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Mark Morodomi, President  
Glenn Kawaguchi, OD, Vice President  
Debra McIntyre, OD, Secretary  
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Jeffrey Garcia, OD  
David Turetsky, OD  
Lillian Wang, OD  
Vacant, Public Member  
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Vacant, Licensed Optician Member  
Vacant, Public Member



**LEGISLATION AND REGULATION COMMITTEE  
TELECONFERENCED MEETING AGENDA**

**Friday, February 26, 2021**

**Time: 10:30 a.m. until the completion of business**

**MEMBERS OF THE COMMITTEE**

Lillian Wang, OD, Chair  
Glenn Kawaguchi, OD  
Mark Morodomi  
David Turetsky, OD

**This public meeting will be held via WebEx Events. To participate in the Webex meeting, please log on to this website the day of the meeting using this link:**

**<https://dca-meetings.webex.com/dca-meetings/onstage/g.php?MTID=ebb4843fd6a01aa7117145a844d807433>**

**Event number: 146 139 3194**

**Event password: LR02262021**

**NOTICE: Pursuant to Governor Gavin Newsom's Executive Order N-29-20, in response to the COVID-19 pandemic, the meeting is being held entirely electronically. No physical public location is being made available for public participation. Members of the public may observe or participate using the link above. Due to potential technical difficulties, please consider submitting written comments via email prior to the meeting:**

**[optometry@dca.ca.gov](mailto:optometry@dca.ca.gov)**

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

- 1. Call to Order/Roll Call/Establishment of a Quorum**
- 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 Action on September 18, 2020 Legislation and Regulation Committee Meeting Minutes**
- 4. Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes).**
- 5. Future Agenda Items**
- 6. 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 Bagley-Keene Open Meeting Act. Public comments will generally be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board or its committees 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.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at 916-575-7170, email: [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov) or mailing a written request to Kristina Eklund at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

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**MEMBERS OF THE COMMITTEE**

Lillian Wang, OD, Chair  
Glenn Kawaguchi, OD, Vice President  
David Turetsky, OD

**Legislation and Regulation Committee  
DRAFT MEETING MINUTES**

**Friday, September 18, 2020**

**This public meeting was held via WebEx Events.**

<b>Members Present</b>	<b>Staff Present</b>
Glenn Kawaguchi, OD	Shara Murphy, Executive Officer
Lillian Wang, OD	Cheree Kimball, Assistant Executive Officer
David Turetsky, OD	Marc Johnson, Policy Analyst
	Natalia Leeper, Licensing Coordinator
	Rebecca Bon, Legal Counsel

**Link to Meeting:** <https://youtu.be/0o1pirlu6bU>

**1. Call to Order / Roll Call**

*Audio of discussion:* [0:03 / 1:18:55](#)

Dr. Wang called roll at 10:00 a.m. and all members were present. A 3-0 quorum was established.

**2. Public Comment for Items Not on the Agenda**

*Audio of discussion:* [0:20 / 1:18:55](#)

There were no public comments.

**3. Discussion and Possible Action on January 31, 2020 Legislation and Regulation Committee Meeting Minutes**

*Audio of discussion:* [1:31 / 1:18:55](#)

**David Turetsky moved to approve the January 31, 2020 minutes as they have been presented. Glenn Kawaguchi seconded. The Committee voted unanimously (3-0) and the motion passed.**

Member	Aye	N	Abstain	Absent	Recusal
Wang	X				
Turetsky	X				
Kawaguchi	X				

**4. Discussion and Possible Action on Presentation by Adam Bentley (Chair, Dispensing Optician Committee) on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes)**

*Audio of discussion: [2:17 / 1:18:55](#)*

Adam Bentley, Chair of the Dispensing Optician Committee (DOC), presented on optician program statute changes. Section 2550.1 (c) and (d) received a comment from the National Association of Optometrists and Opticians (NAOO) which stated that the definition does not make sense as written. It suggests that certain acts will be listed. The Board agreed to place the semicolon.

Immediately below was another comment from the NAOO that suggested removal of the terms “Registered Optician, and Registered Dispensing Optician as they are confusing. The NAOO recommends that the terms be removed from The statute and be replaced with the definitions from Subsection 1 through 4. As the DOC reviewed this, it declined to make a change because the language enabled the Board to list the RDO versus RSLD; defining the business registration from that of the individual. The Committee felt that it is necessary to have each of the titles.

Mr. Bentley reported that Dr. Kawaguchi did not feel that subsections 3 and 4 are needed as they make the statute a bit more confusing. As discussed during the DOC meeting, members felt that 3 and 4 provided the needed clarity for Registered Dispensing Opticians (RDOs) when directing staff that is not certified or registered regarding what they can do in California. Mr. Bentley noted that other states have very clear guidelines about what staff can and cannot do; within an RDO business the Board regulates certain acts and this, as written, defines those acts.

Dr. Kawaguchi believes it is regulation for the sake of regulation; he understands the intent but is not convinced it is necessary based on other standards in other standards. Dr. Wang requested clarification that he is basing this on what is written in other states; Mr. Bentley provided an example of Nevada which has a very clear explanation of what acts can and cannot be performed within an RDO business. Dr. Wang responded that what is listed is everything that can be performed under the supervision of an RDO? Mr. Bentley confirmed, “yes”.

Dr. Kawaguchi argued that, with this proposed change, it sounds like the Board is trying to regulate folks who are not registered, but the Board would have no power or

ability to enforce and infractions. Ms. Bon responded that if the intent is to carve out what tasks unregistered folks may perform, she does not see a problem with outlining what is allowed. Dr. Kawaguchi asked would be held accountable if there is a breach of professionalism or conduct; the Board does not have the power to go after the unregistered person.

Dr. Turetsky asked if the provision right underneath that states: “Anybody that is working under the supervision of an ophthalmologist or an optometrist,” none of these regulations apply to them; so, would that not mitigate the entire circumstance if the Ophthalmologist says: “I am giving everything over to my SLD”. Dr. Kawaguchi argued that this assumes that the doctor is the direct supervisor, but he knows that in many offices the doctor is not the direct manager of unregistered staff. Dr. Wang commented that if the doctor is asking staff to perform duties that are outside of the purview of an RDO, then that comes directly under the doctor’s responsibility. Section (g) is referring to optician trainees that are doing RDO work without licensure. Anything else that is not something that an RDO would perform would then fall under the purview of the doctor.

Ms. Murphy explained that a situation such as in Dr. Kawaguchi’s example would certainly be an issue and if a consumer were aware of that or if the SLD or contact lens dispenser (CLD) felt that they were put in a position where they were being asked to directly supervise, those are details that staff would investigate in an enforcement case. Ms. Murphy believes the text under (g) “the provision of this chapter does not apply” allows the industry to employ within offices professionals of all different levels; but in the case of an actual investigation of an enforcement issue or a consumer protection claim, then enforcement would take interviews to determine what the line of supervision was and whether an SLD or CLD was placed in a position to oversee duties that would not be appropriate.

Dr. Wang asked if it would be too vague to include an additional statement that talks about all other skills that an RDO is licensed to perform, to cover any extension of practice privileges by an optician. Mr. Bentley offered an example using the word dispense, which he feels is a broad word. This is where the Committee is trying to obtain a bit more clarity.

Ms. Murphy advised that the Committee be careful about trying to “future proof”; she noted that during the development of the CE regulation package, members and staff had a desire to ensure that new future technologies could be incorporated. This is difficult for a regulatory body. Ms. Murphy added that this discussion indicates the need to provide more specificity and it is the Board’s continued job to review statutes and the industry to make adjustments that align with practice and provide consumers protection against new technologies or new duties.

Dr. Turetsky stated that Dr. Wang’s point is very well taken. Things will change drastically in the next five years. He envisions opticians taking on far greater responsibilities and using new instrumentation and equipment that comes out. He

argued that we should not be too specific and leave some room for growth and development that will not have to go before the Legislature to be modified.

Dr. Wang clarified that since the Dispensing Optician Committee (DOC) feels that this is helpful, she is fine with keeping this. Her question is whether we can include an additional statement that opens the door or leaves room to include an expansion of skills. Ms. Bon replied that she understands the Members' idea that the more maneuverability the Board allows itself, the better because then the Board will have much greater ability in its regulatory capacity to deal with the nuances.

Ms. Murphy asked Mr. Bentley if, in his professional expertise, if he feels this is too prescriptive; too specific? She noted that three occupational analyses will be coming to bear in the next year; where the committee will be looking at what is happening in the industry and how folks are interacting within vision care. Mr. Bentley replied that he loves embracing change and believes that when he is in an RDO business it provides peace of mind knowing that the Board is regulating specific acts and saying that certain individuals perform certain acts; as well as what you can do if you are not a registered individual.

A public comment from Mr. William Kysella was made. Mr. Kysella is a member of the DOC. He believes part of the issue is that we are dealing with a substantive provision in a definition section. The substantive work under 1 and 2 of this definition is under the other sections (2559.15 and 2560); therefore, as times change, this work will change, which the cross-reference captures. He suggested cleaning the language up by saying that "the definition of an unregistered optician trainee means an individual who is not registered, under this chapter, who is performing work under the supervision of an SLD" (or whoever it is). This may eliminate the need for having to list specific duties. Anna Watts, also a member of the DOC making public comment, agreed with this statement. Committee agrees with the change.

Ms. Murphy requested confirmed that she is hearing that the Committee is comfortable with the reference to Section 2559.15 and the reference to Section 2560 that points back to the statutes which develop the practice act for a registered CLD or a registered SLD? Dr. Wang noted Mr. Kysella's other suggestion in stating that "the definition of an unregistered optician trainee means an individual who is not registered, under this chapter, who is performing work under the supervision of a registered SLD".

Mr. Bentley directed Members' attention to Section 2550(u) which states "*failure to refer a patient to an appropriate optometrist or physician and surgeon if the patient does not hold a current and unexpired prescription*". The DOC changed this proposed section making it unprofessional conduct for an optician failing to refer the patient to an optometrist or physician/surgeon if their prescription has expired. This change was based on task and knowledge statements from the SLD occupational analysis, which showed the failure to refer for a valid prescription as within the typical tasks of a registrant.

Dr. Wang recalled a comment from the last meeting that if there is a referral by the RDO it would have to be entered or written down somewhere for legal reasons.

Dr. Kawaguchi directed Members' attention to the number of unprofessional conduct cases. He stated that this is adding a new regulation and he feels this is more the responsibility of an optometrist or ophthalmologist. While an optician may choose to suggest to a patient with an expired prescription that they will need a new exam; he is not sure that it is appropriate to hold them accountable and to increase documentation. Dr. Kawaguchi understands and likes the point, but he also wants to be careful to not overregulate SLDs and CLDs. He agrees with this in concept but not in a new regulation. Mr. Bentley recalled in a previous discussion if an optician were to notice any problem with the eye, they would have to refer the patient back to the doctor. During this conversation the Committee wanted to say that it is not the optician's scope to identify an eye disease and refer; we settled on an expired prescription.

Dr. Turetsky recalled that the previous statute stated that if an optician were filling an expired prescription and it was an emergency, that it was acceptable, but the optician was supposed to advise the patient to return to their ophthalmologist or optometrist for an examination and send a written notice to the doctor that they have filled an expired prescription. He asked if this modifies that specific statute, 2541.1(b)? Mr. Bentley, Ms. Watts, and Dr. Wang agree that if this exists, it would eliminate the need for (u).

Ms. Murphy advised that she wants to ensure that before removing (u) that we are not trying to give clarity within the practice act for an SLD that currently did not appear and was just in general terms within prescription lens statutes. She reminded the Members that the importance of the proposed statutes is to provide a comprehensive practice act that provides clear direction and definitions for a cohesive and coherent discussion with everyone on the same page about the occupational analyses and what those do to inform a larger change of statutes . Dr. Turetsky asked that someone review this before removing section (u).

Public comment: Megan Loper, representing Luxottica, questioned if the Occupational Analyses (OAs) will be a part of the discussion before recommending that the Legislature consider changes to the statute, or if it will be a separate effort?

Public comment: Joe Neville with the NAOO, commented on 2550.1(g)(3) and (4) which was discussed. He cautioned that if the Committee intends to limit the number of people that an SLD can supervise (at the 3-to-1 ratio) they may be creating a third category individuals in an optical dispensary, which he referred to as a clerical person. The items in (3) and (4) are not regulated activities.

Mr. Neville also commented on 2555(u). He argued that as it is written right now, it creates a plaintiff's dream. Opticians will be subject to claims that if they did not make the statement "you need to see your doctor"; and they do not record and keep a record, they will be subject to lawsuits. They will not only be subject to prosecution from the



Board, but they will become subject to lawsuits. He suggested a stronger statement that an optician is not permitted to fill an expired prescription might be the better solution.

Mr. Kysella stated that for [2555\(u\)](#) the last comment can be combined with the provision Dr. Turetsky read. The unprofessional conduct to (u) should be filling an expired prescription. It shall not be unprofessional conduct to fill an expired prescription in an emergency where the prescribing doctor is notified. An exception to (u) can be created.

Ms. Murphy spoke to the time frame of the OAs, that it is the intention to make this change a separate item. The Board is in the beginning stages of developing the OA for unlicensed assistants; Therefore, it will be at least 6-8 months before that data will be available. The intention in asking the Legislature to implement these statute changes is to create a clear practice act with clear definitions and provisions that apply to businesses and that apply to individual licensees so that the Committee may have the next-step of the conversation from a very clear concise practice act.

Mr. Bentley presented on [Sections 2259.15 and 2559.2\(a\)](#). He explained that Section 2259.15 is removing the phrase *“allowing for usual and customary absences”*. If a registered SLD is not sick or late for work, there is room for them to operate the business. All optician tasks are permitted because of this, *“allowing for usual and customary absences”*. Since the Committee is trying to regulate RSLD’s, they must always be present to perform direct supervision. By having a supervising RSLD always present, the Committee is protecting the consumer from eyewear that is improperly fit, fabricated or adjusted. Mr. Bentley’s position is to remove *“allowing for usual and customary absences”* and replace it with *“there should always be a supervising RSLD present”*.

[Section 2559.2\(a\)](#) is regarding the number of years an applicant can go without practicing before he/she is required to retake the exam before applying for a new license. The addition of “has maintained their ABO, NCLE or practice within another state allows a CLD or SLD to not retake the exam. Mr. Bentley and Dr. Kawaguchi discussed this and came to the consensus on a 3-year requirement to align with the American Board of Opticianry (ABO) and National Contact Lens Examiners (NCLE) expiration dates and continuing education requirements. Eighteen other states require opticians to maintain ABO and NCLE certifications throughout the use of the state-issued license.

Mr. Bentley reported that feedback was received from the NAOO regarding [Section 2564.5](#), posing the requirement to have both hot and cold running water. Considering the burden placed on the business owner in having a new system installed that runs both hot and cold water, it was suggested to have the term *“clean running water”* rather than hot or cold. Ms. Murphy noted that staff confirmed compliance with the Centers for Disease Control (CDC) guidelines for sanitation, that hot water is not needed. Mr. Bentley stated that [Section 2560.70](#) is where members agreed the language should be expanded to *“all optical devices to be regulated by the state”*.



Dr. Kawaguchi noted broadly that he is not certain the intent of the DOC and the proposed language is matching all the time. He suggests continuing to work with staff to ensure the intent matches the way the language is drafted. Dr. Wang asked if the DOC will discuss their changes with staff and Legal Counsel and review those changes at the next Board meeting. Ms. Murphy announced that at the [October 23, 2020](#) Board meeting several public hearings must occur. Another future LRC meeting, which Mr. Bentley will present, will be scheduled to discuss the statutory review.

Mr. Bentley asked if the Members wish to touch on 2545(b)(1) which he purposely skipped over because it will be a larger conversation; Dr. Wang suggested discussing it at the next meeting due to tight time restraints.

**5. Review, Discussion and Possible Action on Draft 2021 Optometry Board Strategic Plan**

*Audio of discussion:* [1:14:30 / 1:18:55](#)

This item was not taken up.

**6. Future Agenda Items**

*Audio of discussion:* [1:16:55 / 1:18:55](#)

There were no public comments. No future agenda items were requested.

**7. Adjournment**

Meeting adjourned at 11:18 a.m.

New text is underlined, and deleted text is ~~strikethrough~~.

Non-substantive changes made after the 9/18/20 LRC meeting are highlighted in yellow.

Substantive changes made after 9/18/20 LRC meeting are highlighted in green.

## **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.  
(Amended by Stats. 2006, Ch. 148, Sec. 2. Effective January 1, 2007.)

**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.  
(Amended by Stats. 2006, Ch. 148, Sec. 3. Effective January 1, 2007.)

**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 years ~~to~~ and shall not exceed 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

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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:

(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.

*(Added by Stats. 1998, Ch. 8, Sec. 1. Effective January 1, 1999.)*

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

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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 evaluation to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and follow-up 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 and services devices~~ 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 and services devices 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 devices 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 devices 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.

**Commented [BR1]:** 2540, 2541, and 2541.3 use term "ophthalmic devices"  
Is this meant to be broader?  
Is it defined anywhere else?

**Commented [JM2R1]:** Global change - proposed change to "devices" for consistency

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(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).

*(Added by Stats. 2002, Ch. 814, Sec. 1. Effective January 1, 2003.)*

**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, registered dispensing opticians ~~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.

*(Amended by Stats. 2016, Ch. 489, Sec. 10. (SB 1478) Effective January 1, 2017.)*

**2541.6.** No prescription ophthalmic device that does not meet the standards adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California under Section 2541.3 shall be purchased with state funds.

*(Amended by Stats. 2016, Ch. 489, Sec. 11. (SB 1478) Effective January 1, 2017.)*

**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 registrant shall also comply with the requirements of Section 2560. A registered dispensing optician shall not ~~fit a dispense~~ contact lens or lenses, or a plano

**Commented [JM3]:** Legal has suggested removal, as the RDO business does not technically perform these functions

New text is underlined, and deleted text is ~~strikethrough~~.

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contact lens or lenses, unless the prescription specifically refers to and authorizes contact lenses. A registered dispensing optician shall not fit a generic type of contact lens or mode of wear for a contact lens contrary to the type or mode, if any, referred to in the prescription. (Amended by Stats. 1985, Ch. 1139, Sec. 3.)

**2543.** (a) Except as provided in the Nonresident ~~Contact Ophthalmic Lens Dispenser Seller~~ Registration Act (Chapter ~~5-45~~ 5.5 (commencing with Section ~~2546~~ 2564.70), 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~~ 5.5 (commencing with Section ~~2546~~ 2564.70).

(Amended by Stats. 2006, Ch. 148, Sec. 6. Effective January 1, 2007.)

**2544.** (a) Notwithstanding any other provision of law, an assistant in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist or physician and surgeon may fit prescription lenses. Under the direct responsibility and supervision of an optometrist or 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.

**Commented [JM4]:** Non substantive – switching optometry and physician and surgeon for consistency

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(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.

*(Amended by Stats. 2010, Ch. 604, Sec. 1. (AB 2683) Effective January 1, 2011.)*

**2545.** (a) Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, 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 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 ~~two hundred fifty dollars (\$250)~~ ~~one thousand dollars (\$1,000)~~ nor more than ~~two thousand five hundred dollars (\$2,500)~~ thirty-five thousand dollars (\$35,000) per violation. The

finer collected pursuant to this section from licensed physicians and 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.

(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.

*(Amended by Stats. 2016, Ch. 489, Sec. 12. (SB 1478) Effective January 1, 2017.)*

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

Relocated entire Chapter 5.45 into Chapter 5.5, Article 2.5.

**CHAPTER 5.5. Registered Dispensing Opticians [2550 - 2569]**

**Article 1. General Provisions [2550 – 2559]**

~~**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~~

**Commented [JM5]:** Dr. Kawaguchi is concerned about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. He suggested a base fine and the use of multipliers determined by the number of violations.

Chair Bentley and the staff concur, suggesting a reduction to the maximum fine to \$35,000 per violation, comparable to the per-day penalties recently levied in Connecticut. A maximum fine of \$35,000 acts as a significant deterrent to a business model or consistent business practice, which employs unlicensed practice, forfeits supervision and increases the potential for consumer harm. Specifically related to optical businesses, staff suggests using the regulatory process to set a per-patient-contact fine of \$5,000 and then to create first, second, and multiple offense penalties tiered within the maximum single violation fine of \$35,000.

**Commented [BR6R5]:** Where did 50k figure come from? Consistency can be resolved in regulations  
Agreed with staff rec in second paragraph: can achieve specificity in regulation

**Commented [JM7R5]:** Other Boards which set out fine levels and multipliers within regulations:

Bureau of Automotive Repair:  
<https://govt.westlaw.com/calregs/Document/ID4DC4800D22311E188D8F78AB153FACA?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=sc.Default>

**Commented [BR8R5]:** if this is meant to create a higher penalty for corporations, then the statute should be changed because it currently states ‘any person’ who violates shall be subject to this fine. (Unless ‘person’ is defined somewhere as including corporations)  
If it is meant for an individual, then consider leaving it at \$250 - \$2,500



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~~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. (Amended by Stats. 2016, Ch. 489, Sec. 13. (SB 1478) Effective January 1, 2017.)~~

2550.1. All references in this chapter to the board shall mean the State Board of Optometry. For the purposes of this chapter, the following definitions shall apply:

(a) "Board" means the State Board of Optometry.

(b) "Prescription" means any order made by a licensed physician and surgeon or licensed optometrist pursuant to Sections 2541.1 or 2541.2.

(c) "Fit" and "fitting" means doing any or all of the following acts, either singly or in combination with others, prior to the act of adjusting, either singly or in combination with others: designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.

(d) "Adjust" and "adjusting" means doing any or all of the following acts, either singly or in combination with others: adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.

(e) "Dispensing Optician", "Registered Dispensing Optician" and "Registrant" means any individual or entity who is registered with the board as follows:

(1) "Spectacle Lens Dispenser" means any individual who is registered with the board pursuant to Article 1.5 (commencing with Section 2559.1) of this chapter.

(2) "Contact Lens Dispenser" means any individual who is registered with the board pursuant to Article 2 (commencing with Section 2560) of this chapter.

(3) "Nonresident Ophthalmic Lens Dispenser" means an entity who is registered with the board pursuant to Article 2.5 (commencing with Section 2564.70) which offers, advertises, and performs optical services to the general public.

(4) "Registered Dispensing Ophthalmic Business" means an entity who is registered with the board pursuant to Article 3.5 (commencing with Section 2568.1) which offers, advertises, and performs optical services to the general public.

(f) "Ophthalmic Lens" or "Ophthalmic Device" means any prescription lenses, spectacles, eyeglasses, contact lens, other ophthalmic devices that alter or change the visual powers of the human eye, or any prescription plano contact lens ordered by a physician and surgeon or optometrist.

**Commented [JM9]:** NAOO feels this definition "does not make sense as written...suggest that certain acts will be listed but no such list of acts is included".

The DOC comes to the consensus that the acts are, in fact, listed under "designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids." A semicolon was added to clarify the statute.

**Commented [BR10R9]:** Would those changes make it more streamlined and clear? Also...isn't it redundant to say 'any or all of the following, either singly or in combination'??

**Commented [JM11]:** Legal proposes switching "business" to "entity" for better clarification

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(g) “Unregistered Optician Trainee” means an individual who is not registered with the board pursuant to this chapter. The unregistered trainee may perform the following:

- (1) Fitting and adjusting of spectacle lenses under the direct responsibility and supervision of a duly registered spectacle lens dispenser pursuant to section 2559.15.
- (2) Fitting and adjusting of contact lenses under the direct responsibility and supervision of a duly registered contact lens dispenser pursuant to section 2560.
- ~~(3) The selection of frame designs, the actual sales transaction, and the transfer of physical possession of lenses, spectacles, eyeglasses, contact lenses, and other optical devices subsequent to performance of all services of the dispensing optician.~~
- ~~(4) Administrative, custodial, or office tasks not related to direct patient care.~~

**Commented [JM12]:** After further discussion with Legal, staff proposes to no longer include section 3 & 4.

The provisions of this chapter shall not apply to an individual in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist, pursuant to section 2544 of the business and professions code.

*(Amended by Stats. 2016, Ch. 489, Sec. 14. (SB 1478) Effective January 1, 2017.)*

**2551.** ~~(a) Individuals, corporations, and firms shall make application for registration and shall not engage in that business prior to being issued a certificate of registration.~~  
~~(b) Application for that 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 or firm, and shall contain specify the name under which he or she, they or it proposes to do business and the business address.~~  
~~(c) Corporations and firms shall be organized and exist pursuant to the general corporation law and shall be a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.~~  
~~(d) If applicable, the application shall include a list of officers in the corporation, firm or partnership and a copy of the articles of incorporation as submitted to the Secretary of State.~~  
~~(e) Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.~~  
*(Amended by Stats. 1990, Ch. 1190, Sec. 2.)*

**2552.** (a) Each application pursuant to this chapter shall be verified under oath by the person required to sign the application and shall designate the name, address, and direct business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied. Any changes to this information shall be reported in writing to the board within 14 days.  
(b) 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).

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(c) 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 requires of the applicant, 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, electronic, or registered mail if the board requires additional documents or information.

~~(d) This section shall become operative on January 1, 1988.~~

*(Amended by Stats. 2016, Ch. 489, Sec. 15. (SB 1478) Effective January 1, 2017*

Commented [JM13]: delete obsolete reference

2553. 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.~~

~~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).~~

(a) Each certificate of registration 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. The certificate displayed must include the registration number issued by the board, the applicant's name, address of record, and certificate expiration date.

Commented [JM14]: Delete – can be defined in regulation

2553.1. (a) If a registered dispensing optician ~~business~~ sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:

(1) The registered dispensing optician ~~business~~ selling or transferring ownership of the business shall return the certificate of registration to the board no later than 10 calendar days 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.

(2) The registered dispensing optician ~~business~~ assuming ownership of the business shall record with the board a written notice of the change of ownership, providing all information 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.~~

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~~(b) This section does not apply to a change of location of business by a registered dispensing 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 (e) 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~~ 2568.1.

(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~~ 2568.3.

(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 (e).

(d) A registered spectacle lens dispenser may fit and adjust spectacle lenses at a health facility or at a business location, only if he or she is they are in personal attendance at a certified place of business pursuant to Section ~~2553~~ 2568.1 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 facility or at a business location, as defined in subdivision (f), other than on a temporary basis, shall maintain an emergency patient response system. This system shall consist of a telephone answering machine or service or a telephone paging device and the registered spectacle lens dispenser shall respond to patient inquiries received through the emergency system within 24 hours excluding weekends and holidays.~~

~~(e)~~ (f) "Business location" means the place at which any business employs more than 25 persons 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.

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

*(Amended by Stats. 1993, Ch. 240, Sec. 1. Effective January 1, 1994.)*

2553.6. (a) The board shall deny any application for registration under this chapter if any person licensed as a physician and surgeon 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.

(b) 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

**Commented [JM15]:** Global change – non binary references consistent with current CA law

**Commented [JM16]:** Changed to physician / surgeon for clarity

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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.

~~(4)~~ “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.

(c) 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. (Amended by Stats. 2010, Ch. 604, Sec. 2. (AB 2683) Effective January 1, 2011.)

2553.7. ~~Registrations of registrants dispensing opticians, spectacle lens dispensers, and contact lens dispensers shall expire at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed.~~  
(Added by Stats. 2017, Ch. 564, Sec. 1. (AB 1708) Effective January 1, 2018.)

2554. Each registrant shall conspicuously and prominently display at each registered location the following consumer information:  
“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.”

The State Board of Optometry regulates optometrists and registered dispensing opticians ~~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

Commented [JM17]: Non substantive change: removing passive voice

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Email: [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov)

Internet Web site: [www.optometry.ca.gov](http://www.optometry.ca.gov)

(Amended by Stats. 2016, Ch. 489, Sec. 17. (SB 1478) Effective January 1, 2017.)

2555. Certificates issued ~~hereunder~~ under this chapter 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.

The board may take action against any registrant who is charged with unprofessional conduct and may deny an application for a registration if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating, attempting to violate, conspiring to violate, or directly or indirectly assisting in or abetting the violation of any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of a registered optician.

(f) Any action or conduct that would have warranted the denial of a registration.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license, registration or permit by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her registration by fraud, misrepresentation, or mistake.

(j) Making or giving any false statement or information in connection with the application for issuance of a license.

(k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered dispensing optician, in which event the record of the conviction shall be conclusive evidence thereof.

(l) Administering to themselves any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a registration under this

2-26-20 LRC Agenda Item #4 – Optician Statutory Review

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chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.

(m) (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an ~~optometrist~~ optician.

(2) Committing any act of sexual abuse, misconduct, or relations with a patient. The commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a registrant. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that registrant provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.

(3) Conviction of a crime that requires the person to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a registrant.

(n) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

(o) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.

(p) The practice of functions defined in this chapter without a valid, unrevoked, unexpired registration.

(q) The employing, directly or indirectly, of any suspended or unregistered optician to perform any work for which an optician registration is required.

(r) Permitting another person to use the registration for any purpose.

(s) Altering with fraudulent intent a registration issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.

(t) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from optician to patient, from patient to patient, or from patient to optician. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings.

(u) Failure to refer a patient to an appropriate optometrist or physician and surgeon if the patient does not hold a current prescription.

**Commented [BR18]:** Seems like this should all be in regulation.

The previous paragraph already gives the board the ability to take action in its discretion.

These paragraphs elaborate on that and make it more specific, which is what regulations are meant to do.

Not to mention some of these items repeat what is in the first paragraph (e.g. subsection (c))

Unprofessional conduct is usually defined in regulation (see § 1441 for BRN, § 4260 for Naturo, § 317 for Chiro, etc.)

**Commented [JM19R18]:** For consistency, staff modeled this section on BPC 3110, which sets out enforceable actions the Board may take against optometrists. Also, having this in statutes gives optician enforcement more “teeth” and is not limited to administrative actions. Although placing this into regulation is possible, that is a process which may take several years while placing into a statute would make it effective upon a bill being signed into law.

Staff requests further discussion on inclusion of this section.



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2555.1. (a) In the discretion of the board, a certificate issued ~~hereunder~~ under this chapter 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.

(b) 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 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.

(c) 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.~~

*(Amended by Stats. 2016, Ch. 489, Sec. 19. (SB 1478) Effective January 1, 2017.)*

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 themselves~~ 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.

*(Amended by Stats. 2018, Ch. 703, Sec. 22. (SB 1491) Effective January 1, 2019.)*

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

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action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

*(Amended by Stats. 2016, Ch. 31, Sec. 2. (SB 836) Effective June 27, 2016.)*

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~~ 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.

Commented [JM20]: Remove – obsolete language

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(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.

*(Amended by Stats. 2016, Ch. 31, Sec. 3. (SB 836) Effective June 27, 2016.)*

**2556.5.** Any person who holds himself themselves 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. *(Added by Stats. 1953, Ch. 1144.)*

**2557.** This chapter shall not affect any person licensed as an optometrist under Chapter 7 of Division II Two of this code, nor any physician and surgeon licensed under Chapter 5 of Division II Two 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

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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.  
(Added by Stats. 1939, Ch. 955.)

**2557.1. (relocated from 2563)** A certificate issued to a registered spectacle lens or 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.

**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.  
(Amended by Stats. 2016, Ch. 489, Sec. 20. (SB 1478) Effective January 1, 2017.)

**2558.1 (relocated from 2559.6)** No spectacle lens or contact lens prescription 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.

**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.  
(Amended by Stats. 2016, Ch. 489, Sec. 21. (SB 1478) Effective January 1, 2017.)

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## Article 1.5. Spectacle Lens Dispensing [2559.1 – 2559.6]

**2559.15.** On and after January 1, 1988, no individual may fit or adjust spectacle lenses unless the that individual complies with 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 unregistered optician trainee~~ 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 physically present on the registered premises when an unregistered ~~technician- optician trainee fits~~ and adjusts spectacle lenses, ~~allowing for usual and customary absences including illness and vacation, and shall not supervise more than three unregistered optician trainees at a time.~~

*(Added by Stats. 1986, Ch. 773, Sec. 12. Section operative January 1, 1988, pursuant to Section 2559.5.)*

**2559.2.** (a) An individual shall apply for registration as a registered spectacle lens dispenser on forms prescribed by the board. The board shall register an individual as a registered spectacle 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 but has maintained their American Board of Opticianry or National Contact Lens Examiners registration or practiced within another state within the last ~~five~~ three 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 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, 1980.~~

(e) (d) 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, or within any

Commented [JM21]: Removing passive voice

Commented [JM22]: Several stakeholders have expressed concern with the removal of the words "allowing for usual and customary absences". NAOO notes this section has existed for decades and feels no harm has been identified and the removal may harm small optician businesses. Based on comments from NAOO, the DOC comes to the consensus to remove "allowing for usual and customary absences." If the acts of opticianry are to be regulated than the direct supervision must always be done by an RSLD. By having a supervising RSLD always present, the consumer is protected from eyewear this is improbably fit, fabricated and adjusted.

Commented [BR23R22]: Adding "physically present" seems to remove the possibility of absences (customary or not) anyway...

Commented [JM24R22]: Staff requests further Board discussion.

Commented [BR25R22]: but what does staff mean when it adds 'physically present'? what problem was it intending to solve? Previously it said 'on the premises' Why was physically present added if it causes the problem of being unclear about absences? Why was 'usual and customary absences' removed if it worked fine (according to the comment above)?

Commented [JM26]: Removed – obsolete language

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location where the practice of ophthalmology or optometry is practiced. The certificate of the registered spectacle lens dispenser is must be displayed in a conspicuous place at the place of business where ~~he or she is~~ they are fitting and adjusting. ~~The registered spectacle lens dispenser must report this location to the board within 14 days of its display of the certificate.~~ (Amended by Stats. 2016, Ch. 489, Sec. 22. (SB 1478) Effective January 1, 2017.)

Commented [JM27]: Remove proposed text – can be done in regulation

2559.3. ~~A certificate issued to a registered spectacle lens dispenser may, in the discretion of the board, be suspended or revoked for violating~~ The board may, in its discretion, suspend or revoke a certificate 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 violating~~ The board may, in its discretion, suspend or revoke the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Commented [JM28]: Legal suggest this rewording to remove passive voice

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. (Amended by Stats. 2016, Ch. 489, Sec. 23. (SB 1478) Effective January 1, 2017.)

2559.4. This article shall not apply to an assistant fitting spectacle lenses pursuant to Section 2544 if the assistant is acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting spectacle lenses for his or her patients. (Amended by Stats. 2010, Ch. 604, Sec. 3. (AB 2683) Effective January 1, 2011.)

2559.5. This article shall become operative on January 1, 1988. However, the board may, prior to that date, accept and process applications, including the collection of fees, and perform other functions necessary to implement this article.

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]



2-26-20 LRC Agenda Item #4 – Optician Statutory Review

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**2560.** No individual may fit and adjust contact lenses, including plano contact lenses, unless the that individual complies with 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 an unregistered optician trainee~~ performs the fitting and adjusting under the direct responsibility and supervision of a duly registered contact lens dispenser who is then physically present on the registered premises. In no event shall a registered contact lens dispenser supervise more than three contact lens dispenser ~~trainees unregistered optician trainees~~.

*(Amended by Stats. 1994, Ch. 26, Sec. 44. Effective March 30, 1994.)*

**2561. (a)** An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the board.

**(b)** 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.

**(c)** 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.

**(d)** 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.

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

**(f)** 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 themselves out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

*(Amended by Stats. 2016, Ch. 489, Sec. 25. (SB 1478) Effective January 1, 2017.)*

**2562.** Upon satisfactory completion of the fitting of contact lenses, but in no event more than 60 days after receipt of the prescription, a registered contact lens dispenser shall direct the person named in the prescription to return to the prescribing physician and surgeon or optometrist for an evaluation.

*(Added by Stats. 1982, Ch. 418, Sec. 8.)*

Commented [JM29]: Removing passive voice



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~~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 acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting contact lenses for his or her patients under Section 2544. (Amended by Stats. 2010, Ch. 604, Sec. 4. (AB 2683) Effective January 1, 2011.)

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. For the purposes of this section, "accessible handwashing facilities" means a clean and sanitary sink with clean running water, disinfectant soap, and adequate drying devices such as a towel or electric hand dryer, which is physically separate from a lavatory or bathroom and is accessible to all relevant persons.

(Added by Stats. 1982, Ch. 418, Sec. 8.)

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

#### Article 2.5. Nonresident Ophthalmic Lens Dispensers (New article; contains provisions from Chapter 5.45)

Placeholder section numbers listed; new section numbers to be determined by Legislative Counsel

2564.70. (relocated from 2546) This act may be cited as the "Nonresident Contact Ophthalmic Lens Dispenser Registration Act."  
(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)

2564.71. (relocated from 2546.1) (a) On and after January 1, 1997, no 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 the person is registered with the ~~Division of Licensing of the Medical Board of California.~~ California State Board of Optometry.

(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~~ 2564.76 may be shipped, mailed, or delivered directly to a patient.

**Commented [JM30]:** NAOO opposes the expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses. Based on these comments, the DOC comes to the consensus to expand registration of all regulated prescribed optical devices by the state. If the Board is protecting the consumer from contacts, then this protection should expand to all prescribed optical devices.

**Commented [JM31]:** Delete obsolete language

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*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.72 (Relocated from 2546.2)** All references in this chapter to the division shall mean the State Board of Optometry.

**2564.73. (relocated from 2546.3)** ~~The division~~ State Board of Optometry may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.  
*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.74. (relocated from 2546.4)** (a) Application for registration as a nonresident ~~contact~~ ophthalmic lens dispenser seller shall be made on forms prescribed by the State Board of Optometry, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a co-partnership, or the president or secretary if a corporation, and shall contain the name or fictitious or assumed name, if applicable, under which the person proposes to do business, location of the business, registration number as issued by the board if applicable and the designation of an agent for service of process in California.

(b) The board shall be notified in writing within 30 days of any change of name, fictitious or assumed name, location of business, corporate officer, or agent of service.

(c) Advertising, including but not limited to U.S. Mail, websites, electronic communications such as email, facsimile transmissions, directories, and newspaper and magazine ads must contain the following:

(1) The registration number issued by the board, along with text attributing the registration number to the board.

(2) Any other information the board deems necessary.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.75. (relocated from 2546.5)** In order to obtain and maintain registration, a nonresident ~~contact ophthalmic lens dispenser seller~~ shall:

(a) Be in good standing and either registered or otherwise authorized in the state or jurisdiction in which the selling facility is located and from which the contact ophthalmic lenses are sold.

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

(c) Maintain records of ~~contact ophthalmic~~ 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 ophthalmic~~ lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the ~~contact ophthalmic~~ lens prescriber.

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

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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.

(f) Disclose in any price advertisement any required membership fees, or 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~~ ophthalmic 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~~ ophthalmic lens ~~dispenser~~ seller to publish or cause to be published any advertisement or sales presentation relating to ~~contact~~ ophthalmic lenses representing that ~~contact~~ ophthalmic lenses may be obtained without confirmation of a valid prescription.

*(Amended by Stats. 2002, Ch. 814, Sec. 4. Effective January 1, 2003.)*

**2564.76 (relocated from 2546.6)** (a) ~~contact~~ Ophthalmic lenses may be sold only upon receipt of a written prescription or a copy of a written prescription and may be sold in quantities consistent with the prescription's 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 ~~dispenser~~ seller, the ~~dispenser~~ seller shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling ~~furnishing~~, 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 ~~dispenser~~ seller.

(2) The prescriber fails to communicate with the dispenser-seller by 2 p.m. of the next business day within eight (8) business hours after the ~~dispenser~~ seller requests confirmation, or the prescriber fails to communicate with the ~~dispenser~~ 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 ~~dispenser~~ seller before the time period described in paragraph (2) of subdivision (a) elapses and informs the ~~dispenser~~ seller that the contact lens prescription is invalid, the ~~dispenser~~ seller shall not fill the prescription. The prescriber shall specify in the communication with the ~~dispenser~~ seller the basis for invalidating the prescription.

(c) A dispenser-seller shall not alter, other than color, any of the specifications of an contact ophthalmic lens prescription other than the color or such as a different manufacturer, brand, or other physical property of the lens.

substitute a different manufacturer, brand, or other physical property of the lens.

**Commented [JM32]:** Dr. Kawaguchi feels federal laws may be too lenient and create a loophole. Based on comments from Dr. Kawaguchi, the DOC comes to the consensus to stay in line with the federal contact lens rule and felt eight business hours felt like a fair amount of time for the prescriber to respond to a request.

**Commented [JM33]:** Based on comments made by Dr. McIntyre, staff proposes addition of the words "such as a different manufacturer, brand or other physical property of the lens" to better clarify the changes a dispenser shall not make to a prescription.

**Commented [BR34R33]:** This is the kind of clarification that could go in regulation instead, while keeping the statute broad

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(d) Notwithstanding the provisions of this section, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the ~~dispenser-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.

*(Amended by Stats. 2002, Ch. 814, Sec. 5. Effective January 1, 2003.)*

**2564.77. (relocated from 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.

(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.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.78 (relocated from 2546.8)** Every registration issued to a nonresident ~~contact~~ ophthalmic lens ~~dispenser-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 State Board of Optometry, and pay the renewal fee prescribed by this chapter.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.79 (relocated from 2546.9)** The amount of fees prescribed in connection with the registration of nonresident ophthalmic lens ~~dispenser-seller~~ is that established by the following schedule:

(a) The application fee for a nonresident ~~contact-ophthalmic~~ lens ~~dispenser-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.

New text is underlined, and deleted text is ~~strikethrough~~.

Non-substantive changes made after the 9/18/20 LRC meeting are highlighted in yellow.

Substantive changes made after 9/18/20 LRC meeting are highlighted in green.

(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.

*(Repealed and added by Stats. 2016, Ch. 799, Sec. 5. (SB 1039) Effective January 1, 2017.)*

**2564.80. (relocated from 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)~~ thirty-five thousand dollars (\$35,000) per violation. The fines collected pursuant to this section shall be available upon appropriation to the ~~Medical Board of California~~ State Board of Optometry for the purposes of administration and enforcement.

(b) ~~Medical Board of California~~ 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.

(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.

*(Added by Stats. 2002, Ch. 814, Sec. 6. Effective January 1, 2003.)*

### **ARTICLE 3. Fiscal Provisions [2565 - 2568]**

**2565.** The amount of fees prescribed in connection with the registration of dispensing ophthalmic businesses 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).

(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.

*(Repealed and added by Stats. 2016, Ch. 799, Sec. 7. (SB 1039) Effective January 1, 2017.)*

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

**Commented [JM35]:** Similar to 2545(b), Dr. Kawaguchi is concerned about the possible risk of inconsistency in the application of a maximum fine of \$50,000 from case-to-case and year-over-year. Staff notes that specific fine limits for specific violations are set within regulation.

Chair Bentley and staff concurs, suggesting a reduction to the maximum fine to \$35,000 per violation, comparable to the per-day penalties recently levied in Connecticut. Some RDOs are individual locations, while some corporations operate dozens of RDOs in California. The committee does not seek to increase fines comparable to sizes of businesses, but only to the number of infractions. A maximum fine of \$35,000 acts as a significant deterrent to a business model or consistent business practice, which employs unlicensed practice, forfeits supervision and increases the potential for consumer harm. Specifically related to optical businesses, staff suggests using the regulatory process to set a per-patient-contact fine of \$5,000 and then to create first, second, and multiple offense penalties tiered within the maximum single violation fine of \$35,000.

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Substantive changes made after 9/18/20 LRC meeting are highlighted in green.

- (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 State Board of Optometry 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). *(Repealed and added by Stats. 2016, Ch. 799, Sec. 9. (SB 1039) Effective January 1, 2017.)*

**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.
- (Repealed and added by Stats. 2016, Ch. 799, Sec. 11. (SB 1039) Effective January 1, 2017.)*

**2566.2.** Every registration issued to a dispensing ophthalmic business, 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.

*Added by Stats. 2017, Ch. 775, Sec. 102. (SB 798) Effective January 1, 2018.)*

**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

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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.

*Amended by Stats. 2015, Ch. 405, Sec. 10. (AB 684) Effective January 1, 2016.)*

**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.

*(Amended by Stats. 2005, Ch. 74, Sec. 6. Effective July 19, 2005.)*

**ARTICLE 3.5. Registered Dispensing Ophthalmic Businesses [2568.1 – 2568.5]**  
**(New article; contains various relocated sections)**

**Placeholder section numbers listed; new section numbers to be determined by Legislative Counsel.**

**2568.1 (relocated from 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 shall be known as dispensing ophthalmic businesses and shall not engage in that business unless registered with the State Board of Optometry.

**2568.2. (relocated from 2551)** (a) Individuals, corporations, and firms shall make application for registration and shall not engage in that business defined in Section 2550 or 2550.1 prior to being issued a certificate of registration.

(b) Application for that 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 or firm, and shall contain specify the name under which they or it proposes to do business and the business address.

(c) Corporations and firms shall be organized and exist pursuant to the general corporation law and shall be a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.

(d) If applicable, the application shall include a list of officers in the corporation, firm or partnership and a copy of the articles of incorporation as submitted to the Secretary of State.

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

*(Amended by Stats. 1990, Ch. 1190, Sec. 2.)*



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**2568.3 (relocated from 2552)** (a) Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and direct business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied. Any changes to this information shall be reported in writing to the board within 14 days.

(b) 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).

(c) 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, electronic or registered mail if the board requires additional documents or information.

~~(d) This section shall become operative on January 1, 1988.~~

*(Amended by Stats. 2016, Ch. 489, Sec. 15. (SB 1478) Effective January 1, 2017.)*

**2568.4 (relocated from 2553)**

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

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 or 2550.1 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). Only individuals registered with the board pursuant to those sections shall perform those supervisory functions.

**2568.5 (relocated from 2553.1):** (a) If a registered dispensing ~~optician~~ ophthalmic business sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:

(1) The registered dispensing ~~optician~~ ophthalmic business selling or transferring ownership of the business shall return the certificate of registration to the board no later than 10 calendar days 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~~ ophthalmic business shall be responsible for complying with all laws relating to the ~~optician~~ ophthalmic dispensing business until the notice described in paragraph (2) is received by the board.

(2) The registered dispensing ~~optician~~ ophthalmic business assuming ownership of the business shall record with the board a written notice of the change of ownership, providing all

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information 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~~ ophthalmic 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.

(b) This section does not apply to a change of location of business by a registered dispensing ophthalmic business.

*(Added by Stats. 2011, Ch. 389, Sec. 1. (SB 824) Effective January 1, 2012.)*

#### **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.

# ISSUE MEMORANDUM

<b>DATE</b>	February 26, 2021
<b>TO</b>	Legislation and Regulation Committee
<b>FROM</b>	Marc Johnson, Policy Analyst Natalia Leeper, Lead Licensing Analyst
<b>SUBJECT</b>	Agenda Item #4: Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes).

**Summary:**

This agenda item continues the discussion on proposed statutory changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code. The LRC last reviewed the proposal at the September 18, 2020 public meeting and made several changes and suggestions for revision. Additionally, this proposal did not have the benefit of full Legal Counsel review, which has now been completed.

The proposed text for this meeting includes several changes made by LRC members, staff and Legal Counsel. Additionally, several sections were unresolved, and staff requests further LRC discussion on those sections.

For the proposed text and changes, please refer to the attachment. Changes highlighted in green may require further discussion. Changes highlighted in yellow are non-substantive changes, corrections for syntax, passive voice corrections or minor rewordings.

Previous Discussion – Legislative and Regulation Committee Meetings:

- [September 19, 2020](#)

Previous discussion - Board Meetings:

- [May 15, 2020](#)
- [August 14, 2020](#)

Previous discussion - Dispensing Optician Committee Meetings:

- [June 18, 2020](#)
- [January 30, 2020](#)
- [December 13, 2019](#)
- [September 27, 2019](#)