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To: Dispensing Optician Committee Members

Date: July 14, 2017

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Subject: **Agenda Item 4 – Presentation by the Office of the Attorney General on the Disciplinary Process and Potential Consumer Protection Improvements**



DOC DISCIPLINARY REVIEW TRAINING

AGO TRAINING

JULY 14, 2017

TRAINING OVERVIEW

- State Board of Optometry's Purpose and Mission
- Board Responsibilities
- Agency Responsibilities
- DOC Responsibilities
- DOC Tools to Regulate Practice
- Questions, Comments, and Feedback

STATE BOARD OF OPTOMETRY PURPOSE AND MISSION

- The California State Board of Optometry was created by the California Legislature in 1937 to safeguard the public's health, safety, and welfare.
- Board makeup (BPC 3010.5) as of 2016
 - 11 members
 - *1 professional member- registered as a dispensing optician, spectacle lens dispenser, or contact lens dispenser in good standing with the Board*

BOARD MAKEUP, CONT...

- Dispensing Optician Committee (BPC 3020)
 - Advise and make recommendations to Board re the regulation of dispensing opticians, SLD, and CLD.
 - 5 members
 - 1 member of the board
 - 1 SLD/CLD
 - 1 RDO
 - 2 public members

BOARD RESPONSIBILITIES

- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry when warranted.
 - Licensing Laws and state boards were created by the state legislature to regulate the practice of licensee in order to protect the public from incompetent, negligent and unscrupulous practitioners, by instituting disciplinary action. Public protection is the “highest priority” for a licensing agency.
 - Licensing laws are also intended to prevent future harm that has not yet occurred.

AGENCY RESPONSIBILITIES

- **Enforcement Program**
 - **Accusation-** seeks discipline (revocation or probation/suspension) of a license based on violations of laws regulating the practice
 - **Petition to Revoke Probation-** seeks to revoke a license based on failure to comply with terms of probation
 - **Statement of Issues-** seeks to deny a license based on violations of laws regulating the practice or that render a person unfit for the practice applied

DISPENSING OPTICIAN COMMITTEE RESPONSIBILITIES (BPC 3020)

- Reviewing of the disciplinary guidelines relating to registered dispensing opticians, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers.
- Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550).

DOC TOOLS TO REGULATE SAFE PRACTICE – *DISCIPLINARY GUIDELINES*

DISCIPLINARY GUIDELINES – what are they?

- Terms of probation necessary for a licensee to be a safe practitioner based on violations of the act
- Current regulations don't make reference to DGs. Don't have any.

DOC TOOLS TO REGULATE SAFE PRACTICE – *DISCIPLINARY GUIDELINES*

DISCIPLINARY GUIDELINES-When are they used?

- Settlement
 - Settlement terms negotiated based on DG's
- Evidentiary Hearing
 - ALJ issues a proposed decision to:
 - Place licensee on probation/Issue license and place licensee on probation
- Board Acting on Proposed Decisions after Hearing
 - If probation is granted, the terms and conditions of probation provide the necessary public protection.

DOC TOOLS TO REGULATE SAFE PRACTICE – *DISCIPLINARY GUIDELINES*

- **Petition to Revoke Probation**
 - Filed when agency determines a violation of the probation terms has occurred, therefore demonstrating unfitness to practice profession
- **Post-Hearing Matters**
 - **Petitions for Reinstatement**
 - License is placed on probation upon reinstatement. Disciplinary guidelines used to tailor what conditions of probation would best serve public protection if the licensee is reinstated
 - **Modification of Penalty/Early Termination of Probation**
 - Board will look at how compliant the probationer has been with the terms of probation in determining whether they have rehabilitated sufficiently as to be safe to practice by removing certain conditions of probation or removing Board oversight.

DOC TOOLS TO REGULATE SAFE PRACTICE – *REGULATIONS*

Regulations

- “Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.” (Gov’t. Code section 11342.600). IOW: regulations implement, interpret or make specific the statutes of the agency.

DOC TOOLS TO REGULATE SAFE PRACTICE – *REGULATIONS*

- Generally, there are three types of statutes
 - Self-Executing: Specific in its language so no implementing/interpreting regulation needed:
 - The annual licensing fee is \$500
 - Wholly Enabling: no legal effect in its language without the enactment of a regulation:
 - The annual licensing fee may be no more than \$500

DOC TOOLS TO REGULATE SAFE PRACTICE – *REGULATIONS*

- Susceptible to interpretation: may be enforced without a regulation, but may need a regulation for its efficient enforcement.
 - “There shall be adequate space between hospital beds.” Statute could be enforced on a case-by-case basis, but difficult as “adequate” not defined.
 - If a statute is open to interpretation but think it should be interpreted one specific way, regulate it.

DOC TOOLS TO REGULATE SAFE PRACTICE – *STATUTES*

- **Statutory Authority**
 - **Deficiencies in Statutes hindering enforcement:**
 - **No provisions listing the following as conduct warranting discipline:**
 - Unprofessional Conduct
 - Dishonest/fraudulent or deceitful acts
 - Making misleading/untrue statements
 - Unlawful or dangerous use of alcohol/drugs
 - Aiding and abetting unlicensed activity
 - Failure to cooperate in Board investigation and consequence
 - Failure to cooperate with citation/abatement order and consequences
 - Failure to comply with an order of the Board and consequences

DOC TOOLS TO REGULATE SAFE PRACTICE – *STATUTES*

- Confusing Language

- Professions not clearly set out or defined
- Statutes are redundant or contradictory
- Violations of statute deemed a crime but not a cause for discipline. See eg. 2556.5, 2558, etc.
- Violations are inconsistent amongst professions: SLD and CLD require felony conviction for discipline-2559.3; whereas “general provisions” requires only a conviction that is substantially related-2555.1.
- Words not defined in regulations. Eg: Assistant, Direct Responsibility, Direct Supervision, Accessible, etc.

- Basis for denial of application limited

DOC TOOLS TO REGULATE SAFE PRACTICE – *STATUTES*

- No Statutes Circumventing Enforcement Action
 - Ability to Surrender license if have a mental/physical condition rendering them unable to safely practice (see e.g. BPC section 2751)
 - Statutes authorizing derivative jurisdiction: If a licensee is disciplined, all licenses he holds or is associated with shall be disciplined and he may not be on any other licenses



AAAAAAND GO!

- Questions?
- Comments?