individuals residing outside of California that cannot be fingerprinted electronically in California must have their fingerprints taken at a law enforcement agency in their state of residence, using fingerprint cards. These individuals should complete two fingerprint cards. The applicant should retain the second card, to be used if the first card is determined to be unreadable and rejected by the Department of Justice. Applicants must mail one fingerprint card, together with fees in the amount of \$49 (either personal check drawn on a U.S. bank, money order or certified check), payable to the "California Department of Justice," to:

California State Board of Optometry
2450 Del Paso Road, Suite 105
Sacramento, CA 95834

The applicant's responsible officers or officials will be notified if the first card is rejected. If rejected, the applicant's responsible officers or officials must follow the instructions on the rejection letter, and submit the second fingerprint card.

(e) No license will be issued until the Board receives a response from the Department of Justice for all persons required to submit fingerprint information under section 144 of the code and this Section, and the Board determines that the applicant with whom the persons fingerprinted are associated merits approval.

Note: Authority cited: Sections 3025, 3070.2, Business and Professions Code.
Reference: Sections 144, 3070.2, Business and Professions Code; Section 11105, Penal Code.

§1586 Mobile Optometric Office Quarterly Reporting Requirements

An owner or operator of each mobile optometric office shall file a quarterly report with the Board using the "Owner and Operator Quarterly Report Form" (Form QTR1 (New 04-2021)), which is hereby incorporated by reference. After the owner and operator has

been registered with the Board, the FORM QTR1 shall be submitted to the Board by the third business day of the following months and covering each quarter of operations as a registrant: March, June, September and December.

Note: Authority cited: Sections 3025, 3041, 3070.2, Business and Professions Code.
Reference: Sections 3070.2, Business and Professions Code.

§1587 Patient Notification and Records

(a) Each owner and operator of a mobile optometric office shall meet the requirements in sections 1566 and 1566.1 for posting a consumer notice in a conspicuous place in the mobile optometric office.

(b) In addition to the posted notice required by subdivision (a), each owner and operator of a mobile optometric office shall provide each patient, or the patient's caregiver or guardian, a consumer notice in at least 12-point font containing all of the following information:

(1) The name, license number, telephone number, primary business address, and business email address (if any), of the optometrist directing medical operations at the mobile optometric office;

(2) The owner and operator of the mobile optometric office's name, primary business address, telephone number, website or email address (if any), and Board-issued certificate to operate number;

(3) Information on followup care available for the patient, including a list of available Medi-Cal or volunteer optometrists; and,

(4) The following information:

NOTICE OF REGULATION AND WHO TO CONTACT REGARDING COMPLAINTS

The operation of mobile optometric offices and optometrists providing services at a mobile optometric office are regulated by the California State Board of Optometry ("Board"). The Board receives and investigates all consumer complaints involving the practice of optometry and opticianry. Complaints or grievances involving the operation of this mobile optometric office or a California-licensed optometrist or optician should be directed in writing to:

Board of Optometry

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

PRESCRIPTIONS

Optometrists are required to provide patients upon request with a copy of their ophthalmic lens prescriptions as follows:

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

COPIES OF MEDICAL RECORDS

Patients may obtain a copy of their medical records by contacting the owner and operator of this mobile optometric office as listed on this notice.

(c) Each owner and operator of a mobile optometric office shall retain in the patient's file, along with the notice required by this section, an acknowledgement of receipt of the consumer notice that sets forth all of the following: (1) the patient has received the consumer notice required by this section; (2) the printed name of the patient or the patient's caregiver or guardian, (3) the signature of the patient or the patient's caregiver or guardian; and (4) the date of receipt.

(d) An owner and operator of a mobile optometric office shall maintain at the primary business office in California a copy of all records required by Section 3070.2 of the code and this Article. The records may be maintained in either paper or electronic form.

Note: Authority cited: Sections 3025, 3041, 3070.2, Business and Professions Code. Reference: Sections 3041, 3041.3, 3070, 3070.1, 3070.2, Business and Professions Code.



Owner and Operator Quarterly Report Form

Business and Professions Code (BPC) section 3070.2; Title 16, California Code of Regulations (CCR) sections 1583 – 1587

After the owner and operator of a mobile optometric office has been registered with the Board, this report shall be submitted to the Board by the third business day of the following months covering each quarter of operation as a registrant: March, June, September, and December.

A. Background Information				
Name of Owner and Operator as Registered with the Board				Certificate Number
Owner and Operator Address of Record				
City		State	Zip	Telephone
Website (if any)				
Name of Authorized Contact Person			Contact Person's Title	
Contact Person's Direct Telephone Number			Contact Person's Email (Optional)	
Full Legal Name of Optometrist Directing Medical Operations (Managing Optometrist)				Managing Optometrist's License Number
Managing Optometrist's Address of Record		City		State Zip
Managing Optometrist's Email Address (Optional)			Managing Optometrist's Direct Telephone Number	
B. The owner and operator of a mobile optometric office shall provide the following information to the Board with this report as an attachment:				
<ol style="list-style-type: none"> 1. A list of all visits made by the mobile optometric office, including dates of operation, address, care provided, and names and license numbers of optometrists who provided care; 2. A summary of all complaints received by the mobile optometric office, the disposition of those complaints, and referral information. 3. An updated and current list of licensed optometrists who have provided care within the mobile optometric office since the last reporting period. 				

4. An updated and current list of licensed optometrists who are available for follow-up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.

C. Certification

I hereby certify under penalty of perjury under the laws of the State of California that I am authorized to sign this report on behalf of the owner and operator and that I have personally reviewed the report, and that the information provided and any accompanying documents are true and accurate.

Authorized Representative's Signature

Authorized Representative's Printed Name and Title

Date

NOTICE OF COLLECTION OF PERSONAL INFORMATION

The information requested on this form is mandatory pursuant to Business and Professions Code sections 27, 3070.2 and Title 16 CCR section 1585. The information provided will be used to determine compliance with BPC section 3070.2 and the owner and operator's continued qualification for registration. The information may be provided to other governmental agencies, or in response to a court order, subpoena, or public records request. You have a right of access to records containing personal information unless the records are exempted from disclosure by the Information Practices Act, including Civil Code section 1798.40. Individuals may obtain information regarding the location of their records by contacting the Executive Officer of the California State Board of Optometry at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834, telephone number 916-575-7170.



Application for Registration for Ownership and Operation of Mobile Optometric Offices

Business and Professions Code (BPC) §3070.2; Title 16, California Code of Regulations (CCR) §§1583 – 1587 (Board’s regulations)

Unless exempt, all owners and operators of a mobile optometric office (“office”) where the practice of optometry is performed must be registered with the Board using this form and meet all requirements in BPC section 3070.2 and Sections 1583-1587 of the Board’s regulations to operate legally in California. Exemptions include an office affiliated with an approved optometry school, and, any facilities, services, or clinics set forth in Business and Professions Code sections 3070.1 or 3070.2(b).

Notices and Requirements:

- This form must be filled out in full with all information requested or the application may be rejected as incomplete. Attach extra sheets where needed.
- Please submit a non-refundable fee of \$2,632.000.
- Each applicant’s responsible officers or officials listed in Section “C” of this application must submit full and complete fingerprints for use in conducting criminal background checks as set forth in Section 1585 of the Board’s regulations.
- Any material misrepresentation of any information on the application is grounds for denial or subsequent revocation of the registration.
- The Board may revoke approval at any time it determines an owner and operator is not meeting the requirements of the law and the Board’s regulations.
- Upon the Board’s approval of the registration, the owner and operator shall be issued a certificate to operate, which shall be valid for two (2) years from the date of approval and expire unless renewed in accordance with Section 1584 of the Board’s regulations.
- Owners and operators must maintain the records required by BPC section 3070.2 and Article 13 of the Board’s regulations at the primary physical business address in California.
- Owners and operators must post addresses of record on the Internet and make them available to the public per BPC section 27. The Board will mail or serve official Board notices and actions to the address of record. The primary physical business address and the address of record may be the same address.
- Under Business and Professions Code sections 31 and 494, the State Board of Equalization (BOE) and the Franchise Tax Board (FTB) may share taxpayer information with the Board. You are required to pay your state tax obligation, if any. This application may be denied or your certificate to operate may be suspended if you have a state tax obligation (e.g., sales or use tax owed) and the state tax obligation is not paid and your name appears on either the BOE or FTB certified list of top 500 tax delinquencies.

A. General Information
Name of Owner and Operator’s Organization (Legal Name)
Owner and Operator’s Primary Physical Business Address

City	State	Zip	Telephone
Owner and Operator's Address of Record			
City	State	Zip	Telephone
Website Address (if applicable)			
Name of Authorized Contact Person			Title of Contact Person
Direct Telephone Number of Contact Person			Contact Person's Email (Optional)
Full Legal Name of Optometrist Directing Medical Operations (Managing Optometrist)			Managing Optometrist's License Number
Managing Optometrist's Address of Record		City	State Zip
Managing Optometrist's Email Address (Optional)		Managing Optometrist's Direct Telephone Number	
B. Owner and Operator's Organizational Information.			
1. Is the organization operating pursuant to section 501(c)(3) of the Internal Revenue Code? YES <input type="checkbox"/> NO <input type="checkbox"/>			
2. Is the organization operating pursuant to section 501(c)(4) of the Internal Revenue Code? YES <input type="checkbox"/> NO <input type="checkbox"/>			
3. Organization's Tax Identification Number: _____			
4. Does the organization plan to not accept payment for services other than those provided to Medi-Cal beneficiaries? YES <input type="checkbox"/> NO <input type="checkbox"/> (If you answer "no" to the above question, please list in a separate attachment what other payments you will collect other than those provided to Medi-Cal beneficiaries.)			
C. Responsible Organization Officers or Officials. Please list below information, including the social security number (SSN) or individual taxpayer identification number (ITIN) as required by BPC section 30, for each of the principal individuals who are the officers or officials responsible for the operations of the organization (non-profit or charitable organization). Attach additional sheets if necessary.			
Individual #1 – Name			Title
Address Line 1			
Address Line 2			
City		State	Zip

SSN / ITIN	Business Phone Number	
Email Address (Optional)	Alternate Phone Number (if any)	
Individual #2 – Name	Title	
Address Line 1		
Address Line 2		
City	State	Zip
SSN / ITIN	Business Phone Number	
Email Address (Optional)	Alternate Phone Number (if any)	
Individual #3 – Name	Title	
Address Line 1		
Address Line 2		
SSN / ITIN	Business Phone Number	
Email Address (Optional)	Alternate Phone Number (if any)	
D. Operating Standards and Complaint History. Please provide the following information. Attach additional sheets of paper containing written responses to the following questions by question number. (Example: Response to Question No. 1.:)		
1. Please describe the services you will be rendering within the mobile optometric office(s).		
2. Please list the names and license numbers for all optometrists who will be providing patient care as part of the mobile optometric office(s).		
3. Please list the dates of operation of the mobile optometric office(s).		
4. Please list the cities and/or counties served.		
5. Please describe how follow-up care for all patients served by the mobile optometric office(s) will be provided.		

6. Please provide the Board with a catalog of complaints, if any, that the office has received in the past three years. If no complaints were received in the past three years, please mark this box N/A _____

If complaints were received within the last three years, a “catalog” of the complaints must be provided in the form of a list of complaints in alphabetical order by the patient’s name and containing the following information for each patient:

- (A) Complainant’s Name;**
- (B) Name of Patient;**
- (C) Date Complaint Received;**
- (D) How the Complaint was Received (e.g., in person, letter, email, fax or telephone)**
- (E) Date Patient Received Care at the Mobile Optometric Office;**
- (F) Name of Person(s) Providing Care or Services to the Patient;**
- (G) Title of Person(s) Providing Care or Services and License Number, if applicable;**
- (H) Complainant’s Contact Information (Phone, Address, Email);**
- (I) Summary of Complaint as Reported by the Complainant;**
- (J) Complainant’s Requested Resolution, if any;**
- (K) Whether the Owner and Operator Addressed the Issues in the Complaint and, if so, how the Complaint was Addressed with the Patient or the Patient’s Caregiver or Legal Guardian; and,**
- (L) Resolution Date.**

E. Certification

I hereby certify under penalty of perjury under the laws of the State of California that I am authorized to sign this application on behalf of the applicant, that I have read this application and the information provided herein along with any accompanying documents, and that the application and attachments are true and accurate.

Authorized Representative’s Signature	Authorized Representative’s Printed Name and Title	Date

NOTICE OF PERSONAL INFORMATION COLLECTION AND ACCESS:

The information provided in this application will be used by the California State Board of Optometry to determine whether the owner and operator of a mobile optometric office (office) qualifies for registration in California. Unless otherwise specified, all information requested on this application is mandatory. Sections 30, 31, 144, 494.5, and 3070.2 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is grounds for rejection of the application as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, the Franchise Tax Board, the Board of Equalization, or to another government agency as may be necessary to permit the Board, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual or applicant has the right to review their file, except as otherwise provided by the California Information Practices Act. Social security numbers (SSN) and individual taxpayer identification numbers (ITIN) are not considered public records. However, other information provided on this form may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California State Board of Optometry is responsible for maintaining the information in this form, and may be contacted at 2450 Del Paso Road, Suite 105, Sacramento, CA 95834, telephone number 916-575-7170 regarding questions about this notice or access to records.

Disclosure of the applicant’s responsible officers or official’s social security numbers or individual taxpayer identification numbers is mandatory. Sections 30 and 31 of the Business and Professions Code and Public Law 94-455 (42 USCA 405(c)(2)(C)) authorize the collection of the social security numbers or ITINs. The social security number or ITIN will be used exclusively for tax enforcement purposes or compliance with any judgment or order for family support in accordance with section 17520 of the California Family Code. If the applicant fails to disclose social security numbers or ITINs, the application will be deemed incomplete and not be processed.



ISSUE MEMORANDUM

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

Summary/History:

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

Action Requested:

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

Suggested motion:

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

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

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

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

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

- Primary address of record
- Telephone number

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

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

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

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

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

Attachments:

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

**TITLE 16. CALIFORNIA STATE BOARD OF OPTOMETRY
PROPOSED REGULATORY LANGUAGE**

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

§ 1524. Fees

- (a) Application fee for certificate of registration as an optometrist by examination \$275
- (b) Biennial renewal of a certificate of registration as an optometrist \$425
- (c) Delinquency fee for failing to renew a certificate of registration timely \$50
- (d) Application fee for a branch office license \$75
- (e) Annual renewal of a branch office license \$75
- (f) Penalty fee for failure to renew a branch office license timely \$25
- (g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration \$25
- (h) Application fee for a fictitious name permit \$50
- (i) Annual renewal of a fictitious name permit \$50
- (1) Delinquency fee for failure to renew a fictitious name permit timely \$25
- (j) Application fee for a statement of licensure \$40
- (1) Biennial renewal of a statement of licensure \$40
- (2) Penalty fee for failure to renew a statement of licensure timely \$20
- (k) Application fee for a certificate to use therapeutic pharmaceutical agents \$25
- (l) Application fee for approval of a continuing education course \$50
- (m) Application fee for a certificate to treat primary open angle glaucoma \$35
- (n) Application fee for a certificate to perform lacrimal irrigation and dilation \$25
- (o) Application fee for a retired license \$25

(p) Application fee for a retired license with a volunteer designation \$50

(r) Application fee for an immunization certification \$50.

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

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

§ 1572. Immunization Certificate Applications

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

(1) First, Middle, and Last Name;

(2) Email address;

(3) License number;

(4) A declaration by the applicant under the penalty of perjury by the applicant that:

(A) The information provided, including all accompanying documents or other requested proof of completion, is true and accurate,

(B) The applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board; and

(C) The applicant will comply with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the immunization branch of the California State Department of Public Health.

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

(1) The application fee of \$50 fixed by the Board pursuant to Section 1524 in this Article;

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

(3) A certificate or other documents proving certification in basic life support.

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

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



Application for Optometrists to Administer Immunization Shots¹

Fee: \$50

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

Per California Business and Professions Code §3041(g), you must have a current California Optometrist License and have a Therapeutic Pharmaceutical Agents (TPA) license type to be eligible for a certificate to administer immunizations. “Immunization” means the administration of immunizations for influenza, herpes zoster virus, and pneumococcus in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the Centers for Disease Control (CDC) for persons 18 years of age or older.¹

If eligible, you must also meet and maintain the following requirements for an immunization certificate:

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

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

First, Middle, and Last Name:	
Email address:	
License #:	
<p><i>1. I declare under penalty of perjury under the laws of the State of California that the information provided on this form and the attached documents or other requested proof of completion is true and accurate. I understand and agree that any misstatements of material facts may be cause for denial of the Application for Optometrists to Administer Shots and disciplinary action by the California State Board of Optometry.</i></p> <p>AND</p>	

¹ Bus. & Prof. Code, § 3041, subd. (g) and 16 CCR 1572.

2. I declare under of perjury under the laws of the State of California that I will comply with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the immunization branch of the California State Department of Public Health.

Optometrist Signature:

Date:



ISSUE MEMORANDUM

DATE	May 21, 2021
TO	Members, California State Board of Optometry
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5b – Discussion and Possible Action on Regulations - Amend Title 16, Sections 1507.5 and 1524 of the CCR (Implementation of Assembly Bill 458 - Nazarian, Chapter 425, Statutes of 2018)

Summary:

This regulatory proposal would implement [Assembly Bill 458 \(Nazarian, Chapter 425, Statutes of 2019\)](#), which amended Business and Professions Code (BPC) Section 3070.1.

BPC 3070.1 authorizes a TPA-certified optometrist to practice optometry in the residence of an individual who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition, provided they complete a permit application, pay fees, and meet certain record retention and patient disclosure requirements. Additionally, the optometrist is required to provide a patient notice prescribed by the Board and an authorization to release the patient’s medical information to the Board if desired for specified enforcement purposes.

The Consumer Protection and Public Relations and Outreach Committee reviewed the proposed text at the February 25, 2021 public meeting and recommended the full Board adopt the proposal.

This proposal would create a new Title 16, California Code of Regulations (CCR) Section 1507.5 (Home Residence Permits) and amend existing Section 1524 (Fees) by doing the following:

- Creating an initial application for a home residence permit;
- Creating an application for renewal of a home residence permit;
- Sets out requirements for a consumer notice to be provided to the patient and an acknowledgment that the patient has received it;
- Allows release of a patient’s medical record to the Board for enforcement purposes;
- Sets the application and renewal fees at \$50.00.

For the text and rationale of this proposal, please see attachment A. For the text of BPC 3070.1, please see attachment B.



Suggested Motion:

"I move to approve the proposed text for California Code of Regulations Title 16, Sections 1507.5 and 1524 as presented and discussed here today, and direct staff to submit the text to the Office of Administrative Law for posting for a 45-day comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, making any non-substantive changes to the package and set the matter for hearing."

Implementation of AB 458

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

Business and Professions Code Section 3070.1

- (a) For purposes of this section, the following terms have the following meanings:
- (1) "Health facility" means a health facility, as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.
 - (2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:
 - (A) Adult residential facilities.
 - (B) Adult residential facilities for persons with special health care needs.
 - (C) Residential care facilities for the chronically ill.
 - (D) Residential care facilities for the elderly.
 - (E) Continuing care retirement communities.
 - (F) Social rehabilitation facilities.
 - (3) "Home residence" means the primary residence of an individual who is restricted by a disabling physical or mental condition. "Home residence" does not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a community care facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, but does include an individual condominium unit, apartment, single-family home, cooperative unit, mobilehome, or trailer, if it is used as a residence.
- (b) (1) An optometrist who is certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3 may, in the form and manner prescribed by the board, submit an application to the board for a home residence permit, and pay all applicable fees prescribed in Section 3152. The board shall, upon application and payment of the fee prescribed in Section 3152, issue a home residence permit to an optometrist certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3. A home residence permit authorizes the holder to engage in the practice of optometry at a home residence as specified in this section.
- (2) A home residence permit shall expire on the same date the licensee's optometry license expires. A home residence optometrist may renew the permit by submitting an application, in the form and manner prescribed by the board, to the board for renewal, and paying any applicable fees prescribed in Section 3152.
- (3) A person engaging in the temporary practice of optometry, as defined in subdivision (b) of Section 3070, is not required to obtain a home residence permit in order to engage in the temporary practice of optometry at a home residence.
- (c) An optometrist may engage in the practice of optometry at any health facility or residential care facility, and in a home residence, if all of the following requirements are satisfied:
- (1) The optometrist maintains a primary business office, separate from the health facility, residential care facility, or home residence, that meets all of the following requirements:
 - (A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

- (B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.
 - (C) Is registered by the optometrist with the Board of Optometry.
 - (D) Is owned or leased by the optometrist or by the employer of the optometrist.
 - (E) Is not located in or connected with a residential dwelling.
- (2) The optometrist maintains or discloses patient records in the following manner:
- (A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).
 - (B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).
 - (C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.
 - (D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:
 - (i) Name.
 - (ii) Optometrist license number.
 - (iii) The place of practice and the primary business office.
 - (iv) Description of the goods and services for which the patient is charged and the amount charged.
 - (E) A copy of any referral or order requesting optometric services for a patient from the health facility's or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.
- (3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility, residential care facility, or home residence.
- (4) The optometrist provides each patient and, if applicable, the patient's caregiver, a consumer notice prescribed by the board that includes the following:
- (A) The name, license number, primary telephone number, and primary business address of the optometrist.
 - (B) Information for filing a complaint with the board.
- (d) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility, residential care facility, or home residence shall not be required to comply with Section 3070 with regard to providing notification to the board of each health facility, residential care facility, or home residence at which the optometrist practices.

(e) Before engaging in the practice of optometry at a home residence, an optometrist shall provide each patient and, if applicable, the patient's caregiver, both of the following:

(1) A consumer notice prescribed by the board that includes any information the board deems appropriate to safeguard the public from substandard optometric care, fraud, and other violations of the act. The patient, or, if applicable, the patient's caregiver, shall sign the consumer notice.

(2) An authorization to release the patient's medical information related to the optometrist's provision of optometry services to the board. The authorization shall disclose that the patient's authorization to release medical information to the board is voluntary and that the medical information shall be used by the board only to investigate complaints and to conduct the board's enforcement duties under the act.

(f) An optometrist subject to subdivision (e) shall maintain in the patient's file a copy of the signed consumer notice described in paragraph (1) of, and, if signed, the signed authorization described in paragraph (2) of, subdivision (e).

(g) The board may adopt regulations to conduct quality assurance reviews for optometrists engaging in the practice of optometry at a home residence.

(Amended by Stats. 2019, Ch. 425, Sec. 1. (AB 458) Effective January 1, 2020.)

ISSUE MEMORANDUM

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

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

Disciplinary Guidelines Amendments

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

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

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

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

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

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

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

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

Maximum Discipline: Revocation

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

Required:

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

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

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

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

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

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

CPC Updates, September 13, 2019

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

Removal from Practice Pending Clinical Diagnostic Evaluation

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

Worksite vs Practice Monitor

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

Pronoun Usage

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

Attachments

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

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

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

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

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

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



UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

&

**OPTOMETRY PROGRAM
DISCIPLINARY GUIDELINES**

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

***“Protection of the Public Shall be the Highest Priority”
Business and Professions Code, §3010.1***

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INTRODUCTION

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

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

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

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

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

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

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

PUBLIC RECORD

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

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including, but not limited to, expert consultant opinions and services, pursuant to Business and Professions Code, section

125.3. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct required investigation and prosecution, not upon the profession as a whole.

PROBATION MONITORING PURPOSE

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

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

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

CITATIONS

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

STIPULATED SETTLEMENTS

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

DISCIPLINARY GUIDELINES

2012 2019 EDITION

EVIDENCE IN AGGRAVATION/MITIGATION OF DISCIPLINE

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

EVIDENCE IN AGGRAVATION OF DISCIPLINE

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

EVIDENCE IN MITIGATION OF DISCIPLINE

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

**DISCIPLINARY GUIDELINES SUMMARY FOR USE BY
ADMINISTRATIVE LAW JUDGES**

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

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

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

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

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

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

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

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

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

UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES

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

1. CLINICAL DIAGNOSTIC EVALUATION

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

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

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

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

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

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

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

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

2. REMOVAL FROM PRACTICE PENDING CLINICAL DIAGNOSTIC EVALUATION

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

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

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

Commented [KC1]: CPC requested edit to “30 consecutive days” has not been made because this language mirrors the language required by the SACC Uniform Standards

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

3. BOARD COMMUNICATION WITH PROBATIONER'S EMPLOYER

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

4. DRUG TESTING STANDARDS

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

Testing Frequency Schedule

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

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

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

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

Exception to Testing Frequency Schedule

I. PREVIOUS TESTING/SOBRIETY

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

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

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

III. NOT EMPLOYED IN HEALTH CARE FIELD

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

VI. LICENSED SUPERVISION DURING PRACTICE

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

OTHER DRUG STANDARDS

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

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when ~~he/she~~ they will be tested again. The Board should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

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

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

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

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

Collection of specimens shall be observed.

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

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

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

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

5. PARTICIPATION IN GROUP SUPPORT MEETINGS

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

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

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

6. DETERMINING WHAT TREATMENT IS NECESSARY

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

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

7. WORKSITE MONITOR REQUIREMENTS

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

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

- c. Review the licensee's work attendance.

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

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

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

8. PROCEDURE FOR POSITIVE TESTING

When a licensee tests positive for a banned substance:

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

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

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

9-10. MAJOR/MINOR VIOLATIONS & CONSEQUENCES

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

1. Failure to complete a Board-ordered program or evaluation;
2. Committing two or more minor violations of probation;
3. Treating a patient while under the influence of drugs or alcohol;

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

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

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

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

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

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

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

11. PETITION FOR RETURN TO PRACTICE

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

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

1. Sustained compliance with current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse; and
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

12. PETITION FOR REINSTATEMENT

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

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

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

PROBATIONARY TERMS AND CONDITIONS

MODEL DISCIPLINARY ORDERS

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

Revocation-Single Cause

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

Revocation - Multiple Causes

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

Suspension - Single Cause

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

Suspension - Multiple Causes (run concurrently)

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

Suspension - Multiple Causes (run consecutively)

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

Standard Stay Order

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

MODEL LICENSEE PROBATIONARY ORDERS

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

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

MODEL APPLICANT PROBATIONARY ORDERS

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

Applicants who are placed on probation:

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

MODEL REINSTATEMENT PROBATIONARY ORDERS

Reinstatement of licensure with conditions of probation:

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

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

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

STANDARD TERMS AND CONDITIONS

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

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

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

SEVERABILITY CLAUSE

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

1. OBEY ALL LAWS

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

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

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

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

2. QUARTERLY REPORTS

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

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

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

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

3. COOPERATE WITH PROBATION MONITORING PROGRAM

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

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

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

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

4. PROBATION MONITORING COSTS

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

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

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

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

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

5. FUNCTION AS AN OPTOMETRIST

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

6. NOTICE TO EMPLOYER

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

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

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

7. CHANGES OF EMPLOYMENT OR RESIDENCE

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

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

8. COST RECOVERY

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

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

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

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

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

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

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

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

10. COMMUNITY SERVICES

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

11. VALID LICENSE STATUS

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

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

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

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

13. LICENSE SURRENDER

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

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

14. VIOLATION OF PROBATION

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

15. COMPLETION OF PROBATION

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

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

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

STANDARD ALCOHOL/DRUG CONDITIONS

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

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

17. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL

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

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

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

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

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

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

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

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

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

18. BIOLOGICAL FLUID TESTING

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

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

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

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

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

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

OPTIONAL CONDITIONS

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

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

19. PARTICIPATE IN GROUP SUPPORT MEETING

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

20. NOTICE TO PATIENTS

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

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

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

21. ALCOHOL AND DRUG TREATMENT

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

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

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

22. WORKSITE MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. DIRECT SUPERVISION

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

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

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

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

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

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

24. REMEDIAL EDUCATION

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

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

25. SUSPENSION

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

26. EMPLOYMENT LIMITATIONS

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

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

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

27. PSYCHOTHERAPY OR COUNSELING PROGRAM

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

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

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

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

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

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

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

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

28. MENTAL HEALTH EVALUATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. MEDICAL HEALTH EVALUATION

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

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

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

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

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

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

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

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

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

30. MEDICAL TREATMENT

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

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

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

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

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

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

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

31. RESTITUTION

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

32. AUDIT REQUIRED

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

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

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

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

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

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

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

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

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

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

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

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

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

33. LENS PRESCRIPTIONS - MAINTAIN RECORDS

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

1. name and address of the patient;
2. date;
3. lens or drug prescribed, including dose and duration, as applicable
- 3-4. price of the services and goods involved in the prescription;
- 4-5. visual impairment or medical condition identified for which the prescription was furnished.

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

34. RESTRICTED PRACTICE

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

35. RESTRICTION ON BRANCH OFFICES

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

36. RESTRICTIONS ON ADVERTISEMENTS

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

37. TAKE AND PASS NBEO EXAM

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

38. CONTINUING EDUCATION

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

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

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

39. MEDICAL RECORD KEEPING COURSE

Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course no later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the continuing optometric education requirements for renewal of licensure.

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

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

RECOMMENDED DISCIPLINE BASED ON VIOLATION

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

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

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

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

AA. Fictitious Name Violation (B&P Code sec. 3078; Title 16 CCR sec. 1513; 1518)
BB. Violation of Probation
CC. Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162; 3163; 3164; 3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)
DD. Fraudulently Altering Medical Records (B&P Code sec. 3105)
EE. False Representation of Fact (B&P Code sec. 3106)
FF. Violating or abetting violation of any section of Optometry Practice Act (B&P Code sec. 3110 and/or sec. 3110(a))
GG. Repeated Negligent Acts (B&P Code sec. 3110 (c))
HH. Incompetence (B&P Code sec. 3110 (d))
II. Conduct Warranting License Denial (B&P Code sec. 3110 (f))
JJ. License Discipline by Other State or Agency (B&P Code sec. 3110 (h))
KK. Making False Statement on Application (B&P Code sec. 3110 (j))
LL. Prescribing, Furnishing, or Administering Drugs without Good Faith Examination (B&P Code sec. 3110 (p))
MM. Failure to Maintain Adequate Records (B&P Code sec. 3110 (g))
NN. Altering or Using Altered License (B&P Code sec. 3110 (v))
OO. Professional Services Beyond the Scope of the License (B&P Code sec. 3110 (r))
PP. Failure to Comply with Patient Records Request (B&P Code sec. 3110 (x))
QQ. Use of Fraudulently issued, counterfeited, etc., Certificate (B&P Code 3107)

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

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

If Warranted:

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

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

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

If Warranted:

- ~~25. Suspension of 30 days or more~~
- 22. Worksite Monitor
- 24. Remedial Education
- ~~25. Suspension~~
- ~~38. Continuing Education~~
- ~~39. Medical Record Keeping Course~~

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

~~Maximum Discipline: Revocation and Cost Recovery~~

~~Minimum Discipline: Stayed Revocation, 3-5 years probation~~

~~Required:~~

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

~~If Warranted:~~

- ~~24. Remedial Education~~
- ~~25. Suspension of 30 days or more~~
- ~~22. Worksite Monitor~~
- ~~34. Restricted Practice~~

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Revocation

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- ~~23. Direct Supervision~~
- ~~25. Suspension~~
- ~~27. Psychotherapy or Counseling Program~~
- ~~30. Medical Treatment~~
- ~~28. Mental Health Evaluation~~

If Warranted:

- ~~25. Suspension~~
- ~~20. Notice to Patients~~
- ~~34. Restricted Practice~~
- ~~22. Worksite Monitor~~
- ~~27. Psychotherapy or Counseling Program~~
- ~~28. Mental Health Evaluation~~
- ~~29. Medical Evaluation~~
- ~~30. Medical Treatment~~

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

22. Worksite Monitor

24. Remedial Education

25. Suspension

22. Worksite Monitor

If Warranted:

20. Notice to Patients

23. Direct Supervision

25. Suspension of 30 days or more

26. Employment Limitations

31. Restitution

34. Restricted Practice

36. Restrictions on Advertisements

37. Take and Pass NBEO Exam

38. Continuing Education

39. Medical Record Keeping Course

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

22. Worksite Monitor

38. Continuing Education

If Warranted:

20. Notice to Patients

23. Direct Supervision

24. Remedial Education

34. Restricted Practice

25. Suspension of 30 days or more

22. Worksite Monitor

26. Employment Limitations

33. Prescriptions – Maintain Records

34. Restricted Practice

39. Medical Record Keeping Course

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

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

33. Prescriptions – Maintain Records

38. Continuing Education

24. Remedial Education

If Warranted:

20. Notice to Patients

34. Restricted Practice

22. Worksite Monitor

25. Suspension of 30 days or more

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

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

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

Required:

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

If Warranted:

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

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

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

Required:

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

If Warranted:

- 20. Notice to Patients
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension

J. Violations Regarding Topical Pharmaceutical Agents (B&P Code sec. 3041.2; Title 16 CCR sec. 1560; 1561; 1562; 1563)

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

Required:

- 1-16. Standard Conditions
- 33. Prescriptions – Maintain Records
- 38. Continuing Education

If Warranted:

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

39. Medical Record Keeping Course

K. Fraud, Misrepresentation or Dishonesty (B&P Code sec. 810; 3101; 3110 (e))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 24. Remedial Education
- 32. Audit Required
- 39. Medical Record Keeping Course

If Warranted:

20. Notice to Patients

- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension **of 30 days or more**
- 26. Employment Limitations
- 31. Restitution
- 33. Prescriptions – Maintain Records
- 36. Restrictions on Advertisements
- 38. Continuing Education

L. Procuring a License by Fraud (B&P Code sec. 123; 496; 3110(i))

Maximum Discipline: Denial or Revocation

Minimum Discipline: Denial or Revocation

M. Practicing without Valid License (B&P Code sec. 3110(s); **3110(t)**)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

25. Suspension

If Warranted:

20. Notice to Patients

- 22. Worksite Monitor
- ~~25. Suspension~~
- 36. Restrictions on Advertisements
- 38. Continuing Education

N. Using Controlled Substances or Alcohol (B&P Code sec. 3110 (l))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 17-18. Standard Alcohol/Drug Conditions

If Warranted:

19. Participate in Group Support Meeting

20. Notice to Patients

- 21. Alcohol and Drug Treatment
- ~~25. Suspension of 30 days or more~~
- 22. Worksite Monitor

- 22. Direct Supervision
- ~~25. Suspension~~
- ~~34. Restricted Practice~~
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- ~~34. Restricted Practice~~
- 38. Continuing Education

**O. Employing Suspended or Unlicensed Optometrist (B&P Code sec. 3110 (t); 3106)
Permitting Another to Use License (B&P Code sec. 3110 (u); 3106)**

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

Required:

- 1-16. Standard Conditions

~~25. Suspension~~

If Warranted:

- ~~20. Notice to Patients~~
- ~~35. Restrictions on Branch Offices~~
- ~~25. Suspension of 30 days or more~~
- 22. Worksite Monitor
- ~~34. Restricted Practice~~
- 26. Employment Limitations
- ~~34. Restricted Practice~~
- ~~35. Restrictions on Branch Offices~~
- 38. Continuing Education

P. Accepting Employment By Unlicensed Person (B&P Code sec. 3109)

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

Required:

- 1-16. Standard Conditions

~~25. Suspension~~

If Warranted:

- ~~20. Notice to Patients~~
- ~~22. Worksite Monitor~~
- ~~26. Employment Limitations~~
- ~~34. Restricted Practice~~
- ~~35. Restrictions on Branch Offices~~
- ~~38. Continuing Education~~

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

~~**Required:**~~

- ~~1-16. Standard Conditions~~

~~38. Continuing Education~~

~~**If Warranted:**~~

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

Q. Unlawful Location for Practice (B&P Code sec. 3070; 3075; 3076; 3077; Title 16 CCR sec. 1505; 1506; 1507)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

~~35. Restrictions on Branch Offices~~

~~22. Worksite Monitor~~

25. Suspension of 30 days or more

26. Employment Limitations

~~22. Worksite Monitor~~

34. Restricted Practice

35. Restrictions on Branch Operations

36. Restrictions as to Advertisements

38. Continuing Education

R. Deceptive Advertising (B&P Code sec 651; 651.3; 3099 ; 3100; 3102; 3103; 3110(g); 17500; Title 16 CCR sec. 1512; 1513; 1514; 1515)

Maximum Discipline: Revocation and Cost Recovery

Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

~~36. Restrictions on Advertisements~~

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

25. Suspension of 30 days or more

~~36. Restrictions on Advertisements~~

S. Prohibited Arrangements by Optometrists (B&P Code sec 655; Title 16 CCR sec. 1514)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

~~22. Worksite Monitor~~

25. Suspension of 30 days or more

~~26. Employment Limitations~~

34. Restricted Practice

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

T. Advertising While Not Holding Valid License (B&P Code sec. 3101)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

22. Worksite Monitor

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

26. Employment Limitations

34. Restricted Practice

36. Restrictions on Advertisements

U. Misuse of Professional Titles or Abbreviations (B&P Code sec. 3098; Title 16 CCR sec. 1512)

Maximum Discipline: ~~6-month suspension. Revocation for successive violation~~

Minimum Discipline: ~~30 days suspension, and at least one-year probation~~
Revocation, 3-5 years' probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

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

26. Employment Limitations

34. Restricted Practice

~~36. Restrictions on Advertisements~~

38. Continuing Education

V. Unlawful Solicitation (B&P Code sec. 3097)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

~~38. Continuing Education~~

If Warranted:

20. Notice to Patients

22. Worksite Monitor

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

34. Restricted practice

38. Continuing Education

W. Unlawful Referrals (B&P Code sec. 650; 650.01)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

20. Notice to Patients

25. Suspension of 30 days or more

22.-Worksite Monitor

25. Suspension

34. Restricted practice

36. Restrictions on Advertisements

38. Continuing Education

X. Employing Cappers or Steerers (B&P Code sec. 3104)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

38. Continuing Education

If Warranted:

20. Notice to Patients

25. Suspension of 30 days or more

22. Worksite Monitor

25. Suspension

34. Restricted practice

36. Restrictions on Advertisements

38. Continuing Education

Y. Criminal Conviction (B&P Code sec. 3094; 3107; Title 16 CCR sec. 1517)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

20. Notice to Patients

17-18. Standard Drug/Alcohol Conditions

22.-Worksite Monitor

24. Remedial Education

25. Suspension of 30 days or more

26. Employment Limitations

27. Mental Health Evaluation

28. Medical Health Evaluation

34. Restricted practice

38. Continuing Education

Z. Fictitious Name Violation (B&P Code sec. 3078; Title 16 CCR sec. 1513; 1518)

Maximum Penalty: 6 month Suspension. Revocation and Cost Recovery for successive violations

Minimum Discipline: Stayed Revocation, 3 years probation

Required:

1-16. Standard Conditions

36. Restrictions on Advertisements

38. Continuing Education

If Warranted:

20. Notice to Patients

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

AA. Violation of Probation

Maximum Discipline: Impose discipline that was stayed, **revocation**

Minimum Discipline: Impose an actual period of suspension

The maximum discipline should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. Other violations of probation should draw at least a period of actual suspension.

BB. Violations by Professional Corporations (B&P Code sec. 3160; 3161; 3162; 3163; 3164; 3165; 3166; Title 16 CCR sec. 1544; 1546; 1547; 1548; 1549; 1550)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

If Warranted:

20. Notice to Patients

22. Worksite Monitor

24. Remedial Education Course for corporate principals involved

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

26. Employment Limitations

31. Restitution

34. Restricted practice

35. Restrictions as to Branch Operations

36. Restrictions on Advertisements

38. Continuing Education

CC. Fraudulently Altering Medical Records (B&P Code sec. 3105)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

38. Continuing Education

39. Medical Record Keeping Course

If Warranted:

20. Notice to Patients

22.-Worksite Monitor

23. Direct Supervision

25. Suspension

26. Employment Limitations

32. Audit Required

34. Restricted Practice

38. Continuing Education

DD. False Representation of Fact (B&P Code sec. 3106)

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

Required:

- 1-16. Standard Conditions
- 32. Audit Required
- 39. Medical Record Keeping Course

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 33. Prescriptions – Maintain Records
- 34. Restricted Practice
- 35. Restrictions on Branch Offices
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

Unprofessional Conduct (B&P code sec. 3110)

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

Required:

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 24. Remedial Education

If Warranted:

- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education
- 39. Medical Record Keeping Course

EE. Violating or abetting violation of any section of Optometry Practice Act (B&P Code sec. 3110 and/or sec. 3110(a))

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

Required:

- 1-16. Standard Conditions
- 24. Remedial Education

If Warranted:

- 19. Participate in Group Support Meeting
- 20. Notice to Patients
- 21. Alcohol and Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education

- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- 31. Restitution
- 32. Audit Required
- 33. Prescriptions – Maintain Records
- 34. Restricted Practice
- 35. Restrictions as to Branch Offices
- 36. Restrictions as to Advertisement
- 37. Take and Pass NBEO Exams
- 38. Continuing Education
- 39. Medical Record Keeping Course

- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

FF. Repeated Negligent Acts (B&P Code sec. 3110 (c))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: ~~Revocation and Cost Recovery~~ Stayed Revocation, 5 years probation

Required:

- 1-16. Standard Conditions
- 24. Remedial Education

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 25. Suspension
- 26. Employment Limitations
- 31. Restitution
- 32. Audit Required
- 33. Prescriptions – Maintain Records
- 36. Restrictions on Advertisements
- 38. Continuing Education
- 39. Medical Record Keeping Course

GG. Incompetence (B&P Code sec. 3110 (d))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

If Required:

- 1-16. Standard Conditions
- ~~22. Worksite Monitor~~
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 33. Prescriptions – Maintain Records
- 37. Take and Pass NBEO Exam
- 38. Continuing Education
- 39. Medical Record Keeping Course

HH. Conduct Warranting License Denial (B&P Code sec. 3110 (f))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 17-18. Standard Alcohol/ Drug Conditions
- 19. Participate in Group Support Meeting
- 20. Notice to Patients
- 21. Alcohol or Drug Treatment
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 27. Psychotherapy or Counseling Program
- 28. Mental Health Evaluation
- 29. Medical Health Evaluation
- 30. Medical Treatment
- 31. Restitution
- 32. Audit Required
- 33. Prescription – Maintain Records
- 34. Restricted Practice
- 35. Restrictions as to Branch Offices
- 36. Restrictions on Advertisements
- 37. Take and Pass NBEO Exam
- 38. Continuing Education
- 39. Medical Record Keeping Course

II. License Discipline by Other State or Agency (B&P Code sec. 3110 (h))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 17-18. Standard Alcohol/ Drug Conditions

19. Participate in Group Support Meeting

20. Notice to Patients

21. Alcohol or Drug Treatment

22. Worksite Monitor

23. Direct Supervision

24. Remedial Education

25. Suspension

26. Employment Limitations

27. Psychotherapy or Counseling Program

28. Mental Health Evaluation

29. Medical Health Evaluation

30. Medical Treatment

31. Restitution

32. Audit Required

33. Prescription – Maintain Records

34. Restricted Practice

35. Restrictions as to Branch Offices

36. Restrictions on Advertisements

37. Take and Pass NBEO Exam

38. Continuing Education

39. Medical Record Keeping Course

JJ. Making False Statement on Application (B&P Code sec. 3110 (j))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

24. Remedial Education

32. Audit Required

39. Medical Record Keeping Course

If Warranted:

20. Notice to Patients

22. Worksite Monitor

23. Direct Supervision

24. Remedial Education

25. Suspension

26. Employment Limitations

31. Restitution

33. Prescriptions – Maintain Records

36. Restrictions on Advertisements

38. Continuing Education

KK. Prescribing, Furnishing, or Administering Drugs without Good Faith Examination (B&P Code sec. 3110 (p))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

1-16. Standard Conditions

24. Remedial Education

25. Suspension

- 33. Prescriptions – Maintain Records
- 38. Continuing Education

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 26. Employment Limitations
- 34. Restricted Practice
- 37. Take and Pass NBEO Exams
- ~~38. Continuing Education~~
- 39. Medical Record Keeping Course

LL. Failure to Maintain Adequate Records(B&P Code sec. 3110 (g)(g))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 33. Prescriptions – Maintain Records
- 39. Medical Record Keeping Course

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 32. Audit Required
- 34. Restricted Practice
- 38. Continuing Education

MM. Altering or Using Altered License (B&P Code sec. 3110 (v))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 22. Worksite Monitor
- 25. Suspension

If Warranted

- 20. Notice to Patients
- 26. Employment Limitations
- 34. Restricted Practice
- 38. Continuing Education

NN. Professional Services Beyond the Scope of the License (B&P Code sec. 3110

(r))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 34. Restricted Practice
- 37. Take and Pass NBEO Exams
- 38. Continuing Education

OO. Failure to Comply with Patient Records Request (B&P Code sec. 3110 (x))

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions
- 39. Medical Record Keeping Course

If Warranted:

- 20. Notice to Patients
- 24. Remedial Education
- 38. Continuing Education

PP. Use of Fraudulently issued, counterfeited, etc., Certificate (B&P Code 3107)

Maximum Discipline: Revocation and Cost Recovery

Minimum Discipline: Revocation and Cost Recovery

Minimum Discipline: Stayed Revocation, 3-5 years probation

Required:

- 1-16. Standard Conditions

If Warranted:

- 22. Worksite Monitor
- 24. Remedial Education
- 25. Suspension
- 26. Employment Limitations
- 38. Continuing Education

QQ. CE Audit Failure (BPC 3110(i))

Maximum discipline: Revocation and Cost Recovery

Minimum discipline: 1-3 years probation including actual suspension until CE compliance verified.

Required:

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

If Warranted:

- 20. Notice to Patients
- 22. Worksite Monitor
- 23. Direct Supervision
- 26. Employment Limitations
- 32 Audit Required
- 34. Restricted Practice
- 39. medical record keeping course



ISSUE MEMORANDUM

DATE	August 14, 2020
TO	Members, California State Board of Optometry
FROM	Shara P. Murphy, Executive Officer <i>Prepared by Marc Johnson, Policy Analyst and Natalia Leeper, Opticianry Program Coordinator</i>
SUBJECT	Agenda Item #21: Update, Discussion and Possible Action on Title 16, Sections 1399.200 – 1399.285 of California Code of Regulations (Optician Program Regulations)

Summary/History:

As part of the Dispensing Optician Committee's statutorily mandated duties under BPC Section 3020, the DOC is charged with recommending registration standards and criteria for the registration of dispensing opticians, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers. As the optician statutory review is ongoing, this agenda item continues that mandate by reviewing existing optician program regulations.

Since the optician statutory review may spawn more substantive changes that will need to be implemented into regulation going forward, staff proposes minor changes to the existing regulations. It would be limited to placing current initial registration and renewal forms (used with the BreZE system), align current fees with the statute and make other non-substantive changes. These changes would not affect any existing operations or modify any current processes.

Similarly, the DOC and the Board had [previously approved](#) a regulatory package in November of 2017, but the previous staff did not continue the package due to missing and inaccurate information, such as incorrect fee amounts and application requirements. The DOC last reviewed the proposed text at the [June 18, 2020, public meeting](#), and recommended Board approval.

Action Requested:

Approve recommended changes to the text of Title 16, California Code of Regulations sections 1399.220 through 1399.285. If approved, staff will begin the regulatory rulemaking process to which will take 14 -18 months to complete.

Suggested motion:

"I move to approve proposed changes to Title 16, Sections 1399.220 through 1399.285 of the California Code of Regulations as presented and discussed here today; and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review and if no adverse comments are received

authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the matter for hearing.”

Changes to Regulation Text:

Attachment A contains the Opticianry Regulation text, with staff's suggested changes. Where appropriate, the proposed new text is underlined and deleted text is ~~struck through~~.

Article 1.

§1399.200

Staff proposes removing the mention of the word 'chapter' throughout the sections and replace it with 'division' when referring to the division of the optician program regulations.

§1399.203.

Removal of the meaning of 'division', which was previously used when the optician program was under the Medical Board Division of Licensing. This term is no longer applicable. The section is also renumbered for consistency.

Article 2.

Staff proposes adding the current application requirements for each license type as it will appear in Breeze into regulation.

§1399.220(a)

This proposed subsection sets out requirements for the Registered Dispensing Optician Initial Application for registration. Information required includes business name, the 'doing business as' name, address of the business, contact information, and SSN/ITIN. For different types of businesses, different documentation is required such as leases, business licenses and applicable corporation documentation. Further, the application asks for the types of lenses being dispensed from the location and the information for the Spectacle Lens Dispenser and or Contact Lens Dispenser who will be performing such tasks. Finally, the application requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.220(b)

This proposed subsection sets out requirements for an initial application for a Contact Lens Dispenser registration. It requires the name, address, contact information, date of birth, SSN/ITIN, gender and race, other state registrations and NCLE Exam information. It also requests possible military service information, employer information, whether the applicant has ever had a professional license suspended and background check information. Finally, the application requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.220(c)

This proposed subsection sets out requirements for an initial application for a Spectacle Lens Dispenser registration. It requires the name, address, contact information, date of birth, SSN/ITIN, gender, race, other state registrations and ABO Exam information. It also requests possible military service information, employer information, whether the applicant has ever had a professional license suspended and background check information. Finally, the application

requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.220(d)

This proposed subsection sets out requirements for an initial application for a Nonresident Contact Lend Dispenser registration. It requires basic entity information such as business name, the 'doing business as' name, address of business, contact information, type of business, and SSN/ITIN. Additionally, it requests whether or not the applicant is licensed to sell contact lenses in their state of operation and information about the license, a toll-free number for consumer complaints, contact information for the person designated to handle Board inquiries and information on the applicant's designated agent. For different types of businesses, it requires applicable documentation such as leases, business licenses, applicable corporation documentation and an example of literature that is included in the contact shipment. Finally, the application requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.222(a)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(a). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

§1399.222(b)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(c). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

§1399.222(c)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(b). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

§1399.222(d)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(d). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

Article 6.

§1399.260

Registered Dispensing Optician fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

§1399.261

Contact Lens Dispenser fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

§1399.262

This text has been deleted as, per Department of Consumer Affairs policy, the Board no longer offers refunds.

§1399.263

Spectacle Lens Dispenser fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

§1399.264

Non Resident Contact Lens Seller fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

Registered Dispensing Opticians of the California State Board of Optometry

Proposed text is underlined and deleted text is ~~strikethrough~~.

Amend Sections of Division 13.5 of Title 16 of the California Code of Regulations as follows:

Article 1. General Provisions

§ 1399.200. Citation.

This ~~chapter~~ division may be cited and referred to as the “Registered Dispensing Optician Regulations.”

Note: Authority and reference cited: Section 2558, Business and Professions Code.

§ 1399.201. Location of Principal Office.

The principal office of the California State Board of Optometry for the purpose of the administration of the registered dispensing optician program is located at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2554, Business and Professions Code.

§ 1399.203. Definitions.

For the purposes of the regulations contained in this ~~Chapter~~ Division, the term:

(a) “Board” means the California State Board of Optometry.

~~(b) “Division” means the California State Board of Optometry.~~

~~(b-e)~~ (b-e) “Code” means the Business and Professions Code.

~~(c-d)~~ (c-d) “Engaging in the business of a dispensing optician” means the filling of prescriptions of licensed physicians and surgeons or optometrists for prescription lenses, and as incidental to the filling of such prescriptions:

(1) Using a keratometer to measure the curvature of the cornea of the eye;

(2) Converting a compounded prescription for spectacle lens by means of an algebraic formula in order to (a) compensate for the different vertex distance between the eye and the refractionist's test lens and between the eye and lens actually dispensed or, (b) to determine the appropriate power of contact lenses in accordance with such prescription;

(3) Taking facial measurements, fitting and adjusting prescription lenses, and fitting and adjusting spectacle frames.

~~(d-f)~~ (d-f) “Personal knowledge,” as used in Section 2552(b) of the code, means knowledge of the affiant which is not based on hearsay.

~~(e-g)~~ (e-g) “Physician and Surgeon” means a physician and surgeon, holding a valid certificate issued by the Medical Board of California to practice medicine in the State of California.

~~(f-h)~~ (f-h) “Prescription,” as used in Chapter 5.5, Division 2 of the code, means:

- (1) A written order from a physician and surgeon or optometrist for spectacle or contact lenses, or
- (2) An oral order from a physician and surgeon or optometrist for spectacle or contact lenses if such order is reduced to writing and a copy of such writing is sent to the prescribing physician or optometrist prior to the delivery of the lenses to the patient.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2550, 2552 and 2558, Business and Professions Code.

§ 1399.204. Delegation of Functions.

Except for those powers reserved exclusively to the “agency itself” under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the ~~division Board~~ delegates and confers upon the executive officer of the ~~Board~~, or his or her designee, all functions necessary to the dispatch of business of the ~~division Board~~ in connection with investigative and administrative proceedings under the jurisdiction of the ~~division Board~~.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2555, Business and Professions Code; and 11500, Government Code.

Article 2. Applications

§ 1399.220. Applications for Registration.

All applications shall be submitted on a form prescribed by the ~~division Board~~, accompanied by such evidence, statements or documents as therein required, and filed with the ~~division Board~~ at its principal office with the required fee.

(a) The Registered Dispensing Optician initial application for registration shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name, if applicable.
- (3) Address of record, including:
 - _____ (A) Street address;
 - _____ (B) City, state and zip code;
 - _____ (C) County; and
 - _____ (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
 - _____ (A) Sole Proprietor;
 - _____ (B) Partnership;
 - _____ (C) Professional Corporation;
 - _____ (D) S Corporation;
 - _____ (E) C Corporation;
 - _____ (F) Health Facility;

- (G) A Non-Profit Organization;
 - (H) Sole owner.
 - (7) Social Security Number or Individual Taxpayer Identification Number.
 - (8) The type(s) of lenses for which the business will be filling prescriptions.
 - (9) Whether the person(s) dispensing lenses is a registered contact lens dispenser or registered spectacle lens dispenser, if applicable.
 - (10) Contact information of any person designated to handle board inquires and complaints, including:
 - (A) First, Middle and Last Name;
 - (B) Title;
 - (C) Telephone number; and
 - (D) Email address, if any.
 - (11) Whether the applicant is the owner or operator of the business for which they are applying.
 - (12) Name(s) and registration number(s) of the contact lens dispenser or the spectacle lens dispenser who will be filling prescriptions for the registered dispensing optician.
 - (13) Applicable business documents, including but not limited to:
 - (A) Lease agreements;
 - (B) Agreements with subleased optometrist or ophthalmologist if applicable;
 - (C) Business License issued by the town, city or county if applicable;
 - (D) If a partnership, the partnership agreement;
 - (E) If a corporation, the articles of incorporation;
 - (F) If a corporation, a list of officers, stakeholders and directors;
 - (G) If a corporation, a letter of Good Standing from California Secretary of State;
 - (H) If a corporation, a letter of good standing or equivalent from the resident state, if applicable.
 - (14) Agent for service of process.
 - (15) A declaration by the applicant under penalty of perjury that the information provided, including all accompanying documents or other requested proof of completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.
- (b) The Contact Lens Dispenser application shall request the following information:
- (1) First, middle, and last names.
 - (2) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and
 - (D) Country.
 - (3) Telephone number.
 - (4) Email address, if any.
 - (5) Date of birth.

- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Spectacle Lens Dispenser Registration in the State of California.
- (10) Whether the applicant has been licensed in another state, and if so, the registration number, and the original issuance date.
- (11) Whether the applicant has taken and passed the National Contact Lens Examiner Examination or equivalent, and if so, the examination date, and state and city in which it was taken.
- (12) Whether the applicant is currently serving in the U.S. Armed Forces.
- (13) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (14) Whether the applicant is requesting expediting of the application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver;
- (15) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (16) Whether the applicant is currently employed at a registered dispensing optician business, and if applicable, the business name, registration number, and location address of the business.
- (17) Whether the applicant will furnish a live scan or fingerprint hard cards to the Board for a background check.
- (18) A declaration by the applicant under the penalty of perjury that the information provided, including all accompanying documents or other requested proof of completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(c) The Spectacle Lens Dispenser application shall request the following information:

- (1) First, middle, and last names.
- (2) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and
 - (D) Country.
- (3) Telephone number.
- (4) Email address, if any.
- (5) Date of birth.
- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Contact Lens Dispenser Registration in the State of California.

- (10) Whether the applicant has been licensed in another state, and if so, the registration number and the original issuance date.
- (11) Whether the applicant has taken and passed the American Board of Opticianry Examination or equivalent, and if so, the examination date, and city and state in which it was taken.
- (12) Whether the applicant is currently serving in the U.S. Armed Forces.
- (13) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (14) Whether the applicant is requesting expediting of this application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (15) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (16) Whether the applicant is currently employed at a registered dispensing optician business, and if so, the business name, registration number, and location address of the business.
- (17) Whether the applicant will furnish a live scan or fingerprint hard cards to the Board for a background check.
- (18) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(d) The Nonresident Contact Lens Dispenser initial application for registration shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name if applicable.
- (3) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and
 - (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
 - _____ (A) Sole Proprietor;
 - _____ (B) Partnership;
 - _____ (C) Corporation; or
 - _____ (D) Limited Liability Corporation.
- (7) Social Security Number or Individual Taxpayer Identification Number.
- (8) Whether the applicant is licensed or otherwise authorized to sell contact lenses in their state or country, including:
 - _____ (A) State or country name;

- (B) Whether the state or country issues a license, and the license number if applicable;
- (C) Whether the license is in good standing; and
- (D) License expiration date.
- (9) A toll-free telephone number, which is available at least six days a week and 40 hours per week in which consumers can call with questions and complaints
- (10) Contact information of person designated to handle board inquires and complaints, including:
 - (A) First, Middle and last name;
 - (B) Title;
 - (C) Telephone number; and
 - (D) Email address, if any.
- (11) Information of applicant's designated agent for service of process, including:
 - (A) Agent's first and last names;
 - (B) Agent's street address, city, state, and zip code;
 - (C) Agent's telephone number; and
 - (D) Email address, if any.
- (12) Applicable business documents, including but not limited to:
 - (A) Lease agreements;
 - (B) Agreements with subleased optometrist or ophthalmologist if applicable;
 - (C) Business License issued by the town, city or county if applicable;
 - (D) If a partnership, the partnership agreement;
 - (E) If a corporation, the articles of incorporation;
 - (F) If a corporation, a list of officers, stakeholders and directors;
 - (G) If a corporation, a letter of Good Standing from California Secretary of State;
 - (H) If a corporation, a letter of good standing or equivalent from the resident state and if applicable;
 - (I) A sample of literature that is included with the contact lens shipment.
- (13) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2555, Business and Professions Code; and 11500, Government Code.

§ 1399.221. Denial of Applications. § 1399.220(a)

In the event an application is denied pursuant to Section 2552 or 2553.6 of the code, the ~~division~~ Board shall notify the applicant in writing within thirty days of the deficiencies or reasons for denial, and of the procedure for requesting a hearing on the denial.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2552, 2553 and 2553.6, Business and Professions Code.

§ 1399.222. Renewal Applications.

A renewal application will be submitted on a form ~~provided~~ prescribed by the ~~division Board~~, accompanied by the renewal fee and filed with the ~~division Board~~ Board at its office in Sacramento prior to the expiration date of the registration.

(a) The Registered Dispensing Optician renewal application shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name if applicable.
- (3) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and
 - (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
 - (A) Sole Proprietor;
 - (B) Partnership;
 - (C) Professional Corporation;
 - (D) S Corporation;
 - (E) C Corporation;
 - (F) Health Facility;
 - (G) A Non-Profit Organization;
 - (H) Sole owner.
- (7) Social Security Number or Individual Taxpayer Identification Number.
- (8) The type(s) of lenses for which the business will be filling prescriptions.
- (9) Whether the person(s) dispensing lenses is a registered contact lens dispenser or registered spectacle lens dispenser, if applicable.
- (10) Contact information of any person designated to handle board inquires and complaints, including:
 - (A) First, middle and last name;
 - (B) Title;
 - (C) Telephone number; and
 - (D) Email address, if any.
- (11) Whether the applicant is the owner or operator of the business for which they are applying.
- (12) Name(s) and registration number(s) of the contact lens dispenser or the spectacle lens dispenser who will be filling prescriptions for the registered dispensing optician.
- (13) Agent for service of process.
- (14) A declaration by the applicant under penalty of perjury that the information provided, including all accompanying documents or other requested proof of

completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(b) The Spectacle Lens Dispenser renewal application shall request the following information:

- (1) First, middle, and last names.
- (2) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and
 - (D) Country.
- (3) Telephone number.
- (4) Email address, if any.
- (5) Date of birth.
- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Contact Lens Dispenser Registration in the State of California.
- (10) Whether the applicant is currently serving in the U.S. Armed Forces.
- (11) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (12) Whether the applicant is requesting expediting of this application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (13) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (14) Whether the applicant is currently employed at a registered dispensing optician business, and if so, the business name, registration number, and location address of the business.
- (15) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(c) The Contact Lens Dispenser renewal application shall request the following information:

- 1) First, middle, and last names.
- (2) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and

- (D) Country.
- (3) Telephone number.
- (4) Email address, if any.
- (5) Date of birth.
- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Spectacle Lens Dispenser Registration in the State of California.
- (10) Whether the applicant is currently serving in the U.S. Armed Forces.
- (11) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (12) Whether the applicant is requesting expediting of the application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver;
- (13) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (14) Whether the applicant is currently employed at a registered dispensing optician business, and if applicable, the business name, telephone number, registration number, and location address of the business.
- (15) A declaration by the applicant under the penalty of perjury that the information provided, including all accompanying documents or other requested proof of completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(d) The Nonresident Contact Lens Dispenser renewal application shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name if applicable.
- (3) Address of record, including:
 - (A) Street address;
 - (B) City, state and zip code;
 - (C) County; and
 - (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
 - _____ (A) Sole Proprietor;
 - _____ (B) Partnership;
 - _____ (C) Corporation; or
 - _____ (D) Limited Liability Corporation.
- (7) Social Security Number or Individual Taxpayer Identification Number.

(8) A toll-free telephone number, which is available at least six days a week and 40 hours per week in which consumers can call with questions and complaints

(9) Contact information of person designated to handle board inquires and complaints, including:

(A) Name:

(B) Title:

(C) Telephone number; and

(D) Email address, if any.

(10) Information of applicant's designated agent for service of process, including:

(A) Agent's first and last names;

(B) Agent's street address, city, state, and zip code;

(C) Agent's telephone number; and

(D) Email address, if any.

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

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2554, Business and Professions Code.

§ 1399.223. Abandonment of Application.

An applicant shall be deemed to have abandoned an application if he or she does not complete the requirements for registration within one year from the date on which the application was filed. An application submitted subsequent to an abandoned application shall be treated as a new application.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2551, Business and Professions Code.

Article 3. Prescriptions for Ophthalmic Devices

§ 1399.230. Oral Prescriptions.

If an oral prescription or order is received for lenses the order shall be reduced to writing and a copy of such writing sent to the prescribing physician or optometrist prior to the delivery of the lenses to the patient.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2550, Business and Professions Code.

§ 1399.231. Retention of Records.

All written prescriptions or oral prescriptions which have been reduced to writing shall be retained for three years after the dates such prescriptions have been filed.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2550, 2555 and 2556, Business and Professions Code.

§ 1399.232. Ophthalmic Devices.

The minimum quality standards for prescription ophthalmic devices sold, dispensed or furnished by registered dispensing opticians are the current standards of the American National Standard Institute Z80.1 and Z80.2.

Note: Authority cited: Section 2541.3, Business and Professions Code. Reference: Section 2541.3, Business and Professions Code.

§ 1399.233. Evaluation of Contact Lenses.

In accordance with Section 2562 of the Code, a registered contact lens dispenser shall ensure that a written statement is enclosed with each contact lens container which directs the person named in the contact lens prescription to return to the prescribing physician or optometrist for an evaluation within 60 days.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2562, Business and Professions Code.

Article 4. Changes of Business Name, Business Address, or Ownership

§ 1399.240. Change of Business Name or Address.

A registrant shall report to the ~~division~~ Board in writing within ten working days any change of the business name or address. The ~~division~~ Board shall change its records accordingly and shall notify the registrant in writing of the change. There is no fee for recording such a change.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2553 and 2554, Business and Professions Code.

§ 1399.242. Change of Ownership.

The ~~division~~ Board shall be promptly notified by the registrant when there is a change in the ownership of the registrant, and the certificate of registration shall immediately be returned to the ~~division~~ Board for cancellation. No new certificate of registration shall be issued until the previous certificate is cancelled. If there is such a change, the new registrant shall file a new application and pay the prescribed application and initial registration fees.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2551 and 2553, Business and Professions Code.

Article 5. Advertising

§ 1399.250. Advertising.

A registered dispensing optician may advertise the provision of any ophthalmic goods or services authorized to be provided by such registration in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

*Note: Authority cited: Sections 651 and 2558, Business and Professions Code.
Reference: Sections 651, 2556 and 17500, Business and Professions Code.*

§ 1399.251. Advertisement for Eye Examination.

It is unprofessional conduct for a registered dispensing optician to advertise a price or fee for a visual eye examination or a complete medical eye examination or to otherwise advertise the furnishing of the services of an optometrist or a physician and surgeon.

*Note: Authority cited: Sections 651 and 2558, Business and Professions Code.
Reference: Sections 651, 2540, 2556 and 17500, Business and Professions Code.*

§ 1399.252. Advertising Requirements.

Registered dispensing opticians shall include the names under which they are registered in all advertising in connection with the business of dispensing optician. For purposes of this ~~chapter~~ division, advertising includes classified directories and solicitations to the public.

*Note: Authority cited: Sections 651 and 2558, Business and Professions Code.
Reference: Sections 651, 2556 and 2558, Business and Professions Code.*

Article 6. Fees

§ 1399.260. Registered Dispensing Optician Fees.

- (a) The application fee for a registered dispensing optician registration shall be one hundred fifty dollars (\$150.00.)
- (b) The initial registration fee shall be two hundred dollars (\$75 200.00.)
- (~~c~~ b) The biennial renewal fee shall be two hundred dollars (\$75 200.00.)
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50.00.)

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2565, Business and Professions Code.

§ 1399.261. Contact Lens Dispenser Fees.

- (a) The application fee for a registered contact lens dispenser shall be one hundred fifty dollars (\$150.00.)
- (b) The initial registration fee shall be two hundred dollars (\$75 200.00.)
- (~~c~~ b) The biennial renewal fee shall be two hundred dollars (\$75 200.00.)
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50.00.)

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566, Business and Professions Code.

~~§ 1399.262. Refund of Application Fee.~~

~~Any applicant for registration as a contact lens dispenser who does not meet the requirements for registration shall be refunded \$50.00 upon written request.~~

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566, Business and Professions Code.

§ 1399.263. Spectacle Lens Dispenser Fees.

- (a) The application fee for registration shall be one hundred fifty dollars (\$150.00.)
- (b) The initial registration fee shall be two hundred dollars (\$200.00.)
- (c) The biannual renewal fee shall be two hundred dollars (\$200.00.)
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50.00.)

§1399.264 Non Resident Contact Lens Seller Fees.

- (a) The application fee for a non-resident contact lens seller shall be one hundred fifty dollars (\$150.00)
- (b) The initial registration fee shall be two hundred dollars (\$200).
- (c) The biannual renewal fee shall be two hundred dollars (\$200).
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50).

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566.1 and 2546.9, Business and Professions Code.

Article 7. Enforcement

§ 1399.270. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of the registration of a dispensing optician pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a dispensing optician if to a substantial degree it evidences present or potential unfitness of a dispensing optician to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

- (a) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the code relating to dispensing opticians.
- (b) Any violation of the provisions of Chapter 5.4, Division 2 of the code.
- (c) Any violation of the provisions of Chapter 5.5, Division 2, of the code.

Note: Authority cited: Sections 481 and 2558, Business and Professions Code. Reference: Sections 481, 2555.1 and 2556, Business and Professions Code.

§ 1399.271. Criteria for Denial and Reinstatement of Registration.

When considering the denial of a registration under Section 480 of the code, or a petition for reinstatement under Section 11522 of the code, the ~~division~~ Board in

evaluating the rehabilitation of the applicant and his or her present eligibility for registration, shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).
- (d) In the case of a denial or revocation based upon the conviction of a crime, the criteria set forth in Section 1399.272.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

*Note: Authority cited: Sections 482 and 2558, Business and Professions Code.
Reference: Sections 482, 2555.1 and 2556, Business and Professions Code.*

§ 1399.272. Rehabilitation Criteria for Suspensions and Revocations.

When considering the suspension or revocation of a registration on the grounds that the registrant has been convicted of a crime, the ~~division~~ Board, in evaluating the rehabilitation of such person and his or her present eligibility for a registration, shall consider the following criteria:

- (a) Nature and severity of the act(s) or offense(s).
- (b) Total criminal record.
- (c) Extent of time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the registrant has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the registrant.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the registrant.

*Note: Authority cited: Sections 482 and 2558, Business and Professions Code.
Reference: Sections 482, 2555.1 and 2556, Business and Professions Code.*

§ 1399.274. Definitions.

As used in Sections 1399.275 through 1399.279, inclusive.

- (a) “Chief of licensing” means the executive officer of the Board, or his or her designee.
- (b) “Optician” means a registered dispensing optician, and a registered spectacle lens dispenser or a registered contact lens dispenser, as applicable.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.
Reference: Sections 2550 and 2550.1, Business and Professions Code.*

§ 1399.275. Citations and Fines.

- (a) The chief of licensing is authorized to issue citations containing orders of abatement and fines for violations by opticians of the provisions of law referred to in this section.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.

Reference: Section 125.9, Business and Professions Code.

§ 1399.276. Amount of Fines.

The amount of any fine to be levied by the chief of licensing shall take into consideration the factors listed in subdivision (b) (3) of Section 125.9 of the code and shall be within the range set forth in each subsection below.

(a) The fine for a violation of the following provisions shall be from \$1100 to \$2500:

- (1) Business and Professions Code Section 810;
- (2) Business and Professions Code Section 2542;
- (3) Business and Professions Code Section 2553;
- (4) Business and Professions Code Section 2556.5;
- (5) Business and Professions Code Section 2559.1;
- (6) Business and Professions Code Section 2559.2(e);
- (7) Business and Professions Code Section 2560.

(b) The fine for a violation of the following provisions shall be from \$100 to \$1000:

- (1) Business and Professions Code Section 650;
- (2) Business and Professions Code Section 651;
- (3) Business and Professions Code Section 654;
- (4) Business and Professions Code Section 655;
- (5) Business and Professions Code Section 2540;
- (6) Business and Professions Code Section 2541.3;
- (7) Business and Professions Code Section 2543;
- (8) Business and Professions Code Section 2553.6;
- (9) Business and Professions Code Section 2554;
- (10) Business and Professions Code Section 2556;
- (11) Business and Professions Code Section 2562;
- (12) Business and Professions Code Section 2564.5;
- (13) Title 16 Cal. Code Reg. Section 1399.230;
- (14) Title 16 Cal. Code Reg. Section 1399.231;
- (15) Title 16 Cal. Code Reg. Section 1399.232;
- (16) Title 16 Cal. Code Reg. Section 1399.240;
- (17) Title 16 Cal. Code Reg. Section 1399.242;
- (18) Title 16 Cal. Code Reg. Section 1399.251;
- (19) Title 16 Cal. Code Reg. Section 1399.252.

(c) In her or his discretion, the chief of licensing may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (b).

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

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.
Reference: Section 125.9, Business and Professions Code.*

§ 1399.277. Compliance with Orders of Abatement.

(a) If a cited optician who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the chief of licensing in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the optician cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. Such failure may result in disciplinary action being taken by the ~~division~~ Board or other appropriate judicial relief being taken against the optician cited.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.
Reference: Section 125.9, Business and Professions Code.*

§ 1399.278. Citations for Unlicensed Practice.

The chief of licensing is authorized to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which registration as an optician is required under Chapters 5.4 and 5.5 of Division 2 of the Code. Each citation issued shall contain an order of abatement. Where appropriate the chief of licensing shall levy a fine for such unlicensed activity in accordance with subdivision (b) (3) of Section 125.9 of the code. The provisions of Sections 1399.275 and 1399.277 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanctions authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.
Reference: Section 125.9, Business and Professions Code.*

§ 1399.279. Contest of Citations.

(a) In addition to requesting a hearing provided for in subdivision (b) (4) of Section 125.9 of the code, the optician cited may, within ten (10) days after service or receipt of the citation, notify the chief of licensing in writing of his or her request for an informal conference with the chief of licensing regarding the acts charged in the citation. The

time allowed for the request shall begin the first day after the citation has been served or received.

(b) The chief of licensing shall hold, within 30 days from the receipt of the request, an informal conference with the optician cited for his or her legal counsel or authorized representative. At the conclusion of the informal conference the chief of licensing may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The chief of licensing shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of Section 1399.277, a copy of his or her findings and decision to the optician cited within ten days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The optician cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the chief of licensing. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b) (4) of Section 125.9.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.
Reference: Section 125.9, Business and Professions Code.*

Article 8. Optical Dispensing Educational Programs (Repealed 1990)



ISSUE MEMORANDUM

DATE	August 14, 2020
TO	Members, California State Board of Optometry
FROM	Cheree Kimball, Acting Assistant Executive Officer <i>prepared by Alexander Juarez, Enforcement Analyst</i>
SUBJECT	Agenda Item #23- Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1399.273 and Optician Disciplinary Guidelines Incorporated by Reference

Summary:

The proposed Optician Disciplinary Guidelines (Guidelines) are used in disciplinary action against applicants and registrants by protecting the consumers of opticianry services from unsafe, incompetent and/or negligent opticians. The Guidelines are used to impose discipline including conditions of probation for licensees that address the violations charged and are modeled after the Optometry Disciplinary Guidelines but are modified to meet the needs of the Optician Program.

Staff requests that the Board review and provide any additional feedback on the proposed Optician Disciplinary Guidelines and recommends approval of the rulemaking package.

If a motion to approve is desired:

“I move to approve the proposed text for California Code of Regulations Title 16, Section 1399.273; the Optician Disciplinary Guidelines and forms optc-ne1 and optc-qr1 incorporated by reference as presented and discussed here today; and direct staff to submit the text to Office of Administrative Law for posting for a 45 day public comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.”

History:

The Dispensing Optician Committee (DOC) began a review of the Guidelines in August 2017 and completed the review in December 2019. Between 2017 and 2019, staff made minor revisions and restructured the Guidelines where appropriate based in part on the advice of the DOC. The DOC moved to send the Guidelines to the full Board for discussion and approval at the December 2019 meeting. Although agendized at the February 28, 2020 Board meeting, staff requested additional review via the Consumer Protection Committee (CPC), which reviewed the proposal at the July 17, 2020 public meeting.

The DOC and CPC provided feedback at the following meetings:

- [August 18, 2017](#)
- [January 4, 2019](#)
- [December 13, 2019](#)
- [July 17, 2020](#)

Discussion:

The Consumer Protection Committee (CPC) was tasked with reviewing the Optician Disciplinary Guidelines in preparation for the July 17, 2020 meeting. During the meeting, the Committee suggested minor amendments to promote consistency and provide clarity to enhance consumer protection. The CPC selected Dr. McIntyre to assist in providing oversight for the final changes to the current Guidelines for Board consideration. The CPC discussed amendments to the following areas:

Attachment 1: Proposed CCR § 1399.273 Regulatory Authority Text

This attachment contains the proposed text for §1399.273 of Division 13.5 of Title 16 of the California Code of Regulations.

Attachment 2: Proposed Optician Disciplinary Guidelines

These guidelines are incorporated by reference into §1399.273.

As noted above, the Guidelines are based on the current Optometry Disciplinary Guidelines and modified for the Opticianry program. The CPC made the following changes to Opticianry Disciplinary Guidelines:

- A. Definitions: To clarify the Mental Health Evaluation term and the Medical Health Evaluation term (terms 25 and 26, respectively, pages 16 – 18 of the DRAFT Guidelines), the definitions of “fit” and “fitting”, “adjust” and “adjusting”, and “ophthalmic lens” and “ophthalmic device” were added.
- B. Probation Monitoring Costs: The Probation Monitoring Costs section [p. 9 - 10 of DRAFT Guidelines] was reworded for clarity. The CPC recommended changing the language to clarify the respondent is responsible for any payments to the Board.
- C. Mental Health Evaluation term: Language for the optional section of the Mental Health Evaluation term [p. 16 of DRAFT Guidelines] has been modified. Previous language stated that it was optional that the Respondent not engage in fitting and adjusting until notified by the Board that they are mentally fit to practice. The CPC requested this to be rephrased to state that the Board can take the additional action of restricting the respondent from fitting and adjusting lenses or dispensing until notified by the Board.
- D. Medical Health Evaluation term: Language for the optional section of the Medical Health Evaluation term [p. 17 of DRAFT Guidelines] has been modified. Previous language stated that it was optional that the Respondent not engage in fitting and

adjusting until notified by the Board that they are mentally fit to practice. The CPC requested this to be rephrased to state that the Board can take the additional action of restricting the respondent from fitting and adjusting lenses or dispensing until notified by the Board.

- E. Global Change: All references to Registered Dispensing Opticians (RDOs) have been changed to Dispensing Ophthalmic Businesses. The terminology has been changed to minimize confusion between individual and business registrations.

In her review of the presented DRAFT of the Disciplinary Guidelines, Dr. McIntyre noted that the definition of “Ophthalmic Lens” and “Ophthalmic Device”, which currently states that lenses or devices “alters or changes the visual powers of the human eye”, should be updated to note that Plano lenses, while not altering visual power, have the ability to affect ocular tissue. The full text of the current definition can be found in number 3 on pages 17 and 18.

Attachment 3: Quarterly Report of Compliance (Form No. OPTC – QR1)

Quarterly Report of Compliance (Form No. OPTC – QR1) – this form is used by probationers for their quarterly report to the Board. Board staff made the following changes based on the CPC’s recommendations:

- F. Language for several questions have been developed into complete sentences. The CPC considered some questions to be incomplete and requested the Board staff develop the questions into more complete sentences to mitigate any confusion.

Attachment 4: Notice to Employers (Form No. OPTC – NE1)

Notice to Employers (Form No. OPTC – NE1) – During their probation period, probationers are required to inform their employers of the discipline imposed by providing the employer with a copy of the Decision and Order in this matter. The employer will inform the California State Board of Optometry, in writing, that they are aware of the discipline. “Employer” refers to the Dispensing Ophthalmic Business registrant where the probationer practices.

Attachments:

1. Proposed CCR § 1399.273 Regulatory Authority Text
2. Proposed Optician Disciplinary Guidelines
3. Quarterly Report of Compliance (Form No. OPTC – QR1)
4. Notice to Employers (Form No. OPTC – NE1)

Opticianry Disciplinary Guidelines – Proposed Text

Add to California Code of Regulations Title 16, Division 13.5, Article 7, Section 1399.273 as follows:

§ 1399.273. Optician Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Registrants.

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the California State Board of Optometry (Board) shall consider the “Opticianry Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (DG 1 05/2020),” which is hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), if after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.) or after stipulation of the parties supported by the Attorney General Office’s reasons for recommending the stipulation, the Board finds that the evidence establishes that an individual is a substance-abusing registrant for purposes of section 315 of the Code, then in addition to any and all other relevant terms and conditions contained in the disciplinary guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance-Abusing Licensees shall apply, without deviation, and be used in any probationary order of the Board affecting that registrant.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 2546.3, 2558, and 315, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, and 2555, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code.



**OPTICIANRY PROGRAM
DISCIPLINARY GUIDELINES
&
UNIFORM STANDARDS RELATED TO SUBSTANCE
ABUSE
(DG 1, 05-2020)**

***“Protection of the Public Shall be the Highest Priority”
Business and Professions Code, §3010.1***

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INTRODUCTION

The mission of the California State Board of Optometry (Board) is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of optometry as well as opticianry. The Board's Optician Program registers and regulates Spectacle Lens Dispensers (SLDs), Contact Lens Dispensers (CLDs), Dispensing Ophthalmic Businesses (DOBs), and Non-resident Contact Lens Sellers (NCLS).

In keeping with its mandate to protect the consumers of optometric and opticianry services from unsafe, incompetent and/or negligent optometrists and opticians, the Board adopts the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Business and Professions Code (BPC) and the California Code of Regulations (CCR).

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that Administrative Law Judges (ALJ) clearly delineate the factual basis for their decisions. This is especially important if the ALJ deviates from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons and to evaluate the appropriateness of the decision.

If, at the time of hearing, the ALJ finds that the Respondent is not capable of safe practice for any reason, the Board favors outright revocation of the registration. If, however, the Respondent has demonstrated a capacity to practice safely, the Board recommends a stayed revocation order with probation.

Suspension of a registration may also be appropriate to protect the public while the Respondent corrects deficiencies in skills and education or participates in rehabilitation.

REGULATORY AUTHORITY

These guidelines are incorporated by reference in Section 1399.273 of Article 7 of Division 13.5 of Title 16 of the California Code of Regulations, as follows:

§ 1399.273. Optician Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Registrants.

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the California State Board of Optometry (Board) shall consider the “Opticianry Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (DG 1 05/2020),” which is hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), if after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.) or after stipulation of the parties supported by the Attorney General Office’s reasons for recommending the stipulation, the Board finds that the evidence establishes that an individual is a substance-abusing registrant for purposes of section 315 of the Code, then in addition to any and all other relevant terms and conditions contained in the disciplinary guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance-Abusing Licensees shall apply, without deviation, and be used in any probationary order of the Board affecting that registrant.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board’s guidelines in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 2546.3, 2558, and 315, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, and 2555, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code.

FACTORS TO BE CONSIDERED

In determining whether denial, revocation, suspension, or probation should be imposed in a given case, the following factors should be considered:

1. Nature and gravity of the act(s), offense(s), or crime(s) under consideration.
2. The nature and duties of the profession in which the applicant seeks registration or in which the registrant is registered.
3. Actual or potential harm to the public.
4. Actual or potential harm to any patient.
5. Prior disciplinary record.
6. Number and/or variety of current violations.
7. Mitigation evidence.
8. Whether there has been a showing of rehabilitation, if the applicant or registrant completed the criminal sentence at issue without a violation of parole or probation
9. Whether there has been a showing of rehabilitation when applying the Board's rehabilitation criteria.
10. Overall criminal record.
11. The number of years that have elapsed since the date of the offense(s).
12. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

INTRODUCTORY LANGUAGE STANDARD PROBATION CONDITIONS

The following introductory language and all standard probation conditions shall be included in probationary decisions/orders. For applicants, Condition 8, Cost Recovery, does not apply. For registrants, all standard probation conditions apply.

PROBATIONARY TERMS AND CONDITIONS

MODEL DISCIPLINARY ORDERS

Revocation - Single Cause

Registration No. _____ issued to Respondent is revoked. Cost recovery in the amount of _____ is due within 90 calendar days of the effective date of this decision or as directed by a Board-approved payment plan.

Revocation - Multiple Causes

Registration No. _____ issued to Respondent is revoked pursuant to Determination of Issues _____ separately and for all of them. Cost recovery [if any] in the amount of _____ is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

Suspension - Single Cause

Registration No. _____ issued to Respondent is suspended for a period of _____.

Suspension - Multiple Causes (run concurrently)

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

Suspension - Multiple Causes (run consecutively)

Registration No. _____ issued to Respondent is suspended for _____ pursuant to Determination of Issues _____. These suspensions shall run consecutively, for a total period of _____.

Standard Stay Order

However [revocation/suspension] is stayed and Respondent is placed on probation for _____ years upon the following terms and conditions:

Cost Recovery for Revocations and Surrenders

If and when respondent's registration is reinstated, they shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 123.5 in the amount of \$ _____. If requested, Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be

construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the registration.

MODEL PROBATIONARY ORDERS

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

IT IS HEREBY ORDERED that Registration No. _____ issued to Respondent is revoked. However, the revocation is stayed and Respondent's registration is placed on probation for ___ years on the following conditions:

Option:

Should the Board subsequently issue a new registration or license to Respondent during the probationary period, the new registration or license shall be immediately revoked. The revocation of the new registration or license shall be stayed, and the probation imposed by this decision and order will continue. Respondent shall remain subject to the same terms and conditions imposed by this disciplinary order.

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

Applicants who are placed on probation:

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

Reinstatement of registration with conditions of probation:

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

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

STANDARD TERMS AND CONDITIONS

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

1. Obey all laws
2. Submit Quarterly Reports
3. Cooperate With Probation Monitoring Program
4. Probation Monitoring Costs
5. Function as a Dispensing Ophthalmic Business, Spectacle Lens Dispenser, Contact Lens Dispenser, or Nonresident Contact Lens Seller
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Valid Registration Status
10. Tolling for Out-Of-State Residence or Practice
11. Registration Surrender
12. Violation of Probation
13. Completion of Probation
14. Sale or Closure of a Dispensary Location

SEVERABILITY CLAUSE

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

1. OBEY ALL LAWS

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

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

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

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health care related board or any professional licensing

or certification agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (OPTC-QR1 (07/2020)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Spectacle Lens Dispenser/Contact Lens Dispenser/Dispensing Ophthalmic Business/Nonresident Contact Lens Seller] registration(s)

Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due every quarter for each year of probation throughout the entire length of probation.

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

3. COOPERATE WITH PROBATION MONITORING PROGRAM

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

Respondent shall claim all certified mail issued by the Board, timely respond to all notices of reasonable requests, and submit reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative. Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Dispensing Ophthalmic Business /Spectacle Lens Dispenser/Contact Lens Dispenser/Nonresident Contact Lens Seller] registration(s).

4. PROBATION MONITORING COSTS

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

The Board may consider financial hardship in setting a repayment schedule.

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

5. FUNCTION AS A [DISPENSING OPHTHALMIC BUSINESS/SPECTACLE LENS DISPENSER/CONTACT LENS DISPENSER/NONRESIDENT CONTACT LENS SELLER]

Respondent shall function as [a dispensing ophthalmic business/spectacle lens dispenser/contact lens dispenser/nonresident contact lens seller] for a minimum of 60 hours per month for 6 consecutive months.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of Respondent’s employers and supervisors and shall give written consent to the Board for the Board to communicate with Respondent’s employers and supervisors regarding the Respondent’s work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and/or condition.

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

The Respondent must ensure that the Board receives written confirmation from the employer that they are aware of the discipline, on the Notice to Employer form to be provided to the Respondent (OPTC – NE1 (7/2020)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

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

Respondent shall also notify their probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are acceptable for mailing purposes. Respondent must also provide their physical residence address.

8. COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$____. If

requested, Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months before the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of their good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period for up to one year without further hearing in order to comply with this condition. During the one-year extension, all conditions of probation will apply.

9. VALID REGISTRATION STATUS

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

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

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon their return to California and before the commencement of any employment where representation as a [Dispensing Ophthalmic Business /spectacle lens dispenser/contact lens dispenser registration/nonresident contact lens seller] is/was provided.

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

11. REGISTRATION SURRENDER

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

Surrender of Respondent's registration shall be considered a disciplinary action and shall become a part of Respondent's registration history with the Board.

12. VIOLATION OF PROBATION

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

13. COMPLETION OF PROBATION

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

14. SALE OR CLOSURE OF A DISPENSARY LOCATION

If Respondent sells or closes their dispensary location after the imposition of disciplinary action, Respondent shall ensure that patients are refunded money for work/services not completed or provided and shall not misrepresent to anyone the reason for the sale or closure of the dispensary location. The provisions of this condition in no way authorize the practice of opticianry by the Respondent during any period of registration suspension.

OPTIONAL PROBATION CONDITIONS

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

15. Community Service
16. Participate in Group Support Meeting
17. Notice to Patients (Dispensing Ophthalmic Businesses ONLY)
18. Alcohol and Drug Treatment
19. Worksite Monitor
20. Direct Supervision
21. Suspension
22. Employment Limitations
23. Psychotherapy or Counseling Program
24. Mental Health Evaluation
25. Medical Health Evaluation
26. Medical Treatment
27. Restitution
28. Audit Required (Dispensing Ophthalmic Businesses ONLY)
29. Lens Prescriptions – Maintain Records (Dispensing Ophthalmic Businesses ONLY)
30. Restricted Practice
31. Restrictions as to Advertisement
32. Take and Pass ABO and/or NCLE Exams
33. Professional Education

15. COMMUNITY SERVICE

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

16. PARTICIPATE IN GROUP SUPPORT MEETING

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

17. NOTICE TO PATIENTS (Dispensing Ophthalmic Businesses ONLY)

During the period of probation, Respondent shall post a notice in a prominent place in their dispensary location that is conspicuous and readable to the public. The notice shall state the Respondent's registration is on probation and shall contain the telephone number of the

California State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to their business. The notice described above shall be approved by the Board before it is posted within 30 calendar days of the effective date of this decision.

18. ALCOHOL AND DRUG TREATMENT

Respondent, at their expense, shall successfully complete a treatment regimen at a recognized and established program for (drugs/alcohol [select one or both]) in California of at least six months' duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist, or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if they believe the Respondent cannot safely practice. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

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

Positive results shall be reported immediately to the Board and may be used in administrative or disciplinary action.

19. WORKSITE MONITOR

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities, including if applicable, as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

20. DIRECT SUPERVISION

During the period of probation, Respondent shall be under the direct supervision of a registered contact/spectacle lens dispenser holding a current and valid unrestricted registration. "Direct supervision" means assignment to a registered contact/spectacle lens dispenser who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while they are functioning as a registered contact/spectacle lens dispenser. The appropriate level of supervision must be approved by the Board prior to engaging in practice.

Supervisor quarterly Reports of Performance are due for each year of probation and the entire

length of probation from each employer, as required by the Board or its designee.

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

21. SUSPENSION

As part of probation, Respondent shall be suspended from the practice of opticianry for a period of ____ (e.g., 90 calendar days) which will begin on the effective date of this decision. If not employed as an optician/dispenser or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board in writing that the employer is aware of the dates of suspension.

22. EMPLOYMENT LIMITATIONS

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

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

Respondent shall work only in a regularly assigned, identified and predetermined worksite(s) at their address of record.

23. PSYCHOTHERAPY OR COUNSELING PROGRAM

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

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

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

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

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

24. MENTAL HEALTH EVALUATION

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

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

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

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

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

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

If, prior to the completion of probation, Respondent is found to be mentally incapable of resuming the practice of opticianry without restrictions, the Board shall retain jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally capable of resuming practice of opticianry without restrictions. Respondents shall pay the cost of the evaluation(s) and treatment.

Respondent shall not engage in fitting and adjusting ophthalmic lenses or devices or dispensing until notified by the Board of its determination that Respondent is mentally fit to practice safely.

For purposes of these guidelines, the following definitions shall apply:

1. "Fit" and "fitting" means doing any or all of the following acts prior to the act of adjusting, either singly or in combination with others, designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
2. "Adjust" and "adjusting" means doing any or all of the following acts, either singly or in combination with others, adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
3. "Ophthalmic Lens" or "Ophthalmic Device" means any prescription lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices, ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

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

25. MEDICAL HEALTH EVALUATION

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

If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of notice of the requirement submit to the Board for

its prior approval the name and qualification of a physician of Respondent's choice. Upon approval of the treating physician, Respondent shall undergo and continue medical treatment at Respondent's cost until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Quarterly reports are due each year of probation and the entire length of probation from the treating physician as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports may constitute a violation of probation and may result in further disciplinary action.

Respondent shall not engage in fitting and adjusting ophthalmic lenses or devices or dispensing until notified by the Board of its determination that Respondent is mentally fit to practice safely.

For purposes of these guidelines, the following definitions shall apply:

1. "Fit" and "fitting" means doing any or all of the following acts prior to the act of adjusting, either singly or in combination with others, designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
2. "Adjust" and "adjusting" means doing any or all of the following acts, either singly or in combination with others, adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
3. "Ophthalmic Lens" or "Ophthalmic Device" means any prescription lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices, ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

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

26. MEDICAL TREATMENT

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

required by the Board or its designee.

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

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

27. RESTITUTION

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

28. AUDIT REQUIRED (Dispensing Ophthalmic Businesses ONLY)

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

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

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

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

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

The Board shall be advised of the results of the audit and may obtain any and all copies of any documents audited or the results of the audit. The cost of the audits shall be borne by

Respondent. Failure to pay for the audits in a timely fashion within ten (10) calendar days from receipt of an invoice for the cost of the audit shall constitute a violation of probation.

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

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

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

After being so notified, Respondent shall cease practice until a replacement auditor is approved and assumes auditing responsibility.

29. LENS PRESCRIPTIONS - MAINTAIN RECORDS (Dispensing Ophthalmic Businesses ONLY)

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

1. Name and address of the patient;
2. Date dispensed;
3. Price of the services and goods involved in the prescription;

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

30. RESTRICTED PRACTICE

[Respondent shall practice only with a specified client population, in a specified practice setting, and/or engage in procedures specified in paragraphs [] to [] of the decision. These restrictions shall be specifically defined in the decision and be related to the violation. Respondent shall be required to document compliance in the manner required by the Board.]

31. RESTRICTIONS ON ADVERTISEMENTS

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

disseminated to the public only after written approval by the Board.

32. TAKE AND PASS ABO AND/OR NCLE EXAM

Respondent shall take and pass part(s) _ of the American Board of Opticianry (ABO) Examination and/or the National Contact Lens Examination (NCLE). Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

33. PROFESSIONAL EDUCATION

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval an educational program or course in areas of _____. The education program or course(s) shall consist of a minimum of ___ hours in each area.

Respondent is responsible for all costs associated with completing professional education requirements. Following completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses approved by the Board.

UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES

Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs Substance Abuse Coordination Committee formulated Uniform Standards Regarding Substance Abusing Healing Arts Licensees (rev. 4/20/11) (SACC). The Board's Uniform Standards not otherwise incorporated into the Standard or Optional Conditions are found in Required Conditions of Probation 34 and 35, and Discretionary Conditions of Probation 36, 37, and 38.

The Uniform Standards apply when dealing with substance-abusing registrants. If, after notice and hearing, the evidence establishes that the registrant is a substance abusing registrant, then Conditions of Probation 34 and 35 shall be imposed without deviation.

Conditions of Probation 36, 37, and 38 shall be considered where the registrant is found to be a substance abuser, and if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.

The Board may impose more restrictive conditions, if necessary, to protect the public.

REQUIRED CONDITIONS OF PROBATION

34. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL

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

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

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

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

Respondent shall ensure that they are not in the presence of or in the same physical location

as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut-off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's opticianry registration.

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

35. BIOLOGICAL FLUID TESTING

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

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

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

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

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

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

DISCRETIONARY CONDITIONS OF PROBATION

36. CLINICAL DIAGNOSTIC EVALUATION

Within 30 days of the effective date of the decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's decision prior to the clinical diagnostic evaluation being performed. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a financial, personal, or business relationship with the registrant within the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the registrant has a substance abuse problem, is a threat to themselves or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the registrant's rehabilitation and safe practice. If the evaluator determines during the evaluation process that a registrant is a threat to themselves or others, the evaluator shall notify the Board within 24 hours of the determination.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing a minimum of 2 times per week.

Respondent shall request the evaluator submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless the Board grants the evaluator an extension, which shall not exceed 30 days.

Respondent shall not return to practice until the Board determines that they are able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what if any work limitations to place on a registrant, the Board will consider the factors set forth in the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee (SACC).

Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a registrant is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in Standard No. 11 of Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the SACC.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

37. PARTICIPATE IN GROUP SUPPORT MEETINGS WITH QUALIFIED FACILITATOR

Respondent shall participate in group support meetings led by a facilitator who meets the qualifications and requirements as set forth in Standard No. 5 of the Uniform Standards

Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. Respondent shall submit dated and signed documentation confirming meeting attendance to the Board during the entire period of probation.

38. WORKSITE MONITOR UNDER UNIFORM STANDARDS

Within 30 days of the effective date of the Decision, Respondent shall submit for the Board's approval the name of a proposed worksite monitor. Once approved, Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities as specified in Standard No. 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

RECOMMENDED DISCIPLINE BASED ON VIOLATION

Below the Board provides recommended ranges of penalties for violations of statutes and regulations under the jurisdiction of the California State Board of Optometry. Each recommended discipline corresponds with the number assigned to the terms, conditions and standards referenced herein:

Probationary Terms and Condition – Standard Terms and Conditions;
Optional Conditions; and Uniform Standards for Substance Abusing Licensees

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

Conviction of a Substantially Related Crime Business and Professions Code (BPC) sections [490](#), [2555.1](#), 16 California Code of Regulations (CCR) [1399.270](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

15. Community Service
16. Participate in Group Support Meeting
17. Notice to Patients (Dispensing Ophthalmic Businesses ONLY)
18. Alcohol and Drug Treatment
19. Worksite Monitor
20. Direct Supervision
21. Suspension
22. Employment Limitations
23. Psychotherapy or Counseling Program
24. Mental Health Evaluation
25. Medical Health Evaluation
26. Medical Treatment
27. Restitution
28. Audit Required (Dispensing Ophthalmic Businesses ONLY)
29. Lens Prescriptions – Maintain Records (Dispensing Ophthalmic Businesses ONLY)
30. Restrictions as to Advertisement
31. Take and Pass ABO and/or NCLE Exams
32. Professional Education
33. Abstention From Use of Controlled Substances/Alcohol
34. Biological Fluid Testing
35. Clinical Diagnostic Evaluation
36. Participate in Group Support Meetings with Qualified Facilitator
37. Worksite Monitor Under Uniform Standards

Dishonesty, False Statement of Application (BPC sections [475](#), [480](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

21. Suspension

33. Professional Education - Ethics

Prohibited Arrangements with Optometrists (BPC section [655](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

19. Worksite Monitor

21. Suspension

31. Restrictions on Advertisements

Disseminating False, Fraudulent, Misleading, or Deceptive Information (BPC section [651](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

30. Restrictions on Advertisements

If Warranted:

15. Community Service

19. Worksite Monitor

21. Suspension

27. Restitution

Dispensing Lenses Below Industry Standard (BPC section [2541.3](#))

Maximum Discipline: Revocation

Minimum Discipline: Stayed Revocation, 3-5 years' probation

Required:

1-14. Standard Conditions

If Warranted:

- 15. Community Service
- 19. Worksite Monitor
- 20. Direct Supervision
- 21. Suspension
- 27. Restitution
- 32. Take and Pass ABO and/or NCLE Exams
- 33. Professional Education



Case Number: _____

Registration Numbers: _____

Year:			
Quarter			
1 st		3 rd	
2 nd		4 th	

Quarterly Report of Compliance

(Return to address shown above)

Please Print or Type

Name:			
List name exactly as it appears on your current registration.			
Last	Middle I.	First	
Residence Address			Mobile Phone Number
Number	Street	State	
Principal Place of Practice Address			Office Phone Number
Number	Street	State	
Email Address			

Probation Compliance (Standard Conditions required of ALL Probationers)		
1.	Obey All Laws. Since the last quarterly report:	Circle One
	1. Have you been arrested, charged, or convicted of any violation of Federal, State, or local laws?	Yes No
	2. Have you complied with all opticianry laws?	Yes No
	3. Have you been disciplined by any other health-care related board or professional licensing or certification regulatory agency in California or elsewhere?	Yes No
Explain any YES answers and provide additional documentation if necessary:		

2.	Quarterly Reports							Circle One	
	1. Do you understand that omission or falsification in any manner of any information on your quarterly reports shall constitute a violation of probation?							Yes	No
	2. Do you understand that failure to submit complete and timely reports shall constitute a violation of probation?							Yes	No
3.	Cooperate with Probation Monitoring Program. Since the last quarterly report:							Circle One	
	1. Have you complied with all requirements of probation?							Yes	No
	2. Have you appeared for meetings when requested?							Yes	No
	3. Have you claimed all certified mail, responded to all notices, and submitted reports as directed?							Yes	No
	4. Have you contacted your probation monitor with any questions or concerns regarding probation?							Yes	No
	Explain any NO answers and provide additional documentation if necessary:								
4.	Probation Monitoring Costs Please indicate your record of payments made for each month since your last quarterly report.								
	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		
	Month	Amount	Month	Amount	Month	Amount	Month	Amount	
	January		April		July		October		
	February		May		August		November		
	March		June		September		December		
5.	Function as a Spectacle Lens Dispenser and/or Contact Lens Dispenser: You are required to work a minimum of 60 hours per month for at least six consecutive months during probation.								
	1. Since the last quarterly report, have you had any problem meeting the minimum number of hours?							Yes	No
	2. If yes, please explain:								
	3. Since the last quarterly report, please indicate the number of hours worked per month:								
	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		
	Month	Hours	Month	Hours	Month	Hours	Month	Hours	
	January		April		July		October		
	February		May		August		November		
	March		June		September		December		
6.	Notice to Employer								

	1. Does the Board have the names, addresses, and telephone numbers of all employers?	Yes	No
Employer Information (Please provide any additional employers/supervisors on additional sheets if necessary)			
	Last Name	First Name	Middle I. License #
	Phone Number	Email Address	
2. If no, please provide the following information:			
	3. Have you provided your employer a copy of the decision and order and the accusation or statement of issues in this matter?	Yes	No
	4. Have you provided the Board with written confirmation from each employer that they are aware of your Discipline?	Yes	No
If NO, please have your employer submit a completed "Notice to Employer" form immediately.			
7. Changes of Employment or Residence			
	1. Since the last quarterly report, has there been any changes of employment, location, address of record, and/or residence?	Yes	No
	2. If YES, have you submitted written notification your monitor and the Board within 14 calendar days of change?	Yes	No
	3. If NO, please explain		
8. Cost Recovery (If applicable)			
	Total Amount Ordered: \$		
	1. Have you paid the total cost recovery amount in full?	Yes	No
	2. If NO, are you participating in a Board approved payment plan?	Yes	No
	3. If YES, have you been able to make every payment on time since your last quarterly report?	Yes	No
	4. If NO, please explain (include dates you're able to submit payments, amounts, and documentation of why you are unable to make payments):		
9. Valid Registration Status			
	1. Since your last quarterly report, have you maintained a current, active, and valid registration?	Yes	No
	2. If NO, please explain:		
10. Tolling for Out-of-State Residence or Practice			

	1. Since your last quarterly report, have you resided or practiced outside of California for over 30 calendar days?	Yes	No
	2. If YES, please explain:		
11. Registration Surrender			
	If you cease to practice due to retirement, health reasons, or are otherwise unable to satisfy any condition of probation, you may surrender your registration. Do you wish to surrender your registration at this time?	Yes	No
	If YES, please explain:		
12. Violation of Probation			
	Do you acknowledge that if the Board files an Accusation or Petition to Revoke Probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final?	Yes	No
	Do you acknowledge that no petition for modification of discipline shall be considered while there is an Accusation or Petition to Revoke Probation or other discipline pending against you?	Yes	No
13. Completion of Probation			
	Do you acknowledge that, upon successful completion of probation, your registration shall be fully restored?	Yes	No
14. Sale or Closure of a Dispensary Location			
	1. Since your last quarterly report, have you sold or closed your dispensary location?	Yes	No
	2. If YES, please explain how you have ensured the continuity of patient care and the transfer of patient records. In addition, state if and when you plan to refund patients for any work/services not completed or provided.		
Probation Compliance (Optional Conditions)			
15.	Community Service	Minimum Monthly Hours:	
	1. Since your last quarterly report, have you been able to meet the required minimum number of hours of community service?	Yes	No
	2. If NO, please explain:		
16 Participate in Group Support Meetings			

	1. Since your last quarterly report, have you attended at least one group support meeting per week?	Yes	No
	2. If YES, have you attached the required documentation confirming such attendance?	Yes	No
	3. Explain any NO answers to questions 1 and 2:		
17	Notice to Patients (RDO Only)		
	1. Have you had your "Notice to Patients" approved by the Board?	Yes	No
	2. If NO, please explain:		
	3. If YES, where is this notice posted in your office?		
18	Alcohol and/or Drug Treatment		
	1. Have you successfully completed a Board approved treatment program?	Yes	No
	2. Have you submitted proof of completion to the Board?	Yes	No
	3. Please explain any NO answers:		
19	Worksite Monitor		
	1. Do you currently have a Board approved worksite monitor?	Yes	No
	Monitor's Name:	Registration #:	Phone #:
	2. If YES, has the monitor been able to follow the Board approved monitoring plan since your last quarterly report?	Yes	No
	3. To the best of your knowledge, has the worksite monitor submitted the required quarterly reports to the Board?	Yes	No
	4. Explain any NO answers to questions 1-3:		

20	Direct Supervision		
	1. Since your last quarterly report, have you been under direct supervision of a registered contact and/or spectacle lens dispenser?	Yes	No
	Supervisor's Name:	Registration #:	Phone# :
	2. If YES, is the supervisor able to follow the Board approved level of supervision?	Yes	No
	3. To your knowledge, has the supervisor submitted the required quarterly reports to the Board?	Yes	No
	4. Explain any NO answers to questions 1-3:		
21	Suspension	Dates of Suspension:	
	1. Have you completely ceased the practice of opticianry during the period indicated above, pursuant to your Order?	Yes	No
	2. If NO, please explain, including periods of practice and why:		
22	Employment Limitations Since your last quarterly report, have you:		
	1. Have you worked in any health care setting as a supervisor of opticians?	Yes	No
	2. Have you worked as a faculty member in a school of opticianry or as an instructor in a CE program?	Yes	No
	3. Have you worked in a "float" capacity?	Yes	No
	4. Explain any NO answers to questions 1-3:		
23	Psychotherapy or Counseling Program		
	1. Since your last quarterly report, have you participated in treatment by a Board approved psychotherapist or counselor?	Yes	No
	Therapist/Counselor:	License#:	Phone#:
	2. To the best of your knowledge, has your psychotherapist/counselor submitted the required quarterly reports to the Board?	Yes	No
	3. Please explain any NO answers to questions 1 and 2:		

24	Mental Health Evaluation		
	1. Since your last quarterly report, have you undergone a mental health evaluation?	Yes	No
	Evaluator:	License#:	Date(s) of Evaluation(s):
	2. If applicable, have you continued the evaluator's recommended restrictions, conditions, and/or treatment plan?	Yes	No
	3. To the best of your knowledge, has the evaluator submitted all required quarterly reports to the Board?	Yes	No
	4. Please explain any NO answers to questions 1-3:		
25	Medical Health Evaluation		
	1. Since your last quarterly report, have you undergone a medical health evaluation?	Yes	No
	Physician:	License#:	Date(s) of Evaluation(s):
	2. If applicable, have you continued the physicians recommended treatment?	Yes	No
	3. To the best of your knowledge, has the evaluator submitted all required quarterly reports to the Board?	Yes	No
	4. Please explain any NO answers to questions 1-3:		
26	Medical Treatment		
	1. Since your last quarterly report, have you participated in treatment by a Board approved physician?	Yes	No
	Physician:	License #:	Phone #:
	2. To the best of your knowledge, has your physician submitted the required quarterly reports to the Board?	Yes	No
	3. Please explain any NO answers to questions 1 and 2:		

27	Restitution	Amount Due:	Paid To:		
	1. Have you paid the required restitution amount above, pursuant to your Order?			Yes	No
	2. If NO, explain:				
28	Audit Required (RDO Only)				
	1. Do you currently have a Board approved auditor?			Yes	No
	Auditor's Name:	License #:	Phone #:		
	2. If YES, has the auditor been able to follow the Board approved auditing plan since your last quarterly report?			Yes	No
	3. To the best of your knowledge, has the auditor submitted the required quarterly reports to the Board?			Yes	No
	4. Explain any NO answers to questions 1-3:				
29	Lens Prescriptions – Maintain Records (RDO Only)				
	1. Are you maintaining patient records of all lens prescriptions dispensed or administered by you?			Yes	No
	2. Are these patient records available for inspection and copying by the Board or its designee?			Yes	No
	3. Explain any NO answers to questions 1 and 2:				
30	Restricted Practice				
	1. Since your last quarterly report, have you practiced in the areas specified in this condition of probation?			Yes	No
	2. If YES, explain:				
31	Restrictions as to Advertisement				
	1. Since your last quarterly report, have you had all advertisements of professional services approved prior to public publishing/dissemination?			Yes	No
	2. If NO, explain:				

32	Take and Pass ABO and/or NCLE Exams			
	1. Have you passed the ABO and/or NCLE?	Yes	Date Passed:	No
	2. If NO, have you scheduled the exam?	Yes	When:	No
	3. If NO to question 2, please explain:			
33	Professional Education	Required area(s) of study:		
	1. Did you submit an education program/course in the areas indicated above within the required timeframe, pursuant to your Order?	Yes	No	
	2. If NO, explain:			
	3. Since your last quarterly report, have you completed any CE for this condition?	Yes	No	
	Course Name:	Course Provider:	Completion Date (attach certificate):	
Probation Compliance (Standard Alcohol/Drug Conditions)				
34	Abstention from Use of Controlled Substances/Alcohol			
	1. Have you abstained from alcohol and all other mood altering drugs, substances and their associated paraphernalia?	Yes	No	
	2. Have you informed the Board of any prescriptions for mood altering drugs and/or other controlled substances?	Yes	No	
	3. If YES to question 2, have you identified to the Board a single physician, nurse practitioner, or physician assistant who is aware of your substance abuse history and is monitoring your prescriptions?	Yes	No	
	4. If YES to question 3, has the single physician, nurse practitioner, or physician assistant provided the Board with quarterly reports?	Yes	No	
	5. Please explain any NO answers to questions 2-4:			

35	Biological Fluid Testing Since your last quarterly report, have you:		
	1. Have you made daily contact with the Board's testing vendor to determine if you need to submit to testing?	Yes	No
	2. Have you submitted to all testing when selected?	Yes	No
	3. Explain any NO answers to questions 1 and 2, including when and why:		

Outstanding Questions, Comments, or Concerns related to your probation

	1. Do you currently have any questions, comments, or concerns that have yet to be addressed by your probation monitor?	Yes	No
	2. If YES, please explain, including when you initially brought your concerns to your probation monitor and any response, if any, that you've received.		

Declaration and Signature:

I hereby submit this Quarterly Report as required by the California Department of Consumer Affairs, Board of Optometry and its order of probation thereof, and declare under penalty of perjury the laws of the State of California that I have read the foregoing report in its entirety and know its contents and that all statements made are truth in every respect, and understand that misstatements of omissions of material fact may be cause for revocation of probation.

 Signature

 Date

Quarter	Quarter 1	Quarter 2	Quarter 3	Quarter 4
	January	April	July	October
Months covered:	February	May	August	November
	March	June	September	December
Due:	April 1 - 7	July 1 - 7	October 1 - 7	January 1 - 7



Notice to Employer

During their probation period, probationers are required to inform their employers of the discipline imposed by providing the employer with a copy of the Decision and Order in this matter. The employer will inform the California State Board of Optometry, in writing, that they are aware of the discipline. "Employer" refers to the Registered Dispensing Optician registrant where the probationer practices.

Section A: Probationer Information			
Probationer Name		Case Number	
Registration Number(s)		Registration Type <input type="checkbox"/> Spectacle Lens Dispenser <input type="checkbox"/> Contact Lens Dispenser	
Section B: Employer Information			
Business Name		Registration Number	Phone Number
Address	City	State	Zip Code
Date Probationer Began Employment			
Employer Only: I have received a complete copy of the Board Decision and Order, as well as the Statement of Issues or Accusation in the disciplinary case referenced above.			
Employer's Name			
Employer's Signature		Date	



ISSUE MEMORANDUM

DATE	February 26, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #7: Discussion and Possible Action to Amend Title 16, California Code of Regulations (CCR) Section 1571 (Glaucoma Grand Rounds Program)

Summary:

Title 16, CCR Section 1571 sets out the requirements for Glaucoma certification for Optometry licensees. In 2020 of the COVID-19 Pandemic, Southern California School of Optometry at Marshall B. Ketchum University was granted a DCA Directors waiver to offering a Grand Rounds certification program, authorized by subsection (B), online as a live course.

Drs. Chalwa, McIntyre, and Wang attended the online grand rounds courses at Marshall B. Ketchum University and report no issues with instruction or curriculum. Therefore, this proposal would remove the in-person patient evaluation requirement from CCR Section 1571 (B).

The Practice and Education Committee reviewed the proposed regulation at the February 26, 2021 public meeting.

If a motion to approve is desired:

“I move to approve the proposed text for California Code of Regulations Title 16, Section 1571 as presented and discussed here today; and direct staff to submit the text to Office of Administrative Law for posting for a 45 day public comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.”

Amend Section 1571 of Article 11 of Division 15 of Title 16 of the California Code of Regulations as follows:

Proposed text deletion is ~~strikethrough~~ and highlighted.

§ 1571. Requirements for Glaucoma Certification.

(a) Only optometrists meeting the requirements of this Article may apply for certification for the treatment of glaucoma as described in subdivision (j) of Section 3041, in patients over 18 years of age. The optometrist shall:

- (1) Hold an active license as an optometrist in California in good standing with the State Board of Optometry (Board);
- (2) Be certified to use Therapeutic Pharmaceutical Agents (TPA) pursuant to Section 3041.3;
- (3) Complete a didactic course of no less than 24 hours in the diagnosis, pharmacological and other treatment and management of glaucoma. The following topics may be covered in the course:
 - (A) Anatomy and physiology of glaucoma
 - (B) Classification of glaucoma
 - (C) Pharmacology in glaucoma therapy
 - (D) Diagnosis of glaucoma including risk factors analysis
 - (E) Medical and surgical treatment
 - (F) Participant performance assessment; and
- (4) Complete a Case Management Requirement where a minimum of 25 individual patients are each prospectively treated for a minimum of 12 consecutive months. For purposes of this section, “treat” means properly evaluating the patient, performing all necessary tests, diagnosing the patient, recognizing the type of glaucoma within a licensee's scope of practice, creating a treatment plan with proposed medications and target pressures, ongoing monitoring and reevaluation of the patient's condition, and making timely referrals to an ophthalmologist when appropriate. The following options may be chosen in any combination to fulfill this requirement:
 - (A) Case Management Course: Completion of a 16-hour case management course developed cooperatively by the accredited California schools and colleges of optometry and approved by the Board, with at least 15 cases of moderate to advanced complexity. The course may be conducted live, over the Internet, or by use of telemedicine. One hour of the program will be used for a final competency examination. Although the Case Management Course does not involve treatment of patients, completion of the 16-hour Case Management Course is equivalent to prospectively treating 15 individual patients for 12 consecutive months. Therefore, completion of the 16-hour Case Management Course will count as a 15-patient credit towards the Case Management Requirement. The full course must be completed to receive the 15-patient credit. The course must include the following topics/conditions:
 1. Presentation of conditions/cases that licensees may treat:
 - a. All primary open-angle glaucoma;
 - b. Exfoliation and pigmentary glaucoma.
 2. Presentation of conditions/cases that licensees may not treat, but must recognize and refer to the appropriate physician and/or surgeon such as:
 - a. Pseudoglaucoma with vascular, malignant, or compressive etiologies;
 - b. Secondary glaucoma;
 - c. Traumatic glaucoma;
 - d. Infective or inflammatory glaucoma;
 - e. Appropriate evaluation and analysis for medical or surgical consultation;
 - f. In an emergency, if possible, stabilization of acute attack of angle closure and immediate referral of the patient.
 - (B) Grand Rounds Program: Completion of a 16-hour grand rounds program developed cooperatively by the accredited California schools and colleges of optometry and

approved by the Board, wherein participants will evaluate and create a management plan for live patients. Completion of the 16-hour Grand Rounds Program is equivalent to prospectively treating 15 individual patients for 12 consecutive months. Therefore, the 16-hour Grand Rounds Program will count as a 15-patient credit towards the Case Management Requirement. The full program must be completed to receive the 15-patient credit. **Patients must be evaluated in person.** The program must include the following:

1. Presentation of various patient types such as: glaucoma suspects; narrow angle, primary open angle glaucoma (early, moderate, late); and secondary open angle glaucoma such as pigment dispersion and pseudoexfoliation. Patient data, including but not limited to, visual acuities, intra-ocular pressures, visual fields, imaging, and pachymetry, will be available on-site and presented upon request;
2. Examination of patients, evaluation of data and test results, and commitment to a tentative diagnosis, treatment, and management plan;
3. Participation in group discussion of the cases with instructor feedback;
4. Attendance of follow-up meetings (within the 16-hour program requirement) where the same or different patients will be reviewed via serial data, including but not limited to visual fields and imaging photos.

(C) Preceptorship Program: Completion of a preceptorship program where each patient must be initially evaluated by the licensee and co-managed with a preceptor. Each patient must be prospectively treated for a minimum of 12 consecutive months. A preceptor for purposes of this section is defined as:

1. A California licensed, Board certified ophthalmologist in good standing; or
2. A California licensed optometrist in good standing, who has been glaucoma certified for two or more years.

Preceptors shall confirm the diagnosis and treatment plan, and then approve the therapeutic goals and management plan for each patient. Consultation with the preceptor must occur at appropriate clinical intervals or when the therapeutic goals are not achieved. Clinical data will be exchanged at appropriate intervals determined by the preceptor and the licensee. Telemedicine and electronic exchange of information may be used as agreed upon by the preceptor and the licensee. Each patient that is seen by the optometrist in the program will count as a 1-patient credit towards the Case Management Requirement.

(b) Licensees who completed their education from an accredited school or college of optometry on or after May 1, 2008, are exempt from the didactic course and case management requirements of this Section, provided they submit proof of graduation from that institution to the Board.

(c) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2000, and who have not completed a didactic course of no less than 24 hours will be required to take the 24-hour course indicated in subsection (a). Licensees who graduated from an accredited school or college of optometry after May 1, 2000, are exempt from the didactic course requirement of this Section.

(d) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2008, and who have taken a didactic course of no less than 24 hours, but not completed the case management requirement under SB 929 [Stats. 2000, ch. 676, § 3],

will be required to complete the Case Management Requirement indicated in subsection (a).

(e) Licensees who started the process for certification to treat glaucoma under SB 929 [Stats. 2000, ch. 676, § 3] but will not complete the requirements by December 31, 2009, may apply all patients who have been co-managed prospectively for at least 12 consecutive months towards the Case Management Requirement indicated in subsection (a).