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To: Board Members

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**Subject: Agenda Item 11 – Discussion and Possible Action Regarding BPC § 3077:
Branch Office License**

As part of its Sunset Background Paper, the Joint Legislative Committee requested the Board advise the Committee on the continued usefulness of the branch office license (BOL). In addition, it requested the Board research other states who have a BOL or other practice locations.

In response, the Board included a Strategic Plan objective to analyze all license types for continued usefulness and impact on consumer protection.

Business and Professions Code (BPC) § [3077](#) inherently limits optometrists from owning more than 2-3 practices. While it does not explicitly state a limit, it requires the optometry owner(s) to be “in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.”

Legislative Intent

The initial legislative intent for requiring the Branch Office License in 1955 is unclear; however, the 50% limit was not added until 1959. According to the case of *Rich v. State Bd. of Optometry* (1965) 235 Cal.App.2d 591, 604–05, the 50% limit was added to make the practice of optometry “more professional” and for the “avoidance of the evils of competition”:

“As the Board correctly points out, the 1959 amendments to section 3077 were apparently added for the purpose of making the practice of optometry less commercial and more professional, ‘to insure an adequate measure of personal performance and supervision in keeping with the nature of the service and the avoidance of the evils of competition which has its place in trade and mercantile pursuits but not in the practice of this profession.’ [citation omitted.] That this was the purpose of the statute was also testified to by Mulford. To achieve this aim, the amended statute limits the number of branch office licenses which an optometrist may possess, and, correspondingly, branch offices which he may operate to one, allowing him to maintain additional branch offices ‘if he is in personal attendance at each of his offices fifty percent (50%) of the time during which such office is open for the practice of optometry.’”

Consumer Protection

Some claim the 1959 amendments initiated after consumer complaints were filed against Dr. Rich for providing substandard care and/or being misled; however, staff was unable to substantiate such claims. Others claim the limit was to prevent owners from creating commercially driven “mills” that excessively prescribe glasses that are not medically necessary.

However, it appears consumer protection mechanisms were added after BPC § 3077 adequately addressing these concerns:

BPC § 3110

Added in 2005, BPC § 3110 allows the Board to discipline licensees charged with unprofessional conduct (e.g., gross negligence, incompetence, repeated negligent acts, excessive prescribing/treatment, etc.). As such, the Board can adequately discipline any licensee who is proven to provide substandard care – regardless of business ownership. In addition, the Board may discipline licensed business owners who “directly or indirectly” assist in or abet violations (BPC § 3110(a)).

BPC § 651

BPC § 651 provides consumer protection against the dissemination of false or misleading information concerning professional services or products.

Board staff does not believe the BOL plays a significant role in investigations; when it comes to consumer complaints, the enforcement process would remain the same without BPC § 3077.

Other State Optometry Boards

After researching other state optometry boards, it appears only two other states limit the number of branch offices an optometrist can own (Texas and Oklahoma). Some states require optometrists to *register or notify* the Board of each practice location, but the majority do not require licenses for separate practice locations.

Other DCA Programs

As discussed during the Board’s August 3 discussion regarding mobile practice, the majority of other DCA programs do not require registering and obtaining a separate license for practice locations. In addition, those with the requirement do not appear to restrict/limit the number licensed professionals can own. Like other state optometry boards, it was more common for DCA programs to require practice location notification, but not a separate license requirement.

Other Considerations

License requirements are enacted and enforced for consumer protection. The legislature (via statutes) and the Board (by regulation) create the requirement to determine who is qualified to provide competent and safe services to consumers. These requirements are not to create unnecessary barriers to entry or to protect the profession.

When examining the necessity of license requirements, the Board should consider guidance from the following entities:

Federal Trade Commission (FTC)

The [FTC](#) is a bipartisan federal agency charged with protecting consumers and promoting competition. According to their website, the FTC “*protects consumers by stopping unfair, deceptive or fraudulent practices in the marketplace.*” The FTC further states, in part, that “*competition in America is about price, selection, and service. It benefits consumers by keeping prices low and the quality and choice of goods and services high. By enforcing antitrust laws, the FTC helps ensure that our markets are open and free.*”

Little Hoover Commission (LHC)

The [LHC](#) is an independent state oversight agency charged with investigating state government operations and policy and makes recommendations to the Governor and Legislature to promote economy, efficiency, and improved service in state operations.

In its [October 2016 report](#), the LHC found “*the state’s licensing process often bars entry to occupations and is not a thoughtful examination of how best to protect consumers*” and

recommended *“experts consider whether the current level of regulation strikes the appropriate balance between protecting consumers and limiting access to occupations and services.”*

Requested Action

After considering the information presented, please discuss the consumer protection necessity for the Branch Office License and decide next steps, if any, regarding this issue.