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Mark Morodomi, President
Glenn Kawaguchi, OD, Vice President
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Rachel Michelin
Maria Salazar Sperber
David Turetsky, OD
Lillian Wang, OD



**DISPENSING OPTICIAN COMMITTEE
TELECONFERENCE MEETING AGENDA**

10:00 to 1:00 PM

(or until completion of business)

MEMBERS OF THE COMMITTEE

Martha "Ruby" Garcia, CLD, SLD, Chair
William Kysella, Jr, Vice Chair
Adam Bentley, SLD
Kanchan Mattoo
Anna Watts, SLD

Teleconference Meeting Locations:

Department of Consumer Affairs
HQ2 – Pearl Room
1747 North Market Boulevard
Sacramento, CA 95834

Charter College – Oxnard Campus
2000 Outlet Center Drive #101
Oxnard, CA 93036

Van Nuys State Building
6150 Van Nuys Boulevard Rm 410
Van Nuys, CA 91401

ORDER OF ITEMS SUBJECT TO CHANGE. ACTION MAY BE TAKEN ON ANY ITEM ON THE AGENDA.

1. Call to Order/Roll Call
2. Public Comment for Items Not on the Agenda
Note: The committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code §11125, §11125.7(a)].
3. Discussion and Possible Approval of Committee Minutes from June 7, 2019
4. Executive Officer's Report
 - A. Status Update on Occupational Analyses
 - B. Status Update on Optician Licensing Program
 - C. Enforcement Update
5. Update on Registered Dispensing Optician Business Types Permitted by Law
6. Update, Discussion and Possible Action on Occupational Analyses
7. Review, Discussion and Possible Action on Potential Changes to Dispensing Optician Statutes
 - A. Chapter 5.4 (Prescription Lens) of Division Two of the Business and Professions Code
 - B. Chapter 5.45 (Nonresident Contact Lens Sellers) of Division Two of the Business and Profession Code
 - C. Chapter 5.5 (Registered Dispensing Opticians) of Division Two of the Business and Profession Code

8. Future Agenda Items

9. Adjournment

The mission of the [California State Board of Optometry](#) is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry.

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

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Jessica Swan – Jessica.swan@dca.ca.gov or calling 916-575-7174. Written requests can be mailed to the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

**Dispensing Optician Committee
Friday, June 7, 2019
DRAFT FULL MEETING MINUTES**

Teleconference Meeting Locations:

DCA Del Paso – Redwood
Room
2420 Del Paso Road, 1st
Floor
Sacramento, CA 95834

Charter College
2000 Outlet Center Dr. #150
Room 102
Oxnard, CA 93036

Van Nuys State
Building
6150 Van Nuys Blvd.,
Rm #410
Van Nuys, CA 91401

Science, Industry and
Business
Library (SIBL)
188 Madison Avenue
New York, NY 10016

Members Present	Staff Present
Martha “Ruby” Garcia, CLD, SLD, Chair	Evan Gage, Assistant Executive Officer
William Kysella, Jr. Vice Chair	Marc Johnson, Policy Analyst
Kanchan Mattoo	Natalia Leeper, Optician’s Program Coordinator
Anna Watts, SLD	Jessica Swan, Administrative Analyst
Adam Bentley, SLD	Jason Hurtado, Interim Legal Counsel
Members Absent	Guest List
	On File

Link to audio for discussions:

https://www.optometry.ca.gov/meetings/20190607_doc_audio.mp3

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

Audio of Discussion: 00:07 / 01:28:18

Ruby Garcia called the meeting to order at 12:30 p.m. and took roll call. William Kysella was present in Van Nuys, CA; Kanchan Mattoo was present in Van Nuys, CA; Anna Watts was present at the DCA, Sacramento, CA location; Ruby Garcia was present in Oxnard, CA. A 4-1 quorum was established.

There were two public members present – one in Sacramento and one in Oxnard, CA.

Adam Bentley arrived during agenda item 3 in New York, NY, and there were no public members at his location. A 5-0 quorum was established.

2. Public Comment for Items Not on the Agenda

Audio of Discussion: 02:42 / 01:28:18

There were no public comments.

3. Review and Possible Approval of Committee Minutes: March 15, 2019

Audio of Discussion: 03:50 / 01.28.18

No changes were made. There was no public comment.

Motion: William Kysella moved to approve the March 15, 2019 Draft Meeting Minutes. Anna Watts seconded. The Committee voted unanimously (5-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Garcia	x				
Bentley	x				
Kysella	x				
Mattoo	x				
Watts	x				

4. Executive Officer's Report

Audio of Discussion: 06:31 / 01:28:18

A. Status Update on Occupational Analyses

Dr. Heidi Lincer, Chief of the Office of Professional Examination Services (OPES), provided an update on the status of the Contact Lens Dispenser Occupational Analysis.

She stated that the project is finished, and the report should be written in a couple of months. She provided a summary of the work they have done. The OPES facilitated two workgroups with Contact Lens Dispensers (CLDs) in February and May of 2019, with a diverse group of Subject Matter Experts (SMEs). OPES also developed a list of task and knowledge statements that describe the CLD profession. This will be compared to the National examination to ensure that the National Examination is accurately measuring what CLDs do and its appropriate use for licensure. The task and knowledge statements were incorporated into a survey that was sent to all licensed CLDs. During the main workshop, the survey results were reviewed and a final description of the CLD profession was developed. The survey results indicated that the CLD work in retail settings was very different from those in private practice. Initially OPES was concerned that individuals working in the two different setting might need different licensure requirements. However, the SMEs felt strongly that the description of CLD practice should be inclusive of the breadth of the profession.

Ms. Garcia questioned, and Ms. Lincer explained that the lower scoring of California applicants in retail settings was not discussed in the workshop. Nevertheless, they believe that having knowledge of the breadth of the profession is important even if the opticians do not use it in their retail settings.

A public member in Oxnard, California questioned, and Ms. Garcia clarified that most of the opticians in the retail settings are not performing the fit of contact lenses.

B. Status Update on RDO applications and Renewals

Natalia Leeper, Optician Licensing Coordinator, presented a status update of the RDO applications and renewals. Ms. Leeper stated that the response time for applications has been reduced to 30 days. They will either receive notice they have been approved within 30 days or they will receive a deficiency notice.

Ms. Leeper further explained that a technical error has come up within the BreEZe system, whereby once an electronic application is submitted and then becomes withdrawn or expired, the applicant is no longer able to submit an electronic application which is moving away from the Board's direction to go paperless. Staff is currently working with the BreEZe team to have this glitch fixed. She further reported that processing times have been reduced by half; approximately 6 to 8 weeks. Staff is currently engaged in outreach with licensees and registrants.

There were no public comments.

C. Enforcement Update

Evan Gage, Assistant Executive Officer, provided the enforcement update. Mr. Gage explained that the Board has been asked to review its enforcement process to remove any identified bottlenecks. Historically, the Department of Consumer Affairs (DCA) has been working with the Board to establish measurable targets for the overall enforcement process. As part of the Consumer Protection Enforcement Initiative (CPEI), Staff continually collaborates with the Office of Information Services (OIS) to determine the best way to analyze the metrics. The processes have been broken down into micro-processes that intake how long it takes to assign a case that has been submitted to the Board for investigation, to complete the investigation and then further measures once it leaves the Board and goes to the Office of the Attorney General for formal discipline and possibly further investigation. This final metric itself is broken down further.

Mr. Gage added that an overall goal has been set in place legislatively, for a target average of 540 days for the entire process beginning with intake and ending with imposed discipline. Mr. Gage ensured that staff strives continually to bring the times down as close as possible to a 540-day average.

Mr. Kysella asked if this goal includes both optometrist enforcement cases and RDO cases, and Mr. Gage confirmed that it includes both.

There were no public comments.

5. Review of Staff Research Regarding Unlicensed Optical Assistants

Audio of Discussion: 32:41 / 01:28:18

Marc Johnson, Policy Analyst, reported on staff research into unlicensed optometric assistants. During the last Committee meeting in March, upcoming priorities were discussed. The Committee requested that staff research the “shadow industry” of unlicensed optometric assistants. In April the full Board directed staff to research these issues.

Mr. Johnson reported on the key points of that research. The Legislature in 2002 and 2012 asked the Board to research this issue by means of an Occupational Analysis (OA). The Board applied for a Budget Change Proposal (BCP) in 2003 to fund the OA which was denied, and then again in 2012, as part of the Sunset Review, which was also rejected due to budgetary reasons. Now that the Board’s budget is more fiscally healthy, it may be something the Committee and the Board may want to revisit.

Mr. Johnson also noted the current laws which set out the duties an optometric assistant may perform. Since the Board does not register optometric assistants it does not track complaints against them. However, staff did conduct a review of various complaints against optometrists and did identify approximately seven complaints that may have pertained to unlicensed or unregistered associated staff.

Mr. Kanchan Mattoo asked and Ms. Leeper answered that according to the enforcement chart of the last fiscal year, the RDO program received 133 complaints and opened 133 cases. Mr. Kysella commented that in an optometric practice, where an optometric assistant may be performing subpar, there is an intermediary body to appeal to which is the doctor running the office, which may account for less complaints.

Ms. Garcia inquired of Adam Bentley and Anna Watts, regarding the list of set outlines that an optometrist assistant is following in their scope of practice, if in their experience there are additional duties the optometric assistant might be performing. Mr. Bentley suggested the fitting and dispensing of contact lenses and glasses. Ms. Watts and Ms. Garcia agree. Ms. Watts shared that in her personal experience, optometric assistants are using OCT machines to look at the visual field, but do not have a full understanding of the purpose and use of the equipment. Additionally, optometric assistants at times write prescriptions for the doctors. Ms. Watts has witnessed mistakes in the prescriptions.

Mr. Johnson reported that in looking at various boards, the Dental Board does license dental assistants and have a Dental Assistant Committee. Their requirements are extensive with types of exams and laws and ethics. The Pharmacy Board licenses pharmacy technicians, and they are required to meet certain course work requirements, pass a board approved exam. Their duties include critical duties such as writing prescriptions and filling medications. The Medical Board has medical assistants. They are unlicensed and perform basic general tasks

under the direction of the medical doctor. Physical therapy assistants are not required to have a special license, however there are requirements in regulation for the basic duties they can perform.

Mr. Johnson added he was not able to find other states that license optometric assistants. Some will define basic requirements. In looking at a professional definition, Mr. Johnson reported that he the only one he could find is the American Optometric Association which calls their program Para Optometrics; they have certification program and a study guide. According to their website, they have 180 in California and 6,700 in the United States.

Mr. Kysella inquired and Ms. Leeper clarified that in California we only license optometric assistants in the retail setting, New York licenses opticians across the board in hospitals, private practice, retail stores, etc. Mr. Kysella noted that we should have a good analysis of the New York model. He believes the Board should either regulate everyone the same or not regulate it at all. Ms. Watts noted that with technology changes many professionals who call themselves opticians do not really understand opticianry. Therefore, she believes in agreement with Mr. Kysella that having licensing across the board would be beneficial.

Committee Members shared their concerns regarding the inability to track and maintain enforcement of opticians when licensure is not required.

Ms. Lincer added that similar comments were heard from CLDs in the workshops: Concerns about optometric assistants who are not required to take the licensing exams and may be able to perform the tasks but not having knowledge of why or how the equipment works. Concerns that they would not be able to answer patient questions. Mr. Mattoo suggested moving ahead with the occupational analysis to obtain direction. Ms. Garcia agreed and believes the Board will see the good reasoning for having the occupational analysis.

A public comment was made expressing that the term optician should not be used in a medical doctor's office or an optometrist's office. He explained that around 75% in his opinion do not have the necessary optical experience to be called an optician.

Motion: William Kysella moved to recommend that the Board of Optometry request an occupational analysis of optometric assistants in furtherance of the Board and this Committee's work to determine whether all people performing tasks like CLDs and SLDs should have some form of license or whether SLDs and CLDs should require no licensure because others performing the same tasks do not require a central license. Kanchan Mattoo seconded. The Committee voted unanimously (5-0) and the motion passed.

Member	Aye	No	Abstain	Absent	Recusal
Garcia	x				
Bentley	x				
Kysella	x				
Mattoo	x				

Watts	x				
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6. Future Agenda Items

Audio of Discussion: 01:23:10 / 01:28:18

Members did not have any items. A public comment was made requesting further discussion of contact lens dispensing referral laws.

7. Adjournment

Committee adjourned at 1:58 p.m.

ISSUE MEMORANDUM

DATE	August 28, 2019
TO	Members, Dispensing Optician Committee (DOC)
FROM	Shara P. Murphy, Executive Officer <i>prepared by Marc Johnson, Policy Analyst and Alexander Juarez, Enforcement Analyst</i>
SUBJECT	Agenda Item 4a – Status Update on Occupational Analysis (OA)

Occupational Analysis - Contact Lens Dispenser Update

An OA was conducted of the Contact Lens Dispensers (CLD) profession by the Office of Professional Examination Services (OPES). The purpose of the analysis is to define current practice for CLDs in terms of the actual tasks that new CLDs must be able to perform safely and competently at the time of licensure. The analysis was completed in July 2019 and will help to inform further changes in CLD statutes and regulations. The findings of the report can be found [here](#) and the executive summary is attached.

Occupational Analysis - Spectacle Lens Dispenser Update

An OA for Spectacle Lens Dispensers (SLD) is currently ongoing, conducted by OPES. A workshop was held on August 12-13, 2019, which included nine SLD participants. Recruitment for new SLDs will begin in October 2019 for the November 18-19, 2019, workshop. Any eligible SLD registrants who wish to participate are urged to contact the Board. It is anticipated this report will be completed in the Spring of 2020.

Occupational Analysis - Unlicensed Assistants Update

Following the recommendation made by the DOC at the June 7, 2019 public meeting, an OA for Unlicensed Assistants was authorized by the Board at the August 2, 2019 public meeting. The OA is needed to determine whether optometric assistants should be regulated for the protection of consumers and will be conducted by OPES. The analysis is estimated to cost \$60,000 and the Budget Change Proposal authorizing this OA has been completed and submitted to DCA. If approved, this OA would likely begin in the fall of 2020.



OCCUPATIONAL ANALYSIS OF THE
CONTACT LENS DISPENSER PROFESSION



OFFICE OF PROFESSIONAL EXAMINATION SERVICES

BOARD OF OPTOMETRY

OCCUPATIONAL ANALYSIS OF THE CONTACT LENS DISPENSER PROFESSION



This report was prepared and written by the
Office of Professional Examination Services
California Department of Consumer Affairs

July 2019

Heidi Lincer, Ph.D., Chief

Miranda R. Morris, M.A., Research Data Analyst I

EXECUTIVE SUMMARY

The Board of Optometry (Board) requested that the Department of Consumer Affairs' Office of Professional Examination Services (OPES) conduct an occupational analysis (OA) of contact lens dispenser (CLD) practice in California. The purpose of the OA is to define current practice for CLDs in terms of the actual tasks that new CLDs must be able to perform safely and competently at the time of licensure. The results of this OA provide a description of practice for the CLD profession that can then be used to review the Contact Lens Registry Examination (CLRE) developed by the National Contact Lens Examiners (NCLE).

OPES test specialists began by researching the profession and conducting telephone interviews with licensed CLDs working in locations throughout California. The purpose of these interviews was to identify the tasks performed by CLDs and to specify the knowledge required to perform those tasks in a safe and competent manner. Using the information gathered from the research and the interviews, OPES test specialists developed a preliminary list of tasks performed in CLD practice, along with statements representing the knowledge needed to perform those tasks.

In January 2019, OPES convened a workshop to review and refine the preliminary lists of task and knowledge statements derived from the telephone interviews. The workshop was comprised of licensed CLDs, or subject matter experts (SMEs), with diverse backgrounds in the profession (e.g., location of practice, years licensed, specialty). These SMEs also identified changes and trends in CLD practice, determined demographic questions for the OA questionnaire, and performed a preliminary linkage of the task and knowledge statements to ensure that all tasks had a related knowledge statement and all knowledge statements had a related task. Additional task and knowledge statements were created as needed to complete the scope of the content areas of the description of practice.

After the workshop, OPES test specialists developed a three-part OA questionnaire to be completed by CLDs statewide. Development of the OA questionnaire included a pilot study that was conducted using a group of licensed CLDs. The pilot study participants' feedback was incorporated into the final questionnaire, which was administered in early April 2019.

In the first part of the OA questionnaire, CLDs were asked to provide demographic information relating to their work settings and practice. In the second part, CLDs were asked to rate specific tasks in terms of frequency (i.e., how often the CLD performs the task in the CLD's current practice) and importance (i.e., how important the task is to effective performance of the CLD's current practice). In the third part, CLDs were asked to rate specific knowledge statements in terms of how important each knowledge statement is to effective performance of the CLD's current work.

In April 2019, on behalf of the Board, OPES distributed the questionnaire to licensed CLDs who were in good standing with the Board and had an email address in California (a total of 318 CLDs), inviting them to complete the OA questionnaire online. Paper mail invitations were sent to the entire population of CLDs who were in good standing with the Board (1,354). A total of 151 CLDs, or 11.2% of the CLDs receiving the invitation, responded by accessing the online OA

questionnaire. The final sample size included in the data analysis was 148, or 10.9% of the population invited to complete the questionnaire. This response rate reflects an adjustment: OPES excluded data from respondents who indicated they were not currently licensed and practicing as CLDs in California. The demographic composition of the respondent sample is representative of the CLD population in California.

OPES test specialists then performed data analyses of the task and knowledge ratings obtained from the OA questionnaire respondents. The task frequency and importance ratings were combined to derive an overall criticality index for each task statement. The mean importance rating was used as the criticality index for each knowledge statement.

Once the data was analyzed, OPES conducted an additional workshop with SMEs in May 2019. The SMEs evaluated the criticality indices and determined whether any task or knowledge statements should be eliminated. The SMEs in this group also established the final linkage between tasks and knowledge statements, organized the task and knowledge statements into content areas, and defined those areas. The SMEs then evaluated and confirmed the content area weights of the examination outline.

The examination outline is structured into five content areas weighted by criticality relative to the other content areas. This outline provides a description of the scope of practice for CLDs, and it also identifies the tasks and knowledge critical to safe and competent CLD practice in California at the time of licensure. Additionally, this examination outline provides a basis for evaluating the degree to which the content of any examination under consideration measures content critical to CLD practice in California.

At this time, California licensure as a CLD is granted by passing the CLRE.

OVERVIEW OF THE CLD EXAMINATION OUTLINE

Content Area	Content Area Description	Percent Weight
1. Patient Assessment	This area assesses knowledge of patient contact lens needs based on patient prescription or lens type; prescription requirements; indications and contraindications; and conditions which require referral to an optometrist or other healthcare provider.	26%
2. Contact Lens Fitting	This area assesses knowledge of methods for interpreting prescriptions; procedures for handling contact lenses; determining and modifying measurements for contact lens prescriptions; and the anatomy and physiology of the eye.	21%
3. Patient Education and Training	This area assesses knowledge of techniques for training and educating patients on contact lens care; insertion and removal; adverse effects; wear schedules; and additional ocular protection.	22%
4. Patient Follow-Up and Contact Lens Dispensing	This area assesses knowledge of procedures for verifying that the product dispensed matches the patient prescription; maintaining records in accordance with laws and regulations; and recognizing and troubleshooting problems with prescription or fit.	27%
5. Advertising and Supervising	This area assesses knowledge of laws and regulations related to advertising and supervising trainees.	4%
Total		100%



ISSUE MEMORANDUM

DATE	September 27, 2019
TO	Dispensing Opticians Committee (DOC)
FROM	Shara Murphy, Executive Officer <i>Prepared by Natalia Leeper, RDO Coordinator</i>
SUBJECT	Agenda Item #4B – Licensing Program Update

New Staff

The vacant Management Services Technician position was filled August 27th by Tien Le. Tien will be assisting both the Optician and Optometry programs in reviewing initial applications.

Tien Le (Optician Program Coordinator)

Experienced in the service industry, Ms. Le has provided exceptional customer service to her guests over the years while acquiring her degree from Sacramento State. She completed an internship at Sutter Senior Care and was responsible for tracking patients, updating their database, and leading programs during her time there

Applications

Staff is continuing to process applications within the mandated 30 day period to inform applicants of deficiencies. This procedure is lowering the overall processing times for applications and preventing a backlog. Processing time for initial applications remains within 6-8 weeks. These times are maintained during the peaks in applications received following Abo Exams updates

Changes in BreEZe are continuing to be implemented to applications. Changes include creating a question to prevent applicants from applying for the incorrect application adding a section to the Registered Dispensing Optician Applications to collect business owner information. Staff anticipates these changes will prevent deficiencies in applications and decrease staff time needed to review applications.

For the new fiscal year staff has revised the format for the licensing stats. The new chart will have all the previous information present to the committee as well as additional information to better represent processing and deficiency times for all applications types.



ISSUE MEMORANDUM

DATE	August 29, 2019
TO	Members, Dispensing Optician Committee (DOC)
FROM	Shara Murphy, Executive Officer <i>prepared by Cheree Kimball, Enforcement Analyst and Alexander Juarez, Enforcement Analyst</i>
SUBJECT	Agenda Item #4C – Enforcement Update

Statistical Review of Fiscal Year 2018-2019

In fiscal year 2018-2019, CSBO enforcement staff:

- received a total of 393 new cases,
- closed 425 cases with no action,
- issued 12 administrative citations,
- referred 17 cases to the Attorney General’s Office for disciplinary action, and
- processed 15 disciplinary orders.

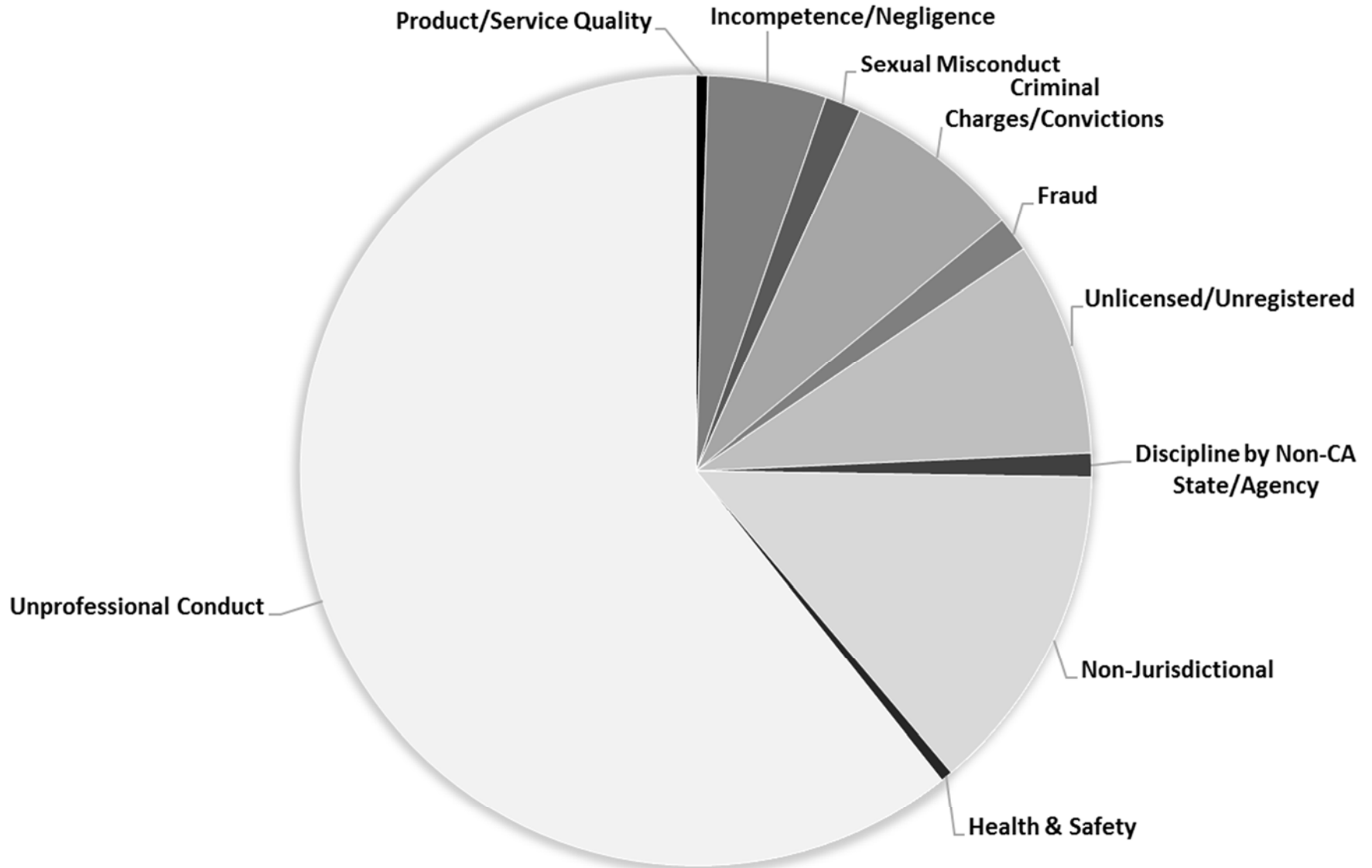
The majority of the cases received by the Optometry program contain allegations of unprofessional conduct, while Optician program cases saw criminal charges as the most common allegation in new cases. The majority of case closures for both programs occurred within one year of the receipt of the initial case. Of the 17 cases referred to the AG’s office, 7 were classified as high priority cases. The 15 processed orders included 4 revocations of SLD registrations and 4 Statement of Issues that were granted by the Board. High priority cases were referred to the AG’s office, on average, around 250 days after receipt, while regular priority cases, on average, were referred around 400 days after receipt.

Statistics Charts for Fiscal Year 2018-2019

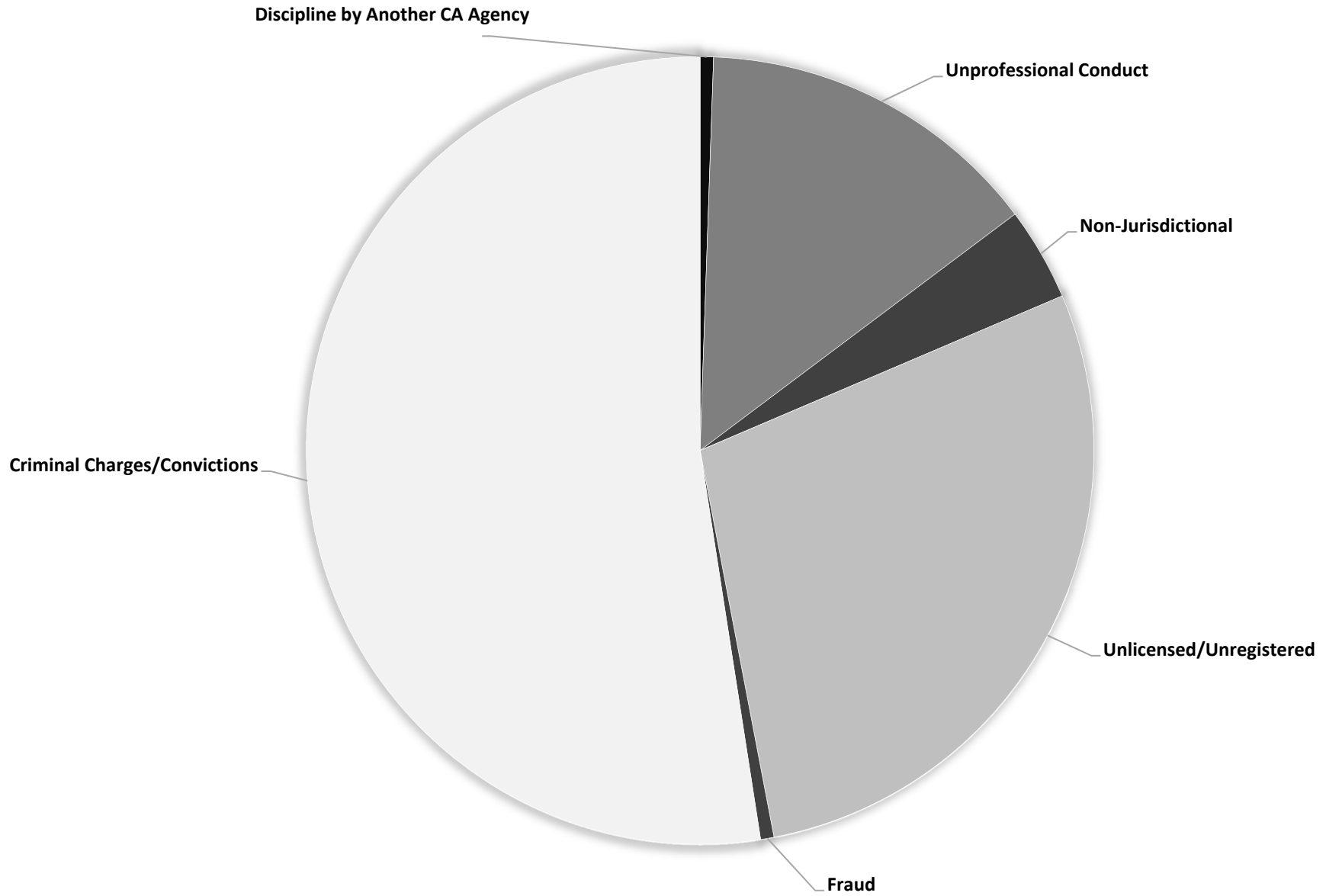
- Attachment 1: Statistical Overview
- Attachment 2: Optometry program cases received by allegation type
- Attachment 3: RDO program cases received by allegation type
- Attachment 4: Optometry program case closures by case age
- Attachment 5: RDO program case closures by case age

	Q1 – FY18/19						Q2 – FY18/19						Q3 – FY18/19						Q4 – FY18/19						FY Total	
	Routine		Urgent		High		Routine		Urgent		High		Routine		Urgent		High		Routine		Urgent		High			
	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO
Cases by Priority																										
Received	50	52	0	0	4	0	44	34	0	0	4	1	47	42	0	0	4	4	52	53	0	0	2	0	207	186
Closed	40	44	0	0	3	0	42	45	0	0	3	1	42	49	0	0	1	0	81	66	0	0	7	1	219	206
Average Age (days) - Closed	146	120	0	0	150	0	200	135	0	0	268	163	223	126	0	0	3	0	265	170	0	0	304	212	268	170
Pending	160	130	0	0	17	2	164	124	0	0	15	2	168	120	0	0	16	3	138	107	0	0	11	2	149	109
Average Age (days) – Pending	291	239	0	0	200	155	164	283	0	0	242	226	348	326	0	0	265	219	378	363	0	0	278	336	370	363
Referred to AG	0	1	0	0	2	0	2	2	0	0	0	0	1	0	0	0	2	0	2	2	0	0	3	0	12	5
Pending at AG	6	26	0	0	3	0	8	27	0	0	3	0	7	26	0	0	3	0	8	29	0	0	6	0	14	29
Final Disciplinary Orders	4	5	0	0	0	1	0	0	0	0	0	0	1	1	0	0	0	0	1	2	0	0	0	0	6	9

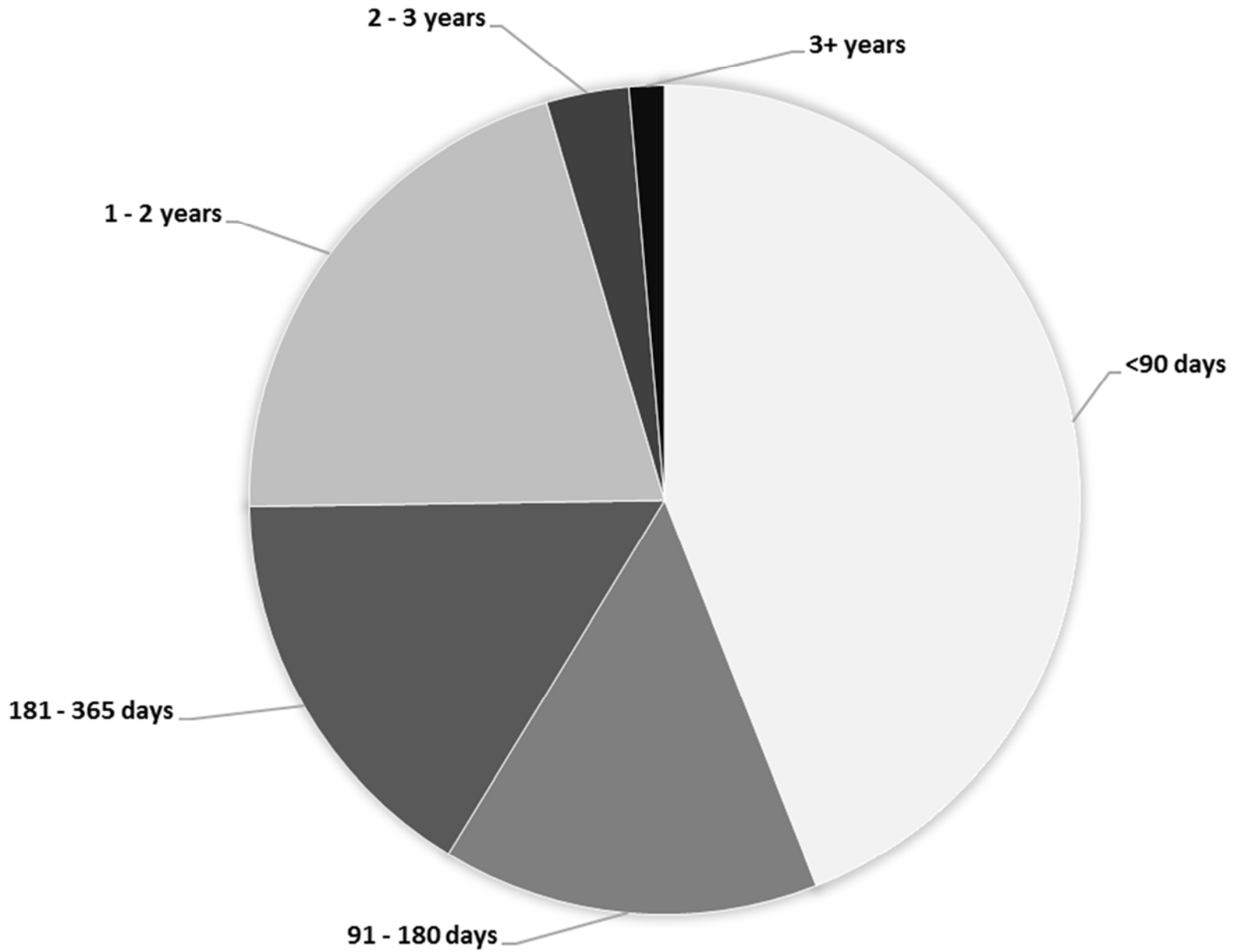
OPTOMETRY CASES RECEIVED - FY 2018/2019



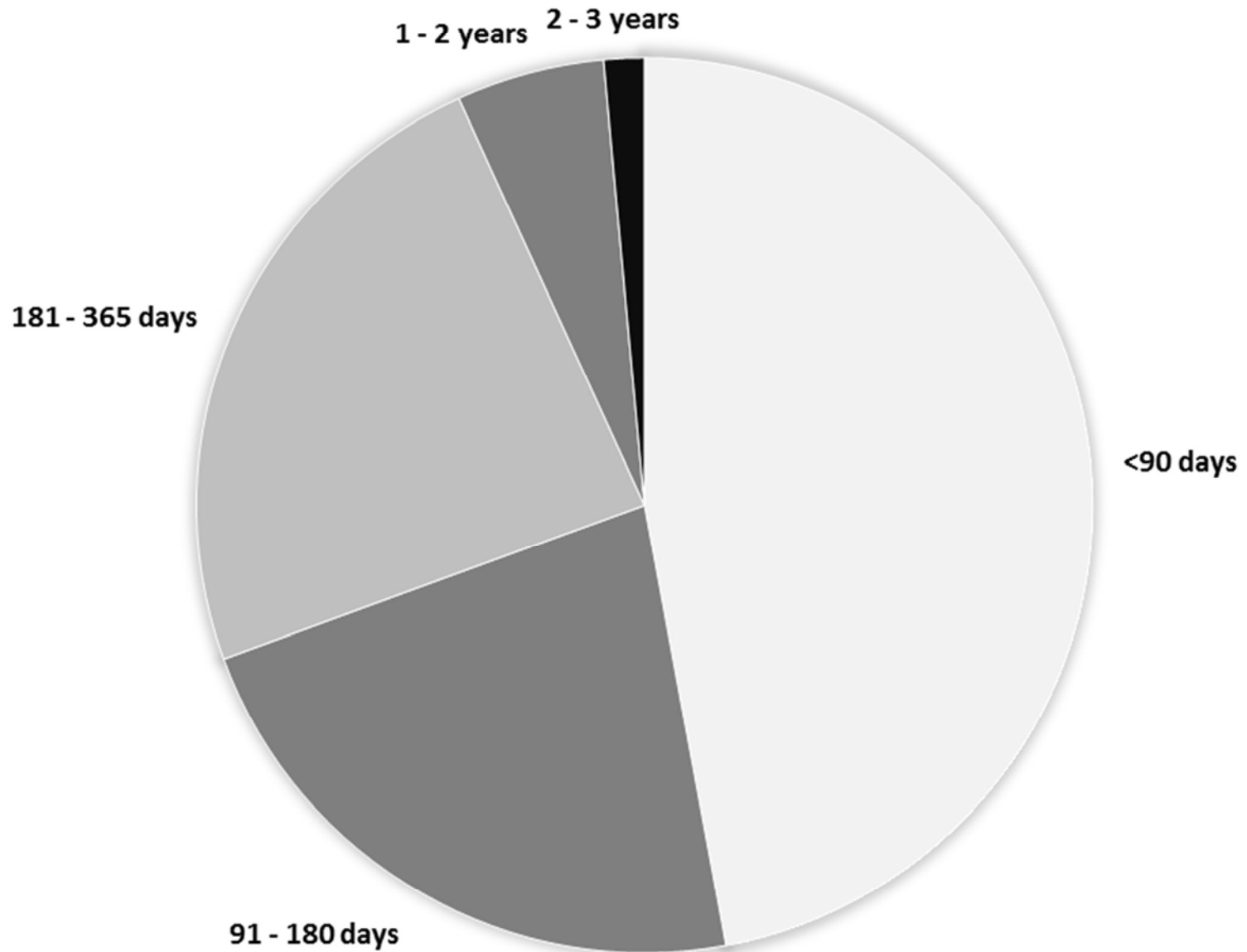
RDO CASES RECEIVED - FY 2018-2019



OPTOMETRY CLOSURES BY AGE - FY 2018/19



RDO CLOSURES BY AGE - FY 2018/19



ISSUE MEMORANDUM

DATE	September 27, 2019
TO	Dispensing Opticians Committee (DOC)
FROM	Shara Murphy, Executive Officer <i>Prepared by Natalia Leeper, Optician Program Coordinator</i>
SUBJECT	Agenda Item #5 – Update on Registered Dispensing Optician Business Types Permitted by Law

Summary/History:

As part of the review of all applications for Registered Dispensing Optician businesses, staff is required to review the business organization type of the applicant as per Business and Professions Code §§2551 and 2552. Carrying on practices as directed by previous Board management, Limited Liability Corporations (LLC) were allowed as business organization types and accordingly were issued Registered Dispensing Optician permits.

Staff was informed by the Attorney General's office that LLCs cannot hold licenses, registrations or certificates, consistent with the practice of other state consumer protection boards. Staff then sought clarification from legal counsel on the question if LLCs could hold a Registered Dispensing Optician business registration. Legal reviewed relevant statutes (Corporations Code [§§17701.04, §13401](#); [BPC §2550 et al.](#)) and determined that Registered Dispensing Optician businesses fit the definition of offering "professional services" and cannot, under current California law, be LLCs.

Action Taken:

Staff determined that approximately 50 current registrants and 11 applicants are affected by this requirement. Subsequently, all applicable optician business registrants and applicants were sent a letter detailing the issue and informing them they would have to change their business organization type to either sole proprietor, partnership or corporation. Current, active registrants were also sent paper applications and staff informed them they would not have to pay to have their locations re-registered (Attachment A). Applicants for an optician business registration were informed that their applications were still valid but a different organization type and new documentation was needed before their application could be approved (Attachment B).

The Board set a deadline of October 25th to re-register these locations and business. After the deadline the Board will cancel the existing registrations. Impacted businesses will need to apply for a new registration number with an appropriate organization type that is authorized under California law. Registrant compliance with this deadline is ongoing.

Attachments

A – Letter to current RDO registrants

B – Letter to RDO applicants



July 26, 2019

Optical Company LLC
2450 Del Paso Road
Sacramento, CA 95834

Re: Limited Liability Company providing Optical Services under existing Registration

Representative for Optical Company LLC

Please allow this correspondence to apprise you of a recent clarification in the law governing a Limited Liability Company's (LLC) authority to hold a license, certificate, or registration under the California Revised Uniform Limited Liability Act (Act), and Business and Professions Code (B & PC).

It has recently come to the attention of the California State Board of Optometry (Board) that the B & PC does not currently authorize an LLC to hold a registration as a Registered Dispensing Optician.¹ The Board registration files have identified license number **DXXXX** as being an LLC.

In addition, Corporations Code section 17701.04 provides, in pertinent part:

(b) A limited liability company may have any lawful purpose, regardless of whether for profit, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business. A domestic or foreign limited liability company may render services that may be lawfully rendered only pursuant to a license, certificate, or registration authorized by the Business and Professions Code, the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, ***if the applicable provisions of the Business and Professions Code, the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship Brokers Act authorize a limited liability company or foreign limited liability company to hold that license, certificate, or registration.*** (emphasis added)

(e) Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 and in Section 13401.3, in this state.

¹ See Bus. & Prof. Code sections 2550 and 2551, which authorize "individuals, corporations, and firms," to hold a certificate of registration.

“Professional services” are statutorily defined as “any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.” (Corp. Code section 13401, subd. (a).)

As a result of the Act’s prohibition against an LLC rendering “professional services,” in California, the Board is requesting that you re-register your certificate of registration by **October 25, 2019**, consistent with B & PC sections 2550 and 2551. Which authorize “individuals, corporations, and firms,” to hold a certificate of registration.

The Board is mindful of the inconvenience this may cause our registrants who are currently licensed as an LLC. For that reason, the Board has agreed to waive any new registration fees to re-register your certificate. Furthermore, upon re-registration, the Board will issue you a new certificate of registration that will begin a new biennial renewal cycle, regardless of your current expiration date.

Finally, in order to facilitate this process, the Board is enclosing a paper application with this letter. Should you have any questions or concerns regarding the re-registration process, please contact the Board via email at rdoprogram@dca.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Murphy". The signature is written in a cursive, flowing style.

Shara P. Murphy
Executive Officer
California State Board of Optometry



July 26, 2019

Optical Company LLC
2450 Del Paso Road
Sacramento, CA 99824

Re: Limited Liability Company providing Optical Services under existing Registration

Representative for Optical Company LLC:

Please allow this correspondence to apprise you of a recent clarification in the law governing a Limited Liability Company's (LLC) authority to hold a license, certificate, or registration under the California Revised Uniform Limited Liability Act (Act), and Business and Professions Code (B & PC).

It has recently come to the attention of the California State Board of Optometry (Board) that the B & PC does not currently authorize an LLC to hold a registration as a Registered Dispensing Optician.¹ The Board has identified your application for **Optical Company LLC** as an LLC.

In addition, Corporations Code section 17701.04 provides, in pertinent part:

(b) A limited liability company may have any lawful purpose, regardless of whether for profit, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business. A domestic or foreign limited liability company may render services that may be lawfully rendered only pursuant to a license, certificate, or registration authorized by the Business and Professions Code, the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, ***if the applicable provisions of the Business and Professions Code, the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship Brokers Act authorize a limited liability company or foreign limited liability company to hold that license, certificate, or registration.*** (emphasis added)

(e) Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 and in Section 13401.3, in this state.

“Professional services” are statutorily defined as “any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration

¹ See Bus. & Prof. Code sections 2550 and 2551, which authorize “individuals, corporations, and firms,” to hold a certificate of registration.

«Organization_Name»

Date

Page 2 of 2

authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.” (Corp. Code section 13401, subd. (a).)

As a result of the Act’s prohibition against an LLC rendering “professional services” in California, the Board is requesting that you provide an alternative organization type to process your application, consistent with B & PC sections 2550 and 2551, which authorize “individuals, corporations, and firms,” to hold a certificate of registration.

Your application is good for one year from date of submission. Your application will be considered deficient until the documentation for a different organization type is provided to the Board.

Should you have any questions or concerns regarding the re-registration process, please contact the Board via email at rdoprogram@dca.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Murphy".

Shara P. Murphy
Executive Officer
California State Board of Optometry

ISSUE MEMORANDUM

DATE	June 7, 2019
TO	Members, Dispensing Optician Committee (DOC)
FROM	Shara P. Murphy, Executive Officer
SUBJECT	Review, Discussion and Possible Action on Potential Changes to Dispensing Optician Statutes: Chapter 5.4 (Prescription Lens) of Division Two of the Business and Professions Code (BPC); Chapter 5.45 (Nonresident Contact Lens Sellers) of Division Two of the BPC; Chapter 5.5 (Registered Dispensing Opticians) of Division Two of the BPC

Summary:

As part of the DOC's statutorily mandated duties under [BPC §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. Additionally, in reviewing priorities at the last meeting, the DOC highlighted issues such as changing fee structures and the possibility of continuing education being required. Staff is proposing to begin this process, which will likely take several committee meetings, by starting a review of all existing optician statutes at this meeting.

Further, staff recommends the DOC further review the statutes after this meeting and bring any additional changes back to the next DOC meeting in early 2020; this also provides the opportunity for the public and stakeholders to provide input at the next meeting. The DOC may also wish to appoint a two-person workgroup to work on these issues. Specific re-wording and text for the statutes will be completed for a future meeting once the intent is established for each change.

Finally, larger changes such as additional registration requirements, a jurisprudence exam or fee changes may be discussed, but this memo does not set out any recommendations on those issues at this time. To better inform those discussions, staff suggests waiting until after the completion of Occupational Analyses for SLDs and unlicensed optometric assistants, likely in late 2020. Similarly, a review of the Optician regulations will occur later in 2020 once the statutory review is complete.

Current Law:

The RDO statutes are set out within Division Two the Business and Professions Code:

- [Chapter 5.4 \(Prescription Lens\)](#)
- [Chapter 5.45 \(Nonresident Contact Lens Sellers\)](#)
- [Chapter 5.5 \(Registered Dispensing Opticians\)](#)

Staff Comments:

The changes listed below are a starting point for this statutory review and Attachment A is the actual text itself with the areas highlighted in yellow. Existing statutes which will not be changed are also included on the attachment. The intention is to specify sections staff feels may need to be changed, explain potential reasons for the changes and to receive direction from committee members regarding those changes. Where appropriate, proposed new text is underlined and deleted text is ~~struck through~~. Once that direction is received, staff will work with Legal Counsel to bring back specific changes to the text of the statute at a future meeting. A motion to continue this staff work is not needed.

Most changes are non-substantive, enhance public protection or provide better clarification of the law. As such, the DOC should consider the following when making a statutory change:

1. Public protection is the highest priority for the Board. Would the change weaken or strengthen this mandate?
2. Is making this change consistent with the Board's overall mission and values?
3. Does this change reflect current federal laws and standards, industry best practices or overall operation of an optician business?
4. What kind of impact would such a change have on a registrant, business or consumer? Does the change impose new requirements in any way that is beneficial or negative?
5. Does the change improve Board efficiency or burden it further?
6. Should any changes be delayed until completion of the SLD and unlicensed assistant occupational analyses?

Proposed Changes:

Where appropriate, references to the Medical Board of California should be updated to Optometry Board. Additionally, pursuant to current law, gender neutral terms in place of 'he/she' should be used.

Chapter 5.4 Prescription Lens – BPC §§2540 – 2545

2541.1 (a): Staff recommends updating this section to mirror any possible changes in Federal Rules regarding spectacle lens (SL) prescriptions.

2541.1 (b): Should the expiration date of a SL prescription be better specified – “Not be less than two to four years” may be confusing.

2541.2 (a)(1): Should this section be re-written for clarity of expiration dates – “not be less than one to two years” may be confusing.

2542: Staff recommends removal of the words “fit, adjust” as dispensing optician businesses do not perform these functions. Additionally, should the sections referring to dispensing optical businesses throughout the statute be updated to include large-scales operations unforeseen during the drafting of the statute?

2545 (b)(1): Staff recommends discussion of the dollar amounts to set a new floor and ceiling for violations. Since most optical businesses are larger businesses, the new amounts would act as an actual deterrent against violations.

CHAPTER 5.45. Nonresident Contact Lens Sellers – BPC §§2546 - 2546.10

Staff is proposing relocation of this entire chapter into Chapter 5.5, Article 2.5, since the section falls under the Board’s purview. Staff feels all license types which the Board regulates should be under one chapter (5.5) for ease of reading and clarity. The renumbering of statutes below will occur after the review is complete, but for the purposes of this discussion the existing section numbers will remain.

2546: Should the act be renamed to “Nonresident Ophthalmic Device Dispensing Businesses” to better identify its purpose? Should this section include nonresident dispensers who also provide spectacle lenses?

2546.1: Staff recommends the word “furnish” be added after “ship, mail” to provide additional protection against violations of the act.

2546.4: Should a registration number, name under which they are registered with the Board, and any ‘doing business as’ names be required with the forms? Should these requirements apply to any advertising on websites or mailers?

2546.5(a): Staff recommends addition of the word ‘jurisdiction’ so other licensing bodies beyond a state board can be required for background information.

2546.5(c): Staff recommends the word “furnish” be added after “ship, mail” to provide additional protection against violations of the act, and to synchronize with change made to other similar sections.

2546.6(a)(2): Should the current communication deadline of 2 p.m. of the next business day be change to mirror updated Federal law or other accepted standards?

2549.9: Staff recommends addition of DCA’s newly-adopted fee language template, which sets a specific fee and a fee ceiling amount within the statute. *Note: this recommendation does not change the fee amounts which is a separate discussion.*

2546.10: Staff recommends discussion of the dollar amounts to set a new floor and ceiling for violations. Since most optical businesses are larger businesses, the new amounts would act as an actual deterrent against violations.

CHAPTER 5.5. Registered Dispensing Opticians – BPC §§2550 - 2569

Staff proposes reorganizing this section into the following articles to better denote the purpose of each section, and move existing chapters into the new section, in order to better specify which statutes apply to which license types. These changes will provide clarity to the purpose of each article and ease of reading.

- Article 1 – General Provisions (no change in name, various sections added)
- Article 1.5 – Spectacle Lens Dispensing (incorporates various sections throughout Chapter 5.5)
- Article 2 – Contact Lens Dispensing (no change in name; incorporates various sections)
- Article 2.5 – Non Resident Ophthalmic Device Dispensers (New article; incorporates Chapter 5.45 and other various sections throughout Chapter 5.5)
- Article 3 – Fiscal Provisions (no change)
- Article 3.5 – Ophthalmic Device Dispensing Businesses (New article; incorporates various sections from Chapter 5.5)
- Article 4 – Review (no change)

Article 1- General Provisions

Where appropriate, the word ‘business’ has been added to denote sections which may be appropriate to a registered dispensing optician business itself.

2550: Staff proposed relocation of part of 2553 into this section for clarity.

2551: Staff recommends addition that all ‘corporations and firms’ be required to operate as professional corporations, as defined by Corporations Code Section 13401. All businesses must adhere to the Corporations Code, but this change will clarify the requirement within the Optician Practice Act.

2551: Staff recommends change of the word “contain” and replace with “specify” to eliminate any ambiguity about what is needed and what the consumer should expect to see when visiting a business.

2551: Should a requirement to list business’s headquarters address, corporate documents and list of officers, with a letter of good standing from the California Secretary of State be added? Should this be applicable to only businesses, or applicable to all registrants?

2552: Staff recommends addition of a direct contact name and phone number for Board inquiry; this allows for access to a responsible person who is handling the application.

2552: Staff recommends adding a notification requirement of 14 days of any changes to the Board.

2552: Staff recommends insertion of the word ‘electronic’ after the words ‘certified or registered’ to denote how an application deficiency may be communicated. Electronic mail is not prohibited and is already done by staff.

2553: Staff recommends relocation of the first two sentences of this section into §2550, which better clarify the intent of §2553.

2553: Should this section be relocated under Article 3.5 - Businesses? Should it specify that only SLD/CLDs can engage in the business as defined in 2550?

2553: Should the section be modified to better specify that only CLDs and SLDs be able to perform the functions as set out in the section?

2553: Staff recommends adding a requirement that a license with a current expiration date be shown in a conspicuous place. Registrants can display their renewal certificate in a manner similar to what is done by licensed cosmetologists and barbers.

2553.1: Staff recommends dispensing optician businesses be required to submit a request for cancellation in writing on a form prescribed by the Board. Recommend relocation in Article 3.5.

2553.1(a)(3): Staff recommends addition of a new subsection (3), which states the new owners of the business must apply for a new registration within 10 calendar days. This provides more specificity about requirements for new business owners of an optician business.

2553.5(e): Staff recommends removal of this section, as its provisions appear to be obsolete.

2553.6: Staff requests DOC discussion on the intent of this section.

2553.6: Staff recommends addition of a requirement that the applicant must disclose to the Board any proprietary interest. Currently, there is no mechanism for the Board to verify this information.

2554: Staff recommends relocation of this section into §2553 for better clarity of consumer notice requirements.

2555: Should this section be rewritten to mirror [BPC §3110 \(Optometry\)](#), listing all actions which constitute unprofessional conduct and be made specific for each license type?

2555.1: Staff recommends defining better who this section applies to – only applicants, not stockholders or unaffiliated employees.

2556.5: This section will need to be updated to reflect potential renaming of the registrant type – such as ‘Ophthalmic Dispenser’ etc.

2558: Staff recommends placing this section into each registrant type (optical business, SLD, CLD), which provides better clarity for enforcement issues.

Article 1.5 – Spectacle Lens Dispensing

2559.1: Staff recommends removal of “allowing for usual and customary absences including illness and vacation” since you can’t supervise someone who isn’t actually there; addition that a supervising Optician shall not supervise more than three unregistered technicians at once. The Occupational Analysis may provide more insight on how many trainees a registrant should have.

2559.2(a): Staff recommends changing five years to three years for public protection.

2559.2(e): Staff recommends addition of a ‘licensed optometrist or ophthalmologist’s office’ to reflect current business practices. Additionally, a requirement that the registrant must report the current location to the board within 14 calendar days, which

2559.5: Proposed removal – section appears to be obsolete.

2559.6: Staff proposes relocating this section into Article 1, so it would apply to all Optical businesses/SLD/CLD/Out of State registrants.

Article 2 – Contact Lens Dispensing

2563: Staff recommends relocation of this section into Article 1, in order to apply to all provisions.

2564.5: Should the term “accessible handwashing facilities” be updated? Does this mean a bathroom, or just a sink?

2546.6: Staff recommends removal of this section, may be redundant.

Article 2.5 – Non Resident Ophthalmic Device Dispensers

New article; incorporates Chapter 5.45 and other various sections to be determined throughout Chapter 5.5.

Article 3 – Fiscal Provisions

2565: Staff recommends addition of DCA’s newly-adopted fee language template, which sets a specific fee and a fee ceiling amount within the statute. *Note: this recommendation does not change the fee amounts which is a separate discussion.*

Article 3.5 – Dispensing Optician Businesses

New Article. Contents to be determined: - various sections pertaining to businesses will be relocated here.

Article 4 – Review

No changes to this article.

BUSINESS AND PROFESSIONS CODE – DIVISION 2

CHAPTER 5.4. Prescription Lenses [2540 - 2545]

2540. No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices.

2541. A prescription ophthalmic device includes each of the following:

- (a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.
- (b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).
- (c) Any plano contact lens that is marketed or offered for sale in this state. "Plano contact lens" means a zero-power or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion.

2541.1. (a) A spectacle lens prescription shall include all of the following:

(1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form "copy lenses currently worn" instead.

(2) The expiration date of the prescription.

(3) The date of the issuance of the prescription.

(4) The name, address, telephone number, prescriber's license number, and signature of the prescribing optometrist or physician and surgeon.

(5) The name of the person to whom the prescription is issued.

(b) The expiration date of a spectacle lens prescription shall not be less than two to four years from the date of issuance unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than two years, or presence or probability of visual abnormalities related to ocular or systemic disease indicates, the need for reexamination of the patient earlier than two years. In no circumstances shall the expiration date be shorter than the period of time recommended by the prescriber for reexamination of the patient. Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's certificate to practice.

(c) The prescriber of a spectacle lens shall orally inform the patient of the expiration date of a spectacle lens prescription at the time the prescription is issued. The expiration date of a prescription may be extended by the prescriber and transmitted by telephone, electronic mail, or any other means of communication. An oral prescription for a spectacle lens shall be reduced to writing and a copy of that writing shall be sent to the prescriber prior to the delivery of the lenses to the person to whom the prescription is issued.

(d) A prescriber of a spectacle lens shall abide by the rules pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission found in Part 456 of Title 16 of the Code of Federal Regulations.

(e) An expired prescription may be filled if all of the following conditions exist:

Commented [JM1]: Check for change in federal rules

Commented [JM2]: Rewritten for specificity? May be confusing.

(1) The patient's spectacles are lost, broken, or damaged to a degree that renders them unusable.

(2) Upon dispensing a prescription pursuant to this subdivision, the person dispensing shall recommend that the patient return to the optometrist or physician and surgeon who issued the prescription for an eye examination and provide the prescriber with a written notification of the prescription that was filled.

2541.2. (a) (1) The expiration date of a contact lens prescription shall not be less than one to

establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than one year, or the presence or probability of visual abnormalities related to ocular or systemic disease indicate the need for reexamination of the patient earlier than one year. If the expiration date of a prescription is less than one year, the health-related reasons for the limitation shall be documented in the patient's medical record. In no circumstances shall the prescription expiration date be less than the period of time recommended by the prescriber for reexamination of the patient.

(2) For the purposes of this subdivision, the date of issuance is the date the patient receives a copy of the prescription.

(3) Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

(b) Upon completion of the eye examination or, if applicable, the contact lens fitting process for a patient as described in subdivision (f), a prescriber or a registered dispensing optician shall provide the patient with a copy of the patient's contact lens prescription signed by the prescriber, unless the prescription meets the standards set forth in subdivision (c).

(c) A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

(1) Rigid gas permeables.

(2) Bitoric gas permeables.

(3) Bifocal gas permeables.

(4) Keratoconus lenses.

(5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

(d) If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, attempt to promptly confirm the information contained in the prescription through direct communication with the contact lens seller.

(e) The contact lens prescription shall include sufficient information for the complete and accurate filling of a prescription, including, but not limited to, the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and an appropriate expiration date. When a provider prescribes a private label contact lens for a patient, the prescription shall include the name of the manufacturer, the trade name of the private label brand, and, if applicable, the trade name of the equivalent national brand.

(f) The contact lens fitting process begins after the initial comprehensive eye examination, and includes an examination to determine the lens specifications, an initial evaluation of the fit of

Commented [JM3]: Rewritten for specificity? May be confusing.

the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and followup examinations that are medically necessary, and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved, or in the case of a prescription renewal for an established patient, the prescriber determines that there is no change in the prescription.

(g) The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the prescription, but only if the prescriber would have required immediate payment from the patient had the examination revealed that no ophthalmic goods were required. A prescriber or registered dispensing optician shall not charge the patient any fee as a condition to releasing the prescription to the patient. A prescriber may charge an additional fee for verifying ophthalmic goods dispensed by another seller if the additional fee is imposed at the time the verification is performed.

(h) A prescriber shall not condition the availability of an eye examination, a contact lens fitting, or the release of a contact lens prescription on a requirement that the patient agree to purchase contact lenses from that prescriber. A registered dispensing optician shall not condition the availability of a contact lens fitting on a requirement that the patient agrees to purchase contact lenses from that registered dispensing optician.

(i) A prescriber or a registered dispensing optician shall not place on the contact lens prescription, deliver to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the prescriber or registered dispensing optician for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a prescriber or registered dispensing optician for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's prescription.

(j) The willful failure or refusal of a prescriber to comply with the provisions of this section shall constitute grounds for professional discipline, including, but not limited to, the imposition of a fine or the suspension or revocation of the prescriber's license. The Medical Board of California and the State Board of Optometry shall adopt regulations, to implement this subdivision, including, but not limited to, standards for processing complaints each receives regarding this subdivision.

(k) For the purposes of this section, "prescriber" means a physician and surgeon or an optometrist.

(l) Nothing in this section shall be construed to expand the scope of practice of a registered dispensing optician as defined in Sections 2542, 2543, and Chapter 5.5 (commencing with Section 2550).

2541.3. (a) The State Department of Public Health, the State Board of Optometry, and the Medical Board of California shall prepare and adopt quality standards and adopt regulations relating to prescription ophthalmic devices, including, but not limited to, lenses, frames, and contact lenses. In promulgating these rules and regulations, the department and the boards shall adopt the current standards of the American National Standards Institute regarding ophthalmic materials. Nothing in this section shall prohibit the department and the boards from jointly adopting subsequent standards that are equivalent or more stringent than the current standards of the American National Standards Institute regarding ophthalmic materials.

(b) No individual or group that deals with prescription ophthalmic devices, including, but not limited to, distributors, dispensers, manufacturers, laboratories, optometrists, or

ophthalmologists shall sell, dispense, or furnish any prescription ophthalmic device that does not meet the minimum standards set by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California.

(c) Any violation of the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California pursuant to this section shall be a misdemeanor.

(d) Any optometrist, ophthalmologist, or dispensing optician who violates the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California pursuant to this section shall be subject to disciplinary action by his or her licensing board.

(e) The State Board of Optometry or the Medical Board of California may send any prescription ophthalmic device to the State Department of Public Health for testing as to whether or not the device meets established standards adopted pursuant to this section, which testing shall take precedence over any other prescription ophthalmic device testing being conducted by the department. The department may conduct the testing in its own facilities or may contract with any other facility to conduct the testing.

2541.6. No prescription ophthalmic device that does not meet the standards adopted by the California under Section 2541.3 shall be purchased with state funds.

2542. A registered dispensing optician shall fit, adjust, or dispense contact lenses, including plano contact lenses, only on the valid prescription of a physician and surgeon or optometrist, and acting on the advice, direction, and responsibility of the physician and surgeon or optometrist. The optician shall also comply with the requirements of Section 2560. A registered dispensing optician shall not fit a contact lens or lenses, or a plano contact lens or lenses.

Commented [JM4]: Remove?

Commented [JM5]: Discussion: Should the sections referring to dispensing optician businesses be updated to reflect current practice?

2543. (a) Except as provided in the Nonresident Contact Lens Seller Registration Act (Chapter 5.45 (commencing with Section 2546), the right to dispense, sell or furnish prescription ophthalmic devices at retail or to the person named in a prescription is limited exclusively to licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians as provided in this division. This section shall not be construed to affect licensing requirements pursuant to Section 111615 of the Health and Safety Code.

(b) It shall be considered a deceptive marketing practice for:

(1) Any licensed physician and surgeon, licensed optometrist, or registered dispensing optician to publish or cause to be published any advertisement or sales presentation relating to contact lenses that represents that contact lenses may be obtained without confirmation of a valid prescription.

(2) Any individual or entity who offers for sale plano contact lenses, as defined in subdivision

(c) of Section 2541, to represent by any means that those lenses may be lawfully obtained without an eye examination or confirmation of a valid prescription, or may be dispensed or furnished to a purchaser without complying with the requirements of Section 2562, except as provided in Chapter 5.45 (commencing with Section 2546).

2544. (a) Notwithstanding any other provision of law, an assistant in any setting where

supervision of a physician and surgeon or optometrist may fit prescription lenses. Under the direct responsibility and supervision of an ophthalmologist or optometrist, an assistant in any setting where optometry or ophthalmology is practiced may also do the following:

- (1) Prepare patients for examination.
- (2) Collect preliminary patient data, including taking a patient history.
- (3) Perform simple noninvasive testing of visual acuity, pupils, and ocular motility.
- (4) Perform automated visual field testing.
- (5) Perform ophthalmic photography and digital imaging.
- (6) Perform tonometry.
- (7) Perform lensometry.
- (8) Perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist.
- (9) Administer cycloplegiacs, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
- (10) Perform pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.

(b) For the purposes of this section, "setting" includes, but is not limited to, any facility licensed by the State Department of Public Health or the State Department of Social Services.

(c) Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400.

2545. (a) Whenever any person has engaged, or is about to engage, in any acts or practices

the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the State Board of Optometry, the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county.

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

(b) (1) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than **one thousand dollars (\$1,000) nor more than two thousand five hundred dollars**

surgeons shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement. The fines collected pursuant to this section from licensed optometrists and registered dispensing opticians shall be deposited into the Optometry Fund and the Dispensing Opticians Fund, respectively, and shall be available upon appropriation to the State Board of Optometry for the purposes of administration and enforcement.

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

Commented [JM6]: Discussion: Should these amounts be changed?

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

CHAPTER 5.45. Nonresident Contact Lens Sellers [2546 - 2546.10]

2546. This act may be cited as the “Nonresident Contact Lens Seller Registration Act.”

2546.1. (a) On and after January 1, 1997, no person located outside California shall ship, mail, furnish or deliver in any manner, contact lenses at retail to a patient at a California address unless registered with the Division of Licensing of the Medical Board of California.

(b) With regard to any person subject to registration pursuant to this section, only replacement contact lenses provided pursuant to a valid prescription as described in Section 2546.6 may be shipped, mailed, or delivered directly to a patient.

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

2546.3. The division may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.

2546.4. Application for registration as a nonresident contact lens seller shall be made on forms prescribed by the division, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a copartnership, or the president or secretary if a corporation, and shall contain the name under which the person proposes to do business, location of the business, and the designation of an agent for service of process in California. The board shall be notified within 30 days of any change of name, location of business, corporate officer, or agent of service.

2546.5. In order to obtain and maintain registration, a nonresident contact lens seller shall:

(a) Be in good standing and either registered or otherwise authorized in the state or jurisdiction

(b) Comply with all directions and requests for information made by the board as authorized under this chapter.

(c) Maintain records of contact lenses shipped, mailed, furnished or delivered to patients in California for a period of at least three years.

(d) Provide a toll-free telephone service for responding to patient questions and complaints during the applicant’s regular hours of operation, but in no event less than six days per week and 40 hours per week. The toll-free number shall be included in literature provided with each mailed contact lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the contact lens prescriber.

(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

Commented [JM7]: Move into chapter 5.5, new article 2.5

Commented [JM8]: Change chapter to “nonresident ophthalmic device dispenser” or other appropriate name

Commented [JM9]: added

Commented [JM10]: Board Discussion: require registration # and name to which they are registered with the board. Requirement they must list their DBA and match up with listing with board records

Commented [JM11]: Added

Commented [JM12]: added

(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

(g) Provide a toll-free telephone number, facsimile line, and electronic mail address that are dedicated to prescribers and their authorized agents for the purposes of confirmation of contact lens prescriptions. These numbers, along with an electronic mail address, shall be included in any communication with the prescriber when requesting confirmation of a contact lens prescription.

(h) It shall be considered a deceptive marketing practice for any nonresident contact lens seller to publish or cause to be published any advertisement or sales presentation relating to contact lenses representing that contact lenses may be obtained without confirmation of a valid prescription.

2546.6. (a) Contact lenses may be sold only upon receipt of a written prescription or a copy of

established expiration date and the standard packaging of the manufacturer or vendor. If the written prescription or a copy of it is not available to the seller, the seller shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling, shipping, mailing, or delivering any lens, and maintain a record of the communication. A prescription shall be deemed confirmed upon the occurrence of one of the following:

(1) The prescriber or the prescriber's agent confirms the prescription by communication with the seller.

(2) The prescriber fails to communicate with the seller by 2 p.m. of the next business day after the seller requests confirmation, or the prescriber fails to communicate with the seller by the next business day on or before the same time of day that the seller requested confirmation, whichever is sooner. For purposes of this paragraph, "business day" means each day except a Sunday or a federal holiday.

(b) If a prescriber communicates with a seller before the time period described in paragraph (2) of subdivision (a) elapses and informs the seller that the contact lens prescription is invalid, the seller shall not fill the prescription. The prescriber shall specify in the communication with the seller the basis for invalidating the prescription.

(c) A seller shall not alter any of the specifications of a contact lens prescription other than the color or substitute a different manufacturer, brand, or other physical property of the lens. Notwithstanding the provisions of this subdivision, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the seller may fill the prescription with a contact lens manufactured by that company if the contact lens prescription and the related parameters are not substituted, changed, or altered for a different manufacturer or brand.

2546.7. (a) A certificate may be denied, suspended, revoked, or otherwise subjected to discipline for any of the following:

(1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.

(2) An act of dishonesty or fraud.

Commented [JM13]: Possible change to timeline – based on federal or other changes to contact lens rules

- (3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.
- (4) Any violation of Section 2546.5 or 2546.6.
- (b) The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all powers granted therein.

2546.8. Every registration issued to a nonresident contact lens seller shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the division, and pay the renewal fee prescribed by this chapter.

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

- (a) The application fee for a nonresident contact lens seller shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.
- (g) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter.

2546.10. (a) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) per violation. The fines collected pursuant to this section shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement.

- (b) The Medical Board of California shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.
- (c) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Commented [JM14]: Change text to reflect fee floors/caps language consistent with DCA's directive

Commented [JM15]: Should these amounts be changed?

CHAPTER 5.5. Registered Dispensing Opticians [2550 - 2569]

Article 1. General Provisions

2550. Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the State Board of Optometry.

If the board, after investigation, approves the application, it shall register the applicant and issue to the applicant a certificate of dispensing optician. A separate certificate of registration shall be required for each address where the business is to be conducted.

Commented [JM16]: Relocated from 2553.

2550.1. All references in this chapter to the board shall mean the State Board of Optometry.

2551. Individuals, corporations, and firms shall make application for registration and shall not

registration shall be on forms prescribed by the board, shall bear the signature of the individual, or general partners if a partnership, or the president or secretary if a corporation, and shall contain specify the name under which he or she, they or it proposes to do business

Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.

Commented [JM17]: Add: Corporations and firms should be professional corps – after enactment of new law – old ones grandfathered

2552. Each application shall be verified under oath by the person required to sign the

complaints with respect to the business address for which registration is applied. Any changes to this information shall be reported to the board within 14 days.

The applicant shall furnish such additional information or proof, oral or written, which the board may request, including information and proof relating to the provisions of Division 1.5 (commencing with Section 475).

The board shall promptly notify any applicant if, as of the 30th day following the submission of an application under this chapter, the application and supporting documentation are not substantially complete and in proper form. The notification shall be in writing, shall state specifically what documents or other information are to be supplied by the applicant to the board, and shall be sent to the applicant by certified, electronic or registered mail. Within 30 days of the applicant's submission of the requested documents or information to the board, the board shall notify the applicant by certified or registered mail if the board requires additional documents or information.

Commented [JM18]: Discussion: should the headquarters address, corporate documents, list of officers and Sec. of State registration be required with application? Applicable to all, or just businesses?

Commented [JM19]: added

Commented [JM20]: added

This section shall become operative on January 1, 1988.

Commented [JM21]: added

2553. If the board, after investigation, approves the application, it shall register the applicant

Commented [JM22]: Relocated to 2550

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 provided that the fitting and adjusting of spectacle lenses is performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses is performed in compliance with Article 2 (commencing with Section 2560).

Commented [JM23]: Change: better specificity that CLD and SLDs can only perform these functions

Each certificate shall be at all times displayed in a conspicuous place at the certified place of business. The certificate shall not be transferable, but on application to the board there may be registered a change of address of the certificate.

Commented [JM24]: Add requirement that a license with current expiration date be conspicuously displayed

2553.1. (a) If a registered dispensing optician business sells or transfers ownership of his or

Commented [JM25]: Should this section be relocated into Article 3.5 – registered dispensing optician businesses?

(1) The registered dispensing optician selling or transferring ownership of the

after the change of ownership is completed and shall submit a request for cancellation of registration on a form prescribed by the Board. This registered dispensing optician business shall be responsible for complying with all laws relating to the optical dispensing business until the notice described in paragraph (2) is received by the board.

Commented [JM26]: added

(2) The registered dispensing optician assuming ownership of the business shall

required by the board. This notice shall be filed with the board no later than 10 calendar days after the change of ownership is completed.

(3) The registered dispensing optician business assuming ownership of the business shall apply for a new certificate of registration from the board no later than 10 calendar days after the change of ownership is completed.

Commented [JM27]: added new section

optician.

2553.5. (a) A registered dispensing optician may fit and adjust spectacle lenses and frames or take facial measurements in any of the following locations:

- (1) A health facility as defined in Section 1250 of the Health and Safety Code for a person admitted to that facility or an employee of that facility.
 - (2) A business location as defined in subdivision (f) for an employee or independent contractor of the person operating the business at that location.
 - (3) Any certified place of business pursuant to Section 2553.
- (b) A registered dispensing optician who fits and adjusts spectacle lenses at a health facility or business location shall provide to the patient written information disclosing the registrant's regular business address, certificate of registration number, phone number, and the name and phone number of the person designated by the licensee to receive complaints and inquiries, as specified in Section 2554.

(c) Nothing in this section shall be deemed to permit a registered dispensing optician or registered contact lens dispenser to fit or adjust contact lenses at a health facility or at a business location, as defined in subdivision (f).

(d) A registered spectacle lens dispenser may fit and adjust spectacle lenses at a health facility or at a business location, as defined in subdivision (f), only if he or she is in personal attendance at a certified place of business pursuant to Section 2553 at least 40 percent of his or her regular working hours each week.

~~(e) A registered spectacle lens dispenser who fits and adjusts spectacle lenses at a health~~

Commented [JM28]: Remove – obsolete?

at any single business address, but shall not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a certified place of business as specified in Section 2553.

(g) This section shall not affect the requirements regarding fitting and adjusting as set forth in Sections 2559.1 and 2560.

2553.6. The board shall deny any application for registration under this chapter if any person licensed under Chapter 5 (commencing with Section 2000), for whom the applicant, in accordance with Section 2550, proposes to fill any prescription, has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest in or with the applicant.

Commented [JM29]: Discussion: should the intent of this section be clarified?

Commented [JM30]: Add: requirement they must report this to the board

The board may, in accordance with Section 2555, suspend, revoke, or refuse to renew the certificate of any individual or firm under this chapter, if such individual or firm, after the effective date of this section, fills, or has filled, while holding a certificate issued pursuant to this chapter, any prescription issued by any person licensed under Chapter 5 (commencing with Section 2000) who has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest, in or with such individual or firm. Such penalties shall be in addition to, and not to the exclusion of, any other remedies or penalties provided by law.

“Proprietary interest,” for the purposes of this section, means any membership, coownership, stock ownership, legal or beneficial interest, any other proprietary interest, or profit-sharing arrangement, designated or arranged or held, directly or indirectly in any form, in or with any individual or firm applying for registration or registered under this chapter, except stock ownership in a corporation which is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through such stock exchange.

This section shall apply only to a dispensing optician required to be registered pursuant to Chapter 5.5 (commencing with Section 2550) and shall not be construed to modify Section 2557, or to affect the fitting of prescription lenses by an assistant pursuant to Section 2544.

2553.7. Registrations of dispensing optician **businesses**, spectacle lens dispensers, and license was issued during the second year of a two-year term if not renewed.

2554. Each registrant shall conspicuously and prominently display at each registered location

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

Spectacle prescriptions: Release upon completion of exam.

Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process. Patients may take their prescription to any eye doctor or registered dispensing optician to be filled.

Optometrists and registered dispensing opticians are regulated by the State Board of Optometry. The State Board of Optometry receives and investigates all consumer complaints involving the practice of optometry and registered dispensing opticians. Complaints involving a California-licensed optometrist or a registered dispensing optician should be directed to:

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

2555. Certificates issued hereunder may in the discretion of the board be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

Commented [JM31]: Should mirror bpc 3110 – specific to license type?

2555.1. In the discretion of the board, a certificate issued hereunder may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such

Commented [JM32]: Change: more specific as to who this applies to – not people like stockholders

person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

The proceeding under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. This section shall become operative on January 1, 1988.

2556. (a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician or a person who engages in the business of, or holds himself or herself out to be, a dispensing optician to do any of the following: to advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon, to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes, or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same. For the purposes of this section, "furnish" does not mean to enter into a landlord-tenant relationship of any kind.

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

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

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

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

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

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to

Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

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

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

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

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

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

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

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

(A) The gravity of the violation.

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

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

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

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

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

(G) Any other factors as justice may require.

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

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

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

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

(4) The failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be

added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

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

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

2556.5. Any person who holds himself out as a “dispensing optician” or “registered dispensing optician” or who uses any other term or letters indicating or implying that he is registered and holds a certificate under the terms of this law without having at the time of so doing a valid, unrevoked certificate, as provided in this chapter, is guilty of a misdemeanor.

Commented [JM33]: Change: update terms

2557. This chapter shall not affect any person licensed as an optometrist under Chapter 7 of Division II of this code, or any physician and surgeon licensed under Chapter 5 of Division II of this code. Such exemption shall not apply to any optometrist or physician and surgeon exclusively engaged in the business of filling prescriptions for physicians and surgeons. This chapter does not prohibit the sale of goggles, sun glasses, colored glasses, or occupational protective eye devices if they do not have refractive values nor do the provisions of this chapter prohibit the sale of complete ready-to-wear eyeglasses as merchandise.

2558. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than 10 days nor more than one year, or by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment. The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act, any regulations as are reasonably necessary to carry out this chapter.

Commented [JM34]: Change: place into each license type – registered dispensing optician businesses, CLD, SLD, non-resident dispensers

2559. Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this chapter, or Chapter 5.4 (commencing with Section 2540), the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the board, the Attorney General, or the district attorney of the county.

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

Article 1.5. Spectacle Lens Dispensing [2559.1 – 2559.6]

2559.1. On and after January 1, 1988, no individual may fit and adjust spectacle lenses unless the registration requirement of Section 2550 is complied with, and unless (1) the individual is a duly registered spectacle lens dispenser as provided in Section 2559.2 or (2) the individual performs the fitting and adjusting under the direct responsibility and supervision of a duly registered spectacle lens dispenser whose certificate of registration is then conspicuously and prominently displayed on the premises. A supervising registered dispenser shall be on the

registered premises when an unregistered technician fits and adjusts spectacle lenses, ~~allowing for usual and customary absences including illness and vacation, and shall not~~

Commented [JM35]: Deletion of unrelated text; addition of maximum of 3 technicians supervised

2559.2. (a) An individual shall apply for registration as a registered spectacle lens dispenser on

lens dispenser upon satisfactory proof that the individual has passed the registry examination of the American Board of Opticianry or any successor agency to that board. In the event the board should determine, after hearing, that the registry examination is not appropriate to determine entry level competence as a spectacle lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting spectacle lenses within the last ~~five three~~ years then the board may require the applicant to take and

Commented [JM36]: Change to 3 for public protection

prescribed or administered by the board shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The board is authorized to contract for administration of an examination.

(b) The board may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

(c) The board shall issue a certificate to each qualified individual stating that the individual is a registered spectacle lens dispenser.

(d) Any individual who had been approved as a manager of dispensing operations of a registered dispensing optician under the provisions of Section 2552 as it existed before January 1, 1988, and who had not been subject to any disciplinary action under the provisions of Section 2555.2 shall be exempt from the examination requirement set forth in this section and shall be issued a certificate as a registered spectacle lens dispenser, provided an application for that certificate is filed with the board on or before December 31, 1989.

(e) A registered spectacle lens dispenser is authorized to fit and adjust spectacle lenses at any place of business holding a certificate of registration under Section 2553

Commented [JM37]: Added to reflect current business practices

he or she is fitting and adjusting. ~~The registered spectacle lens dispenser must report this location to the board within 14 days.~~

2559.3. A certificate issued to a registered spectacle lens dispenser may, in the discretion of the board, be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

2559.4. This article shall not apply to an assistant fitting spectacle lenses pursuant to Section surgeon or optometrist who engages in the practice of fitting spectacle lenses for his or her patients.

~~2559.5. This article shall become operative on January 1, 1988. However, the board may, prior~~

2559.6. No spectacle lens prescription that is issued on or after January 1, 1999, shall be dispensed unless the prescription meets the requirements of Section 2541.1. No spectacle lens prescription shall be dispensed after the expiration date of the prescription unless authorized pursuant to subdivision (e) of Section 2541.1. A person violating this section shall not be guilty of a misdemeanor pursuant to Section 2558. A violation of this section shall be considered unprofessional conduct by the board that issued the dispenser's certificate to practice. A registered dispensing optician may defend this proceeding by establishing that the expiration date of the prescription was not established consistent with Section 2541.1. Nothing in this section shall be construed to authorize a registered dispensing optician to fill a prescription after the expiration date or to make any judgment regarding the appropriateness of the expiration date.

ARTICLE 2. Contact Lens Dispensing [2560 - 2564.6]

2560. No individual may fit and adjust contact lenses, including plano contact lenses, unless the registration requirement of Section 2550 is complied with, and unless (a) the individual is a duly registered contact lens dispenser as provided in Section 2561 or (b) the individual performs the fitting and adjusting under the direct responsibility and supervision of a duly registered contact lens dispenser who is then present on the registered premises. In no event shall a registered contact lens dispenser supervise more than three contact lens dispenser trainees.

2561. An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the board. The board shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or any successor agency to that committee. In the event the board should ever find after hearing that the registry examination is not appropriate to determine entry level competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter from time to time prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five years then the board may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination administered by the board shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The board is authorized to contract with the National Committee of Contact Lens Examiners or any successor agency to that committee to provide that the registry examination is given at

least twice each year on dates publicly announced at least 90 days before the examination dates.

The board may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

The board shall issue a certificate to each qualified individual stating that the individual is a registered contact lens dispenser.

A registered contact lens dispenser may use that designation, but shall not hold himself or herself out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

2562. Upon satisfactory completion of the fitting of contact lenses, but in no event more than person named in the prescription to return to the prescribing physician and surgeon or optometrist for an evaluation.

2563. A certificate issued to a registered contact lens dispenser may in the discretion of the board be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

2564. The provisions of this article shall not apply to an assistant fitting contact lenses while who engages in the practice of fitting contact lenses for his or her patients under Section 2544.

2564.5. A registered dispensing optician fitting contact lenses shall maintain accessible handwashing facilities on the premises and those facilities shall be used before each fitting of contact lenses.

2564.6. A registered dispensing optician shall comply with the applicable provisions of Section 2541.2.

ARTICLE 3. Fiscal Provisions [2565 - 2568]

2565. The amount of fees prescribed in connection with the registration of dispensing opticians shall be as set forth in this section.

(a) The application fee for registration shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).

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

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

Commented [JM40]: Move into Article 1?

Commented [JM41]: Discussion: what does this mean? What should constitute a handwashing facility?

Commented [JM42]: Possible removal – may be redundant with general sections

Commented [JM43]: Add DCA's standard text for caps and ceilings

- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed certificate shall be twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.

2566. The amount of fees prescribed in connection with certificates for contact lens dispensers is as follows:

- (a) The application fee for a registered contact lens dispenser shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The biennial fee for the renewal of certificates shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The division may by regulation provide for a refund of a portion of the application fee to applicants who do not meet the requirements for registration.
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.
- (g) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).

2566.1. The amount of fees prescribed in connection with certificates for spectacle lens dispensers shall be as set forth in this section:

- (a) The application for registration fee shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.

2566.2. Every registration issued to a dispensing optician, contact lens dispenser, and spectacle lens dispenser shall expire 24 months after the initial date of issuance or renewal. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

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

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

[2568.](#) The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit in the Dispensing Opticians Fund, which fund is created to carry out the provisions of this chapter.

ARTICLE 4. Review [2569- 2569.]

[2569.](#) Notwithstanding any other law, the powers and duties of the board, as set forth in this chapter, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.