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Vacant, Optician Licensed Member



MEMBERS OF THE COMMITTEE

David Turetsky, O.D., Chair
Glenn Kawaguchi, O.D.
Eunie Linden, J.D.
Mark Morodomi, J.D.
Sandra D. Sims, J.D.

**LEGISLATION AND REGULATION COMMITTEE
TELECONFERENCE MEETING AGENDA**

**Friday, February 18, 2022
Time: 12:30p until close of business**

PUBLIC WEBEX MEETING

To access the Webex event, attendees will need to click the following link and enter their first name, last name, email, and the event password listed below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=m011e43ea6d2c476eb660fce9d3f1c944>

If joining using the link above

Webinar number: 2488 713 1940

Webinar password: CSBO02182022

If joining by phone

+1-415-655-0001 US Toll

Access code: 248 871 31940

Passcode: 27260218

Due to potential technical difficulties, please consider submitting written comments via email prior to the meeting: optometry@dca.ca.gov

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 Approval of October 22, 2021 Meeting Minutes

4. Discussion and Possible Action on 2021-2025 Strategic Plan Items Relevant to the Committee

5. Update and Discussion on the Following Rulemaking Packages

- a. Mobile Optometric Office Regulations (Adopt Title 16, §§ 1583 – 1587)
- b. Optometry Continuing Education Regulations (Amend Title 16, § 1536)
- c. Implementation of AB 458 (Adopt Title 16, §1507.5; Amend Title 16, § 1524)
- d. Optician Program Omnibus Regulatory Changes (Amend Title 16, §§ 1399.200 – 1399.285)
- e. Optometry Disciplinary Guidelines (Amend Title 16, §1575)
- f. Dispensing Optician Disciplinary Guidelines (Amend Title 16, § 1399.273)
- g. Requirements for Glaucoma Certification (Amend Title 16, § 1571)

6. Discussion and Possible Action on Legislative Proposals and Priorities for 2022

- a. Proposed Changes to Business and Professions Code Sections 655, 2559, 3040 and 3094 (Optometry and Optician Practice Acts)
- b. Other Legislative Proposals and Priorities

7. Future Agenda Items

8. 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.

Action may be taken on any item on the agenda. Items may be taken out of order to accommodate speakers or to maintain a quorum. 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. Please respect time limits, which the Chairperson may request on an as-needed basis to accommodate all interested speakers and the full agenda.

The meeting is accessible to the disabled. To request disability-related accommodations, use the contact information below. Please submit your request at least five (5) business days before the meeting to help ensure availability of the accommodation.

Contact Person: Kristina Eklund
2450 Del Paso Road, Suite 105
Sacramento, CA 95834
916-575-7170
optometry@dca.ca.gov

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**LEGISLATION AND REGULATION COMMITTEE
TELECONFERENCE MEETING MINUTES**

Friday, October 22, 2021

This public meeting was held via WebEx Events.

MEMBERS OF THE COMMITTEE

David Turetsky, O.D., Chair
Glenn Kawaguchi, O.D.
Eunie Linden, J.D.
Mark Morodomi, J.D.
Sandra D. Sims, J.D.

Members Present	Staff Present
David Turetsky, O.D., Chair	Cheree Kimball, Assistant Executive Officer
Glenn Kawaguchi, O.D.	Marc Johnson, Policy Analyst
Eunie Linden, J.D.	Terri Villareal, Enforcement Lead
Sandra Sims, J.D.	
Member Absent	
Mark Morodomi, J.D.	

Link for video: <https://www.youtube.com/watch?v=8t-qRICwfBo>

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

Dr. Turetsky called the meeting to order at 12:30p. A 4-1 quorum was established. Mark Morodomi was not present.

2. Public Comment for Items Not on the Agenda

A letter from Dr. John Kim regarding waiver of fees for military members was included as public comment in the packet. There were no other public comments.

3. Discussion and Possible Action to Adopt April 23, 2021 Legislation and Regulation Committee Meeting Minutes

Video: <https://youtu.be/8t-qRICwfBo?t=200>

Members had no changes. There was no public comment.

Glenn Kawaguchi motioned to accept the minutes as presented. Eunie Linden seconded. Motion passes 4-0-1.

Member	Aye	No	Abstain	Absent
Turetsky	X			
Kawaguchi	X			

Linden	X			
Morodomi				X
Sims	X			

4. Discussion and Possible Action on 2021-2025 Strategic Plan Items Relevant to the Committee

Video: <https://youtu.be/8t-qRICwfBo?t=387>

Dr. Turetsky referred members to the meeting materials, which contained a list of strategic plan items relevant to the committee. He outlined goal area #3, law and regulation, which the committee will be tracking and working on. Staff will report progress to the LRC at future meeting.

Item # 3.1 - Policy Analyst Marc Johnson pointed out the occupational analysis for optometric assistants was underway and would inform item 3.1.

Item # 3.2 – Mr. Johnson noted the mobile optometric office rulemaking package was in process.

Item # 3.3 – Mr. Johnson asked the committee for further direction on telemedicine research. Dr. Turetsky noted the Board discussed the issue in previous meetings in 2019. Dr. Kawaguchi suggested looking at Minnesota and other states and the ARBO would be sharing information on this issue. Staff will continue working with the workgroup on the telemedicine issue.

Item # 3.4 – Mr. Johnson noted AB 1534 gave the Board authority to collect a fee for license verifications.

Item # 3.5 – Staff will work with DCA’s legislation and regulation committee to determine if the Board can track federal legislation.

There was no public comment.

Eunie Linden moved to accept goal #3 as written and move forward to present to full board. Sandra Sims seconded. 4-0-1 motion passed.

Member	Aye	No	Abstain	Absent
Turetsky	X			
Kawaguchi	X			
Linden	X			
Morodomi				X
Sims	X			

5. Update, Discussion, and Possible Action on the Following Rulemaking Packages

- a. Optician Program Omnibus Regulatory Changes (Amend Title 16, §§ 1399.200 – 1399.285)
- b. Dispensing Optician Disciplinary Guidelines (Amend Title 16, § 1399.273)
- c. Implementation of AB 458 (Adopt Title 16, §1507.5; Amend Title 16, § 1524)
- d. Implementation of AB 443 (Amend Title 16, § 1524; Adopt Title 16, § 1572)

- e. Optometry Continuing Education Regulations (Amend Title 16, § 1536)
- f. Requirements for Glaucoma Certification (Amend Title 16, § 1571)
- g. Optometry Disciplinary Guidelines (Amend Title 16, §1575)
- h. Implementation of AB 896 (Adopt Title 16, §§1583 – 1586)

Video: <https://youtu.be/8t-qRICwfBo?t=1754>

Mr. Johnson provided a recap of the Board’s existing rulemaking packages, like what is given to the Board. He referred members to the memo in the packet and noted the Board has had staff shortages which has prevented work being done on the rulemaking packages. He requested the committee prioritize the packages in order to better direct staff’s work.

Mr. Johnson noted the continuing education regulatory package has been submitted to legal for review and the implementation of AB 896 package was next for completion. Dr. Turetsky agreed with the prioritization as set out in the materials. Dr. Kawaguchi asked staff provide some clarification on how the packages are prioritized.

Glenn Kawaguchi moved to accept prioritization of packages as presented and provide an update at the next board meeting. Sandra Sims seconded. 4-0-1 motion passed.

Member	Aye	No	Abstain	Absent
Turetsky	X			
Kawaguchi	X			
Linden	X			
Morodomi				X
Sims	X			

There was no public comment.

6. Update, Discussion and Possible Action on Tracked 2021 Legislation

- a. Assembly Bill 407 (Salas and Low) Optometry: scope of practice
- b. Assembly Bill 691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations
- c. Assembly Bill 1534 (Committee on Business and Professions) Optometry: mobile optometric clinics: regulations.
- d. Senate Bill 509 (Wilk) Optometry: COVID-19 pandemic: temporary licenses

Video: <https://youtu.be/8t-qRICwfBo?t=2344>

Mr. Johnson referred members to the materials with the listing of bills and comments staff has made. He asked the committee to provide any feedback on the listed bills and noted AB 691 and SB 509 have forms listed in law which staff has begun implementing. Dr. Turetsky asked if the insurers had any concerns with temporary licensure.

Public comment was made by Kristine Schultz from California Optometric Association. She has been talking with Vision Service Plan and they have no concerns with temporary licensure and noted COA would be doing outreach on scope of practice changes made by AB 407.

7. Discussion and Possible Action on 2022 Legislative Proposals; Possible Recommendation to Full Board

Video: <https://youtu.be/8t-qRICwfBo?t=2936>

Dr. Turetsky noted in the materials a public comment regarding active duty service member fees and felt the Board should act to remove these fees. Mr. Johnson noted staff would need to talk to legal counsel and the legislature to determine the best approach. Dr. Kawaguchi said the issue has not come up and is likely more complicated than the letter states; he wondered if a regulation package would be appropriate.

Dr. Turetsky asked if the Board could potentially waive the fees for military licensees under existing authority; Mr. Johnson replied he would need to research the issue and come back with information. Ms. Sims asked for more detail from the letter. Dr. Kawaguchi asked that the Board look at the larger issue of license portability with other states. Staff will also work with Dr. Garcia on military issues.

Mr. Johnson referred to legislative proposals for 2022 as listed in the packet. Staff will work to find a legislative author.

Eunie Linden accepted proposals as in packet and recommended they be brought to the full board. Sandra Sims seconded. Sandra Sims seconded. 4-0-1 motion passed.

Member	Aye	No	Abstain	Absent
Turetsky	X			
Kawaguchi	X			
Linden	X			
Morodomi				X
Sims	X			

8. Future Agenda Items

Committee members had no items. There was no public comment.

9. Adjournment

Meeting adjourned at 1:36 p.m.

Legislation and Regulation Committee - Strategic Plan Goal Worksheet - Updated February 7, 2022

Task Number	Task	Completion Goal Date	Success Measure?	Committee Discussion	First Progress Report Due
3.1	Advocate for the adoption of new opticianry statutes and regulations (using data from occupational analyses) that seek to clarify the principles of the profession and provide better consumer protection for those who are seeking opticianry services.	Q1 2024	Report to the Board		
3.1.1	Conduct survey and analysis of existing laws and regulation to see if they might be guided by federal law.	Q2 2023		2/7/22 –Sunset Review Cleanup workgroup to meet on 2/17 to begin optometry statute review.	
3.1.2	Work with Leg Reg Unit to monitor federal legislation/track federal legislation.	Q4 2023		2/7/22 - No resources available from DCA for federal legislation tracking	
3.1.3	Review existing laws to see if they need to be strengthened or added to.	Q1 2024 and ongoing			
3.2	Promulgate rulemakings to effectively regulate practice within mobile clinics and home settings to provide better consumer protection for those who are seeking optometric services.	Q3 2022	Successful implementation and administration of the law permits issued.		
3.2.1	Implement Assembly Bill 896 regulatory package	Q1 2022 - ongoing		10/22/21 - Staff to revise proposed text as a result of AB 1534 and will bring to LRC in spring. Will update LRC at spring meeting. 12/15/21– New AGPA hired to assist with 896 implementations. Staff is continuing work on text revisions brought with AB 1534. 2/3/22 – Mobile Optometric Office text and forms submitted to legal. To be presented to full Board at the 3/11/21 meeting.	Spring LRC meeting
3.2.2	Implement Assembly Bill 458 regulatory package	Q3 2022 - ongoing		10/22/21 - Rulemaking package being prepared by staff for DCA review. Will update LRC at spring meeting. 2/7/21 – Staff has begun rulemaking package for DCA legal review. Planned submission for initial approval by DCA by May 2022.	Spring LRC meeting
3.3	Explore current and emerging methods, opportunities, and technology to increase access to care while maintaining a world-class standard of vision care (e.g., scope of practice, delegation of authority and telemedicine)	Q4 2024	Current and emerging methods explored.		
3.3.1	Identify telemedicine issues and steps and continue research.	Q1 2023		10/22/21 - Directed staff to review the Minnesota Optometry Board for telemedicine policy. Discuss with ARBO their telemedicine policy. Work with Dr. Pruitt on existing staff research on telemedicine and update. 2/7/22 - No update	
3.3.2	Holding stakeholder forum identifying new trends in optometry and opticianry practice	Q2 2024			
3.3.3	Review mobile optometric clinics pursuant to AB 896.	Q4 2024			

3.4	Pursue Sunset Review legislation that modernizes language and concepts in light of current and future practice, that synchronizes the expiration dates of fictitious name permits to align with renewals of general licensure and statements of licensure, and that implements a license verification fee to support unfunded staff work.	Q4 2025	Submission of statutory language in the sunset report at the end of 2025.		
3.4.1	Conduct Optometry statutory review. (Statement of Licensure address, address of record)	Q4 2024		10/22/21 - Staff to begin work on statutory review next year, similar to optician statutory review which was conducted in 2019-2020. 2/7/21 – Sunset Review Cleanup workgroup to meet on 2/17 to begin optometry statutory review.	
3.4.2	Clarify address of record for practicing outside CA. Re-define statement of licensure.	Q1 2025			
3.4.3	Separate the laws/regs exam from the application process.	Q4 2025			
3.4.4	Possible expansion of optometrists to be employed by other doctors.	Q4 2025		2/7/22 – Completed, in law as a result of AB 1534 (2021)	
3.4.5	Submit license verification language to sunset committee.	Q4 2025		2/7/22 – Completed, in law as a result of AB 1534 (2021)	
3.4.6	Submit expiration date synchronization language to sunset committee.	Q4 2025			
3.5	Monitor changes in federal law to identify methods that will strengthen existing California legislation regarding the sale of contact lenses and eyeglasses to improve enforcement and enhance consumer protection.	Q3 2023	Changes in federal laws are monitored and board is aware.		
3.5.1	Work with DCA Leg Reg on how to track federal legislation.	Q4 2021		10/22/21 - Directed staff to work with DCA Leg Reg on tracking system, if available. 12/15/21 – emailed DCA Leg/Reg for further information. 1/13/21 – No resources available from DCA for federal legislation tracking 2/11/22 – Staff to work with Attorney General's office - for background on federal / state law preemption – will report back to LRC	Spring LRC meeting
3.5.2	Presentations made by state and national stakeholder groups on federal laws and trends.	Q2 2023			
3.5.3	Review existing optometry and optician laws to see how they are guided by federal law.	Q3 2023			



ISSUE MEMORANDUM

DATE	February 18, 2022
TO	Members, Legislation and Regulation Committee
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5 – Update and Discussion on Rulemaking Packages

Set out below is an update on the Board's previously approved regulatory packages. They are listed in order of priority recommended by the LRC at the October 22, 2021 meeting and sustained by the Board. For background, a link to previous meetings is included below. No action is needed as this is an informational update.

[Assembly Bill 1534 \(Committee on Business and Professions, Chapter 630, Statutes of 2021\)](#) made multiple changes to the optometry practice act and created a more defined optician practice act. Staff has been meeting internally on implementation. The bill may require changes to existing regulation packages (as noted below) or a new standalone regulation package which will be brought to the LRC a future meeting.

Additionally, [AB 107 \(Salas, Chapter 693, Statutes of 2021\)](#), relating to licensure: veterans and military spouses, was signed into law on October 8, 2021. This bill requires that all Department of Consumer Affairs (DCA) licensing boards issue temporary licenses to the spouses of active-duty members of the United States (U.S.) Armed Forces, provided they meet Board requirements. DCA is currently evaluating the bill for impact and will likely introduce a DCA-wide regulatory package for implementation later this year. If so, the package will be brought to the LRC and the Board for review at a future meeting.

Attachment A is the 2022 Office of Administrative Law (OAL) rulemaking calendar submitted by the Board in January 2022. It is an informational document used by OAL to track all proposed or approved regulations for each board or bureau and sets out proposed timelines for action of each regulation for the year.

Previously Approved Regulatory Packages:

1. Mobile Optometric Office Regulations (Adopt §§1583 – 1586) [Approved by the Board at the May 21, 2021 public meeting.](#)

Subject: This proposal will implement AB 896 (Low, Chapter 121, Statutes of 2020), which would allow nonprofit charitable organizations to provide mobile optometry services to patients and receive reimbursement by Medi-Cal. It requires the Board to develop a registry for mobile optometry offices and a consumer notice to be provided to patients. Assembly Bill 1534 (Assembly Committee on Business and Professions) –

approved by the Governor on October 7, 2021 and effective January 1, 2022, extends the regulatory implementation date to January 1, 2023 and adds authority for the Board to require registration of individual mobile optometric units by each non-profit.

Comments: Staff is currently working on updates to the text and forms as a result of AB 1534, which will be presented at the March 11, 2022 Board meeting in order to meet the January 1, 2023 statutory deadline. It is expected the existing AB 896 package will be combined into a new “omnibus” mobile optometric office package with both the AB 896 and AB 1534 requirements. Additionally, the Board’s new Mobile Optometric Office Coordinator, Genevieve Sanati, will be leading the effort to establish this program.

2. Optometry Continuing Education Regulations (Amend §1536)

Approved by the Board at the August 14, 2020 public meeting, and minor updates to the text were made at the August 31, 2021 public meeting. [Additional changes were made at the November 21, 2021 public meeting.](#)

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

Comment: The initial rulemaking package, containing changes made at the November 21, 2021 meeting, is complete and is with DCA Legal for review and approval. Staff anticipates the rulemaking package being sent to OAL for a 45-day public comment period in March.

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

[Approved by the Board at the May 21, 2021 public meeting.](#)

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

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

5. Optometry Disciplinary Guidelines (Amend §1575)

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

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

Comment: Some work on the rulemaking package has been started. AB 1534 will likely require minor changes to the DG handbook.

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

Approved by the Board at the [August 14, 2020, public meeting](#).

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

Comment: Some work on the rulemaking package has been started. Assembly Bill 1534 will necessitate changes to the optician program regulations.

7. Dispensing Optician Disciplinary Guidelines (Amend §1399.273)

Approved by the Board at the [August 14, 2020, public meeting](#).

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

Comment: The rulemaking package has not been started. Assembly Bill 1534 will likely necessitate changes to the proposed optician disciplinary guidelines.

8. Requirements for Glaucoma Certification (Amend §1571)

Approved by the Board at the [February 26, 2021, public meeting](#).

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

Comment: The rulemaking package has not been started.

**DEPARTMENT OF CONSUMER AFFAIRS
California State Board of Optometry
2022 RULEMAKING CALENDAR**

**SCHEDULE A: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED
DURING THE YEAR 2021**

Subject: Mobile Optometric Office Owner and Permit Program (Assembly Bill 1534, Committee on Business and Professions, Chapter 630, Statutes of 2021; Assembly Bill 896, Low, Chapter 121, Statutes of 2020)

California Code of Regulations Title and Sections Affected: TBD (Title 16)

Statute(s) Being Implemented: Business and Professions Code section 3070.2

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: Summer 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: March 2022

Projected To OAL for Review Date: Fall 2022

Next

Subject: Optician Program Regulations (Assembly Bill 1534, Committee on Business and Professions, Chapter 630, Statutes of 2021).

California Code of Regulations Title and Sections Affected: TBD (Title 16)

Statute(s) Being Implemented: Business and Professions Code sections 2541.2, 2544, 2545, 2550, 2552.2, 2553.7, 2555.5, 2588.1, 2558.2, 2559.2, 2564.5, 2564.71, 2564.74, 2564.76, 2564.80, 2564.91, 2564.94, 3112

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: Winter 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: Fall 2022

Projected To OAL for Review Date: Spring 2023

Next

Subject: Veteran and Military Spouse Licensure (Assembly Bill 107, Salas, Chapter 693, Statutes of 2021)

California Code of Regulations Title and Sections Affected: TBD (Title 16)

Statute(s) Being Implemented: Business and Professions Code section 115.6

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: Winter 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: Fall 2022

Projected To OAL for Review Date: Spring 2023

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2021

Subject: Continuing Education Update

California Code of Regulations Title and Sections Affected: 16 CCR 1536

Statute(s) Being Implemented: Business and Professions Code section 3059

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: May 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: November 19, 2021

Projected To OAL for Review Date: September 2022

NEXT

Subject: Optometry Renewal Fees

California Code of Regulations Title and Sections Affected: 16 CCR 1524

Statute(s) Being Implemented: Business and Professions Code section 3152

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: Fall 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: June 2022

Projected To OAL for Review Date: Winter 2022

NEXT

Subject: Home Residence Permit (AB 458, Nazarian, Chapter 425, Statutes of 2019)

California Code of Regulations Title and Sections Affected: 16 CCR 1507.5 and 1524

Statute(s) Being Implemented: Business and Professions Code sections 3070.1 and 3152

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: September 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: May 21, 2021

Projected To OAL for Review Date: November 2022

NEXT

Subject: Update of Dispensing Optician Forms and Fees

California Code of Regulations Title and Sections Affected: 16 CCR 1399.200, 1399.220, 1399.222, 1399.260, 1399.261, 1399.262, and 1399.263,

Statute(s) Being Implemented: Business and Professions Code sections 2546.9, 2550, 2551, 2554, 2558, 2566, and 2566.1

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: December 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: August 14, 2020

Projected To OAL for Review Date: Spring 2023

NEXT

Subject: Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

California Code of Regulations Title and Sections Affected: 16 CCR 1575

Statute(s) Being Implemented: Business and Professions Code sections 315, 315.2, 315.4, 480, 3091, and 3110; Government Code sections 11400.20 and 11425.50(e)

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: November 2022

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: October 25, 2019

Projected To OAL for Review Date: Summer 2023

NEXT

Subject: Disciplinary Guidelines (Optician)

California Code of Regulations Title and Sections Affected: 16 CCR 1399.273

Statute(s) Being Implemented: Business and Professions Code sections 315, 315.2, 315.4, 480, and 2555; Government Code sections 11400.20 and 11425.50

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: Spring 2023

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: August 14, 2020

Projected To OAL for Review Date: Summer 2023

NEXT

Subject: Requirements for Glaucoma Certification

California Code of Regulations Title and Sections Affected: 16 CCR 1571

Statute(s) Being Implemented: Business and Professions Code sections 3041, 3041.3

Responsible Agency Unit: California State Board of Optometry

Contact Person and Phone Number: Marc Johnson – 916-575-7182

Projected Notice Publication Date: Spring 2023

Projected Public Hearing Date: TBD

Projected Adoption by Your Agency Date: February 26, 2021

Projected To OAL for Review Date: Summer 2023

**Report on the Status of all Uncompleted Rulemaking Described on Previous
Calendars:**

Scope of Practice (AB 443, Salas, Chapter 549, Statutes of 2017)

Amend 16 CCR 1524 and 1572

Board will not be proceeding with this proposal due to AB 691 being signed into law.

Mobile Optometric Offices

Amend California Code of Regulations Title 16

Board will not be proceeding with this proposal due to AB 1534 being signed into law.



ISSUE MEMORANDUM

DATE	December 3, 2021
TO	Members, California State Board of Optometry
FROM	David Turetsky, Chair of the Legislation & Regulation Committee
SUBJECT	Agenda Item #6a - Discussion and Possible Action on Legislative Proposals and Priorities for 2022 - Proposed Changes to Business and Professions Code Sections 655, 2559, 3040 and 3094 (Optometry and Optician Practice Acts)

Stanton Optical-related Changes to Optometry Practice Act

On September 10, 2021, the Legislature passed [AB 1534](#) to address the 21 amended citations filed by the Board against Stanton Optical. The Governor signed the bill into law on October 7, 2021. That bill implements new opticianry statutes effective on January 1, 2022 and revises BPC Section 655 to take effect on January 1, 2023.

Beginning September 23, 2021, the public record included the adoption by the Board of a Proposed Decision from an Administrative Law Judge regarding the 21 amended citations filed against Stanton Optical.

From that decision, this first factual finding and legal conclusion is clear:

1. All parties involved in the delivery of optometric services must enter into an agreement to ensure the independence of the practice of optometry. Stanton Optical used a business and management service agreement to contract with an ophthalmologist group that employed the optometrists in practice at Stanton Optical locations.
 - (a) Rewrite the introduction in subsection (d) to require inclusion of (d)(1)-(d)(15) in all agreements among ophthalmology groups, ophthalmic device dispensing businesses, optical companies, and optometrists when the optometrist and the business or companies are co-located. (All agreements; not just lease agreements.)
 - (b) Strike the text of subsection (d)(16) so that ophthalmology groups are no longer exempted from ensuring the independence of optometrists from business or companies with which optometrists are co-located.
 - (c) Create a definition within subsection BCP 655(a)(7) which defines “co-location”.

- (d) Update reference within subsection BCP 655 (a)(5) to “ophthalmic device dispensing business” and add the correct reference to Article 2.7.

From the same adopted decision, this factual finding and legal conclusion is also clear:

2. The Optometry and Optician Practice Acts must clearly require compliance from individuals AND entities or corporations. Because current statutes are specific to individuals, the Board was unable to defend its claim that Stanton Optical illegally advertised the furnishing of optometric services.

- (a) BCP Section 2559: Add the words “or entity” as applicable throughout the section. This ensures the law applies to entities such as ophthalmic device dispensing businesses or optical companies, not just individuals.
- (b) BCP Section 3040: Add the words “or entity” as applicable throughout the section. This ensures the law applies to entities such as ophthalmic device dispensing businesses or optical companies, not just individuals.
- (c) BCP Section 3094: Add the words “or entity” as applicable throughout the section. This ensures the law applies to entities such as ophthalmic device dispensing businesses or optical companies, not just individuals.

With the authority of the board granted on Friday, November 19, 2021, the below amendments will be submitted to the Senate and Assembly Committees on Business, Professions and Economic Development. The text below reflects changes made by the Board at the November 21, 2021 public meeting.

Staff, the Legislation and Regulation Committee, and I will engage stakeholders to further analyze the Opticianry and Optometry Practice Acts and recommend additional revisions. There may be further proposed amendments to BPC 655(d) (1-16) to expand applicability to an array of business agreements, not just leases.

Once these proposals are entered into a legislative vehicle, the bill will be reviewed by the Committee and recommended to the full Board for support or opposition.

**Proposed Amendments to the Text of Business and Professions Code
(arising from the legal findings and conclusions of Stanton Optical cases)**

Business and Professions Code Section 655.

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Health plan" means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(2) "Optical company" means a person or entity that is engaged in the manufacture, sale, or distribution to **consumers**, physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or **optometric ophthalmic** appliances or devices or kindred products.

(3) "Optometrist" means a person licensed pursuant to Chapter 7 (commencing with Section 3000) or an optometric corporation, as described in Section 3160.

(4) "Physician and surgeon" means a person licensed by the Medical Board of California or the Osteopathic Medical Board of California under Chapter 5 (commencing with Section 2000) or a medical corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code.

(5) "Registered dispensing optician **ophthalmic device business**" means a person or entity licensed pursuant to **Chapter 5.5 Article 2.7** (commencing with Section **2550 2564.92**).

(6) "**Prescriptive or** Therapeutic ophthalmic **product device**" means lenses or other products that provide direct treatment or correction of eye disease, **refractive error**, or visual **conditions requiring** rehabilitation **for diseased eyes**.

(7) "Co-location" means any licensed or registered persons or entity which are located in the same property, building, office suite, or shared space.

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

(c) (1) A registered dispensing **optician ophthalmic device business or** an optical company may operate, own, or have an ownership interest in a health plan so long as the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and may directly or indirectly provide products and services to the health plan or its contracted providers or enrollees or to other optometrists. For purposes of this section, an optometrist may be employed by a health plan as a clinical director for the health plan pursuant to Section 1367.01 of the Health and Safety Code or to perform services related to utilization management or quality assurance or other similar related services that do not require the optometrist to directly provide health care services to enrollees. In addition, an optometrist serving as a clinical director may not employ optometrists to provide health care services to enrollees of the health plan for which the optometrist is serving as clinical director. For the purposes of this section, the health plan's utilization management and quality assurance programs that are consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter

2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) do not constitute providing health care services to enrollees.

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

(3) The Department of Managed Health Care shall forward to the California State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the California State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

~~(d) An optometrist, a registered dispensing optician, a physician and surgeon, an optical company, or a health plan may execute a lease, sublease, or other written agreement with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:~~

(d) When an optometrist and a registered dispensing ophthalmic business are co-located, as defined in section (a)(7), any party involved in the delivery of the optometrist's services (i.e. registered dispensing ophthalmic **device** business, physician and surgeon or optical company) must establish a written agreement ensuring the independence of the practice of optometry. Each party will enter an agreement with the optometrist and include the following in that written agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered dispensing **optician ophthalmic device business**, or a health plan, to the California State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.

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

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

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

(16) This subdivision shall not be applicable to the relationship between **any optometrist and their optometric staff (i.e. contact and spectacle lens dispensers, optometric assistants, or administrative staff.)** ~~any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the Department of Managed Health Care and that health plan.~~

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

(f) Nothing in this section shall prohibit a person licensed under Chapter 5 (commencing with Section 2000) or its professional corporation from contracting with or employing optometrists, ophthalmologists, or optometric assistants and entering into a contract or

landlord-tenant relationship with a health plan, an optical company, or a registered dispensing optician, in accordance with Sections 650 and 654 of this code.

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

(h) (1) Notwithstanding any other law and in addition to any action available to the California State Board of Optometry, the California 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) per administrative action. Notwithstanding any other law and in addition to any action available to the Medical Board of California or the Osteopathic Medical Board of California, the Medical Board of California or the Osteopathic Medical Board of California may issue a citation containing an order of abatement, an order to pay an administrative fine, or both, to a physician and surgeon for a violation of this section. In assessing the amount of the fine, the board shall give due consideration to all of the following:

(A) The gravity of the violation.

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

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

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

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

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

(G) Any other factors as justice may require.

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

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

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

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

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

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

(i) Administrative fines collected pursuant to this section shall be deposited in the fund of the board that has issued the fine. 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.

(j) Any complaints against a physician and surgeon for violations of this section shall be referred to the physician and surgeon's licensing board.

(k) This section shall become operative on January 1, 2023.

Business and Professions Code Section 2559:

2559. Whenever any person **or entity** 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.

Business and Professions Code Section 3040:

(a) It is unlawful for a person **or entity** to engage in the practice of optometry or to advertise or hold himself or herself out as an optometrist without a valid, unrevoked California optometrist license. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

(b) In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

Business and Professions Code Section 3094:

3094. In addition to other proceedings provided for in this chapter, whenever any person **or entity** has engaged, or is about to engage, in any acts or practices that 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 that conduct on application of the board, the Attorney General, the district attorney of the county, or on application of 10 or more persons holding licenses issued under this chapter.



ISSUE MEMORANDUM	
DATE	February 18, 2022
TO	Members, Legislation and Regulation Committee
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #6b – Discussion and Possible Action on Legislative Proposals and Priorities for 2022 - Other Legislative Proposals and Priorities

The 2022 Legislative Session began on January 6, 2022. Upcoming legislative deadlines of note:

- Apr. 29 —Last day for policy committees to hear and report to fiscal committees’ fiscal bills introduced in their house.
- May 6 —Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house.
- May 13 —Last day for policy committees to meet prior to May 31.
- May 20 —Last day for fiscal committees to hear and report to the floor bills introduced in their house (J.R. 61 (b)(8)). Last day for fiscal committees to meet prior to May 31.

Discussion:

Staff works closely with DCA Legislative and Regulatory unit to track legislation and meets on a bi-weekly basis to review any potential bills. As of February 11, 2022, no legislation directly relating to optometry or opticianry has been introduced.

Since it is early in the 2022 session, most other general bills of interest relating to healing arts, health care, boards and bureaus and other similar topics have not been identified yet. Staff expects legislation should be better identified for the next LRC meeting in April.

Please see the attached email from Ethan Rarick (Director of Little Hoover Commission) about possible Bagley-Keene meeting act reforms and potential legislation.

The committee may wish to take public comment from the California Optometric Association or other stakeholders regarding other potential legislation for 2022.

Johnson, Marc@DCA

From: Murphy, Shara@DCA
Sent: Thursday, February 10, 2022 11:26 AM
To: Johnson, Marc@DCA
Subject: Fwd: Bagley-Keene reform

Did you get this, too? Let's make sure to include this letter in materials for next Friday. Thank you!

Respectfully,
Shara P. Murphy (pronouns: she/her)
Executive Officer

California State Board of Optometry
Department of Consumer Affairs
Direct Phone: (916) 291-4999

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From: Rarick, Ethan <Ethan.Rarick@lhc.ca.gov>
Sent: Wednesday, February 9, 2022 10:21:34 PM
To: Rarick, Ethan <Ethan.Rarick@lhc.ca.gov>
Subject: Bagley-Keene reform

[EXTERNAL]: Ethan.Rarick@lhc.ca.gov

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Colleagues,

Thank you for participating in the Little Hoover Commission's survey of state boards and commissions last year regarding your experience meeting remotely during the pandemic. As you may recall, the results of that survey featured prominently in "[The Government of Tomorrow: Online Meetings](#)," our report recommending Bagley-Keene reforms.

Assemblymember Quirk has now introduced a new bill, [AB 1733](#), that would permanently reform the Bagley-Keene Act to facilitate continued remote meetings. I wanted to reach out to let you know that AB 1733 has been introduced.

Our Commission supports legislation that implements our recommendations, and we have issued a formal support letter for AB 1733. For those of you who are able to take a position on legislation, we are happy to answer any questions about the bill, or to connect you to Assemblymember Quirk's staff.

Please feel free to contact me if I can answer any questions or provide any additional information on this issue. We hope to be a resource for all of you as the legislative process addresses this important issue.

Ethan Rarick

Ethan Rarick
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