

BACKGROUND PAPER FOR The California Board of Optometry

Joint Oversight Hearing, March 4, 2025

**Senate Committee on Business, Professions and Economic Development
and Assembly Committee on Business and Professions**

IDENTIFIED ISSUES, BACKGROUND, AND RECOMMENDATIONS

BRIEF OVERVIEW OF THE CALIFORNIA BOARD OF OPTOMETRY

History and Function of the Board

In 1913, the Legislature established a State Board of Optometry (Board). The Board was empowered with rulemaking authority (BPC §§ 3025 and 3025.5), and the Board promulgated the first rule for the practice of optometry in 1923. During that same year, legislation was enacted which required all applicants for licensure to meet specific educational requirements and charged the Board with the responsibility of accrediting those schools. Prior to this time, individuals desiring to practice optometry were not required to have any specific formal education.

In 2015, through the enactment of AB 684 (Alejo and Bonilla, Chapter 405, Statutes of 2015), the Board assumed regulatory oversight of the dispensing opticians program. Prior to the passage of AB 684, the regulation of the dispensing optician professions was under the jurisdiction of the Medical Board of California (MBC). The transition of dispensing opticians from the MBC significantly increased the regulatory responsibilities of the Board. Under current law, no individual, corporation, or firm may engage in the business of filling prescriptions for lenses or perform other activities including “taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames” without a valid certificate of registration issued by the Board.

The Board’s licensed and registered population provide the following services:

- **Optometrist:** Diagnose disorders and dysfunctions of the visual system and provide treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services. The practice of optometry is further specified in BPC § 3041.
- **Registered Dispensing Ophthalmic Business:** Individuals, corporations, and firms which engage in the business of filling prescriptions of licensed optometrists or physicians and surgeons.
- **Registered Spectacle Lens Dispenser:** Fit and adjust spectacle lenses at any place of business holding a Registered Dispensing Ophthalmic Business registration.

- Registered Contact Lens Dispenser: Fit and adjust contact lenses at any place of business holding a Registered Dispensing Ophthalmic Business registration.
- Nonresident Ophthalmic Lens Dispenser: Individuals, partnerships, and corporations located outside of California that ship, mail, or deliver in any manner lenses at retail to a patient at a California address.

The current mission statement of the Board, as stated in its 2021-2025 Strategic Plan, is as follows:

To protect the health and safety of California consumers through licensing, registration, education, and regulation of Optometry and Opticians.

Pursuant to BPC §§ 3010.5 and 3011, the Board is to be comprised of 11 members. Five members are licensed optometrists (including up to two faculty members of an optometric school), and an additional nonpublic member must be a registered dispensing optician, spectacle lens dispenser, or contact lens dispenser in good standing with the Board. Because the term “registered dispensing optician” (RDO) is defined in BPC § 2550 to mean a spectacle lens dispenser, a contact lens dispenser, a nonresident ophthalmic lens dispenser, or a registered dispensing ophthalmic business, the registered dispensing optician member could be any one of the four registrant classifications. The Governor appoints three of the public members and all six of the professional members including the RDO member. The Senate Committee on Rules and the Speaker of the Assembly each appoint a public member.

Board members receive a \$100-a-day per diem. Per BPC § 3017, the Board is required to meet regularly during the year. All Committee meetings are subject to the Bagley-Keene Open Meetings Act. There are currently two vacancies on the Board, including one public member and one professional member. The following is a listing of the current Board members and their background:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority
<p>Jeffrey Garcia, O.D., President, Professional Member Dr. Garcia O.D. has been the owner of Family Eye Care Optometry since 1996, and has been an Adjunct Clinical Assistant Professor for the Southern California College of Optometry since 2014 and an Auxiliary Clinical Faculty for Western College of Optometry since 2013. Dr. Garcia O.D., is a retired Navy Captain, having served as both a Hospital Corpsman and an Optometrist from 1985 to 2018. Dr. Garcia O.D. is a member of the American Optometric Association and California Optometric Association.</p>	8/17/20	6/01/27	Governor
<p>Eunie Linden, J.D., Vice President, Public Member Ms. Linden is an attorney who previously worked as a consultant for the California State Assembly Committee on Business and Professions. Ms. Linden also worked for the California Office of Legislative Counsel as a Deputy Legislative Counsel.</p>	3/19/21	6/01/27	Senate Rules
<p>Stacy Bragg, O.D., Secretary, Professional Member Dr. Bragg, O.D. has been a Telehealth Optometrist at Empire Vision Center since 2022 and an Optometrist at Regency Eye Care Inc since 2017. Ms. Bragg was an Optometrist at Stacy A. Bragg, O.D., Inc from 2016 to 2017, and a Managing Optometrist for EYEXAM of California, Inc. from 2014 to 2016. Dr. Bragg,</p>	5/22/23	06/01/25	Governor

O.D. was an Independent Subleasing Optometrist at First Sight Vision Services, Inc. from 2005 to 2014.			
Alex Clemens, Public Member Mr. Clemens was Partner and Co-Founder at Lighthouse Public Affairs from 2016 to 2022. He was Founder of Barbary Coast Consulting from 2003 to 2016. Mr. Clemens has been a licensed private investigator in the State of California since 1998. Mr. Clemens earned a Bachelor of Arts degree in International Politics from the University of California, Santa Cruz. Mr. Clemens has taught full courses on ethical advocacy and strategic communications at the University of San Francisco Master of Public Affairs program in the 2010s, and to masters' candidates at Golden Gate University in the 2000s. He has guest lectured at the Berkeley Goldman School of Public Policy, at Stanford University, at the University of California Santa Cruz, and at San Francisco State University.	01/19/21	06/01/26	Governor
Martin Dawson, CLD/SLD, Professional Member Mr. Dawson has been a Field Director with Prison Fellowship since 2021 and currently works as an Academy Program Manager with Prison Fellowship. He was an Optical Consultant for Acuity Eye Group from 2020 to 2021 and a Licensed Optician and Lab Manager for Stanton Optical from 2017 to 2020. Mr. Dawson is co-pastor of the Pillar of Fire Church San Diego.	03/19/24	06/01/27	Governor
Paul Hsu, Public Member Mr. Hsu is the Chief Procurement Officer at Global Delivery Company, Inc., and holds the position of Vice President of Business Development at Marketing Promotions Inc. Mr. Hsu is also the President of PCH General Constructions, Inc. Mr. Hsu serves as National Advisor for the Asian Pacific Islanders Americans for Public Affairs and previously chaired Chapter Development and was a member of the National Governing Board for the organization.	06/23/23	06/01/27	Speaker of the Assembly
Robert Klepa, J.D., Public Member Mr. Klepa has been a Hearing Officer for the Orange County Employee Retirement System since 2019, for the Los Angeles City Housing Dept since 2018, for the Ventura County Employees Retirement Association since 2016, for the Los Angeles County Chief Executive Officer Disability Division since 2011, and for the Los Angeles County Civil Service Commission since 2002. Mr. Klepa has been an Adjunct Instructor with Santa Monica College since 2002 and the University of California, Los Angeles Extension Program since 1998. Mr. Klepa was a Hearing Officer for the Los Angeles County Housing Authority from 2009 to 2019 and for the city of Santa Monica from 2005 to 2015. Mr. Klepa was a Judge Pro Tem, Arbitrator, and Mediator with the Los Angeles County Superior Court from 1998 to 2014.	05/22/23	06/01/25	Governor
Joseph Pruitt, O.D., Professional Member Dr. Pruitt, O.D. has been Director of Eye Care at Riverside-San Bernardino County Indian Health Inc., since 2014. Dr. Pruitt, O.D. was staff optometrist at the Department of Veterans Affairs Minneapolis VA Health Care System from 2008 to 2014. Dr. Pruitt, O.D. is a member of the American Optometric Association, Armed Forces Optometric Society, and Christian	06/10/21	06/01/25	Governor

Medical and Dental Association/Fellowship of Christian Optometrists.			
Lillian Wang, O.D, Professional Member Dr. Wang, O.D. has been an optometrist at the Lafayette Optometric Group since 2004 and an associate clinical professor at the University of California, Berkeley School of Optometry since 2000. She did her residency in Pediatric Optometry at the College of Optometry in Houston, TX, from 1997 to 1998 and was an assistant clinical professor at the State University of New York School of Optometry from 1998 to 2000. Dr. Wang, O.D. is a member of the American Academy of Optometry, the California Optometric Association, and the New England College of Optometry Alumni Association.	04/02/2015	06/01/26	Governor
Vacant, Professional Member	N/A	N/A	Governor
Vacant, Public Member	N/A	N/A	Governor

Pursuant to BPC § 3020, the Board has one statutorily required committee, the Dispensing Optician Committee (DOC). All other committees of the Board are formed as needed and members are appointed by the Board president. The Board has not had any full board meetings canceled due to a lack of a quorum in the last four years; however, the DOC has not met since April 2021, due to insufficient member appointments. The following are the Board's current committees and workgroups.

- *Dispensing Optician Committee:* Recommends registration standards and criteria for the registration of opticians. This committee is statutorily required to meet twice a year. *(Statutorily Required)*
- *Legislation and Regulation Committee.* Recommends legislative and regulatory priorities to the Board, assists staff with drafting language for Board-sponsored legislation, and recommends official positions on current legislation. This committee also recommends changes and additions to the Board's regulations.
- *Practice and Education Committee:* Advises Board staff on matters related to optometric practice, including standards of practice issues. Reviews staff responses to proposed regulatory changes that may affect optometric practice, and approves continuing education courses and offers guidance to Board staff regarding continuing education issues.
- *Consumer Protection, Public Relations, and Outreach Committee:* Oversees the development and administration of licensing examinations. Consults on improvements/enhancements to licensing and enforcement policies and procedures. Assists with the development of outreach and educational materials for the Board's stakeholders.
- *Children's Vision Workgroup:* Created in 2015 to work with stakeholders on the issue of pupil health and vision examinations.
- *National Board of Examiners of Optometry/Association of Regulatory Boards of Optometry Workgroup:* Established to improve communications between NBEO/ARBO and the Board. This workgroup has explored alternative ways to administer national exams.

- *Optometry/Opticianry Workgroup*: Established to harmonize the Optometry and Opticianry Practice Acts and discuss emerging issues.
- *Telehealth and Emerging Technologies Workgroup*: Established in 2019, to meet the emerging trends of telehealth within the practice of optometry.
- *Sunset Review Workgroup*: Periodically established for purposes of assisting the Board prepare its Sunset Review Report for the Legislature.
- *Dispensing Optician Committee Workgroup*: Established in 2025, to discuss the purpose, structure, and future of the DOC.

Fiscal and Fund Analysis

As a special fund agency, the Board does not receive General Fund support, relying solely on fees set by statute and collected from licensing and renewal fees. The Board’s fund is not continuously appropriated; however, the Board is mandated to provide \$16 from every biennial renewal to the University of California “solely for the advancement of optometrical research and the maintenance and support of the department at the university in which the science of optometry is taught.”

With the exception of the fictitious name permit, all board licenses and registrations renew biennially, expiring on the last day of the month in which the license was issued. Renewal fees for optometry licenses represent more than half of the Board’s annual revenue. Fees specific to the optometry practice act have not been statutorily increased since 2009. However, the Board has been incrementally increasing fees through regulation to the statutory maximum over the last 10 years. To date, the majority of the licensing and registration fees assessed by the Board are at their statutory maximum. *Fees not at the statutory maximum are notated with **

Optometry Fees	Current Fee Amount	Statutory Limit	% of Total Revenue
Exam Application	\$275	\$275	3.3%
Initial License	\$125	\$125	1%
Biennial Renewal	\$500	\$500	58.8%
Delinquency Fee	\$50	\$50	0.3%
Fictitious Name Permit	\$50	\$50	0.3%
Annual Renewal of Fictitious Name Permit	\$50	\$50	2.8%
Delinquency Fee – Fictitious Name Permit	\$25	\$25	0.2%

Name Change Duplicate Wall Certificate	\$25	\$25	0.6%
Statement of Licensure	\$40	\$40	0.7%
Biennial Renewal Statement of Licensure	\$40	\$40	0.8%
Delinquent Renewal of Statement of License	\$20	\$20	0.1%
CE Course Application	\$100	\$100	0.3%
Retired License	\$25	\$25	0.0%
Retired Volunteer License	\$50	\$50	0.0%
Biennial Renewal of Retired Volunteer License	\$50	\$50	0.0%
* Letter of Verification	*\$40	*\$60	0.1%
Immunization Certification	\$50	\$50	0.0%
*Home Residence Permit	*\$50	*\$100	0.0%
*Renewal Fee for Home Residence Permit	*\$50	*\$100	0.0%
*Delinquency Fee for Home Residence Permit	*\$25	*\$100	0.0%
*Mobile Optometric Office Owner and Operator Registration Fee	*\$360	*Reasonable Cost	0.0%
*Mobile Optometric Office Owner and Operator Biennial Renewal Fee	*\$360	*Reasonable Cost	0.0%
*Mobile Optometric Office Permit Fee	*\$472	*\$600	0.0%

Optician Fees	Current Fee Amount	Statutory Limit	% of Total Revenue
RDO Application	\$200	\$200	0.5%

RDO Registration	\$300	\$300	0.5%
RDO Biennial Renewal	\$300	\$300	4.1%
*RDO Delinquency	*\$50	*\$75	0.1%
RDO Replacement Certificate	\$25	\$25	0.0%
CLD Application	\$200	\$200	0.8%
CLD Registration	\$300	\$300	1.0%
CLD Biennial Renewal	\$300	\$300	4.1%
*CLD Delinquency	*\$50	*\$75	0.1%
CLD Replacement Certificate	\$25	\$25	0.0%
SLD Application	\$200	\$200	2.0%
SLD Registration	\$300	\$300	2.5%
SLD Biennial Renewal	\$300	\$300	10%
*SLD Delinquency	*\$50	*\$75	0.4%
SLD Replacement Certificate	\$25	\$25	0.1%
Nonresident Ophthalmic Lens Dispenser Application	\$200	\$200	0.0%
Nonresident Ophthalmic Lens Dispenser Registration	\$200	\$200	0.0%
Nonresident Ophthalmic Lens Dispenser	\$300	\$300	0.1%
Biennial Renewal			
*Nonresident Ophthalmic Lens Dispenser Delinquency	*\$50	*\$75	0.0%

Nonresident Ophthalmic Lens Dispenser Replacement Certificate	\$25	\$25	0.0%
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There is no mandated reserve level for the Board; however, BPC § 3145 prohibits the Board from maintaining a fund balance that is greater than six months of the appropriated operating expenses of the Board in any fiscal year (FY).

According to the information provided in the Board’s *2025 Sunset Review Report*, the total revenues anticipated by the Board for FY 2024/25 are \$3,153 million and total expenditures for the Board for FY 2024/25 is estimate at \$4,387 (if the Board fully expends its budget authority). The Board’s current reserve level is 8 months or \$2.9 million. The Board reports that between FYs 2020/21 and 2025/26, the Board’s reserve level has significantly decreased from 15.9 months to a projected 1 month in FY 2024/25. The Board reports that it has been operating with a structural deficit for the past three years and projects a deficit in FY 2026/27.

For the last four FYs, the Board has expended approximately 31% on enforcement, 6% on examinations, 17% on licensing, 22% on administration, and 24% on DCA pro rata.

AB 896 (Low, Chapter 121, Statutes of 2020) required the Department of Finance to merge the Optometry Fund and the Registered Dispensing Optician Fund into one fund as a result of the dispensing optician program now under the jurisdiction of the Board. AB 896 abolished the dispensing optician fund on July 1, 2022, and required that any sums of money in that fund be transferred to the Optometry Fund before July 1, 2022. The fund merger occurred in FY 2023-2024.

The Board is currently authorized for 16 staff positions, down 3.9, from a high of 19.9 in FY 2023-24. The Board notes continued challenges with high staff turnover and vacancy rates. The Board attributes staffing issues to both limited resources and advancement opportunities. The Board also notes staff vacancies have been used as a tool to address budget shortfalls.

Licensing/Registration

The Board currently licenses approximately 7,800 optometrists, and registers approximately 1,185 Registered Dispensing Ophthalmic Businesses, 3,300 Registered Spectacle Lens Dispensers, 1,370 Registered Contact Lens Dispensers, and 23 Nonresident Ophthalmic Lens Dispensers.

The Board licenses both individual optometrists and business locations at which an optometrist practices through a statement of licensure (SOL). For those optometrists who practice at more than one location, they are required to obtain a SOL from the Board. A SOL must be placed in all practice locations outside of the optometrist’s principal location. Currently, no licensed optometrist may operate more than 11 optometric offices, and for those that operate mobile optometric offices, they may operate no more than 12 mobile optometric offices during the first renewal period. The Board also issues fictitious name permits (permits) to optometrists or optometric groups who practice under a name different from the individual name licensed by the Board.

There are four registrations issued for the dispensing optician program: Dispensing Ophthalmic Business, Spectacle Lens Dispenser, Contact Lens Dispenser and Nonresident Ophthalmic Lens Dispenser, collectively referred to as RDOs. All of the optician registrant classifications are part of the workforce which fit, sell, offer, advertise or perform optical services to fill and fit prescriptions for eyeglasses and contact lenses. Opticians are prohibited from providing prescription glasses or contacts without a prescription from a licensed optometrist or physician and surgeon. These registrants are not authorized to practice optometry as specified in BPC § 3041.

The Board established internal performance expectations for processing applications. Pursuant to Board regulations (Title 16, California Code of Regulations (CCR) § 1564), the Board is required to inform an applicant for licensure as an optometrist within 45 days of receipt of the application whether the application is complete and accepted for filing or is deficient and what specific information is required. For those with a completed application, the Board is required to inform an applicant for licensure as an optometrist within 120 days after completion of the application, of its decision whether the applicant meets the requirements for licensure. Further, 16, CCR § 1564.1 requires the Board to inform an applicant for a permit for a fictitious name within 45 days from receipt of the application whether its complete or is deficient and the additional information required. Board regulations further require the Board to inform an applicant for a fictitious name within 120 days of a complete application whether the applicant has met the requirements for the permit.

All other licenses/registrations issued by the Board are not subject to the same regulatory timeframes, but the Board follows DCA's current performance measures, which sets a 30-day target to process a complete application for licensure as a Registered Contact Lens Dispenser or Registered Spectacle lens Dispenser. For a Registered Dispensing Ophthalmic Business, the performance target is 60 days. As of July 1, 2024, the Board reports that it is meeting these targets.

During the Board's last sunset review in 2020, the Board noted significant challenges with meeting licensing timeframes. At that time, the Board attributed both staffing challenges and resources to its inability to meet timeframes. In the Board's *2025 Sunset Review Report*, the Board reports that licensing timeframes have improved during the past four years and the Board is currently meeting or exceeding established timeframes.

Steps implemented by the Board to reduce license processing times include:

- Updated BreEZe system to process applications more efficiently, including the reduction of paper processing.
- Created efficiencies at application intake.
- Increased staff for licensing between FYs 2020-21 through FY 2023-24.
- Increased outreach and education.
- Updated the laws and regulation handbook and the candidate exam bulletin.
- Require all application components for a permit to be collected at one time.
- Increased staff training.

The number of optometry applicants for the national examination and initial licensure are lower compared to the time period of the Board's last sunset review. In percentage terms, exam requests were 14% lower in FY 2023-24 compared to FY 2020-21 and initial applications were

34 % lower in FY 2023-24 compared to FY 2020-21. In contrast, the four dispensing optician registrations have increased. During the same period, FY 2020-21 – FY 2023-24, registered dispensing business registrations grew by 7%, spectacle lens dispenser registrations are 15% higher, and contact lens dispenser registrations increased by 20%. The Board has now issued a total of 22 nonresident ophthalmic lens dispenser registrations compared to 15 in FY 2020-2021.

The Board requires primary source documentation for any educational transcripts, experience records, license verification from other states, or professional certifications. As part of the licensing process, all applicants for an optometry license, contact lens dispenser, and spectacle lens dispenser registration are required to submit fingerprint images in order to obtain criminal history background checks from the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). The Board is not aware of any optometrist licensees, spectacle lens, or contact lens registrants that have not been fingerprinted. In addition, the Board queries the National Practitioners Databank for disciplinary actions reported by other states for optometry licensees.

School Approval and Examinations

Although BPC § 3023 states that *the Board shall accredit schools, colleges, and universities in or out of this state providing optometric education*, the Board does not actively accredit or approve any optometric schools, and instead simply accepts accreditation from the Accreditation Council on Optometric Education (ACOE). The ACOE is the only accrediting body for professional optometric degree programs, optometric residency programs, and optometric technician programs in the United States and Canada. The ACOE has accredited 26 schools and colleges of optometry in the United States and Canada. The Board accepts courses offered by all ACOE schools of optometry to be equivalent to those within California. There are currently three accredited schools located in California:

- University of California, Berkeley, Herbert Wertheim School of Optometry & Vision Science
- Marshall B. Ketchum University, Fullerton
- Western University of Health Sciences, College of Optometry, Pomona

BPC § 3057 specifically requires an applicant to have a doctor of optometry degree issued by an accredited school of optometry. Currently, with the exception of Canada, there are no ACOE accredited schools of optometry outside of the United States accepted by the Board for purposes of licensure in California. For individual applicants who have received a degree outside of the United States, with the exception of Canada, they are required to complete education at one of a handful of U.S.-based schools that provide pathways to acquire the necessary degree.

Out-of-state applicants must meet the following requirements:

- Take and pass the California Law and Regulations Exam.
- Take and pass all three parts of the national examination offered by the National Board of Examiners in Optometry (NBEO), including the Treatment and Management of Ocular Disease exam.
- Provide proof of out-of-state license.

- Provide proof of meeting the California continuing education requirements.
- Take and successfully pass a state and federal fingerprint criminal background check.

In addition to meeting education requirements, all applicants for an optometrist license must take and pass the California Laws and Regulations Exam (CLRE), and the three-part national examination developed by the NBEO. The CLRE is a jurisprudence examination that focuses on the laws and regulations specific to the practice of optometry in California. The CLRE is developed by the Department of Consumer Affairs (DCA), Office of Professional Examination Services, and is administered by PSI Services. The CLRE is computer based and is available at numerous PSI testing centers throughout the state nearly every day of the year. Applicants who fail the CLRE must wait 90 days to retake it. The national licensing examination is administered by the NBEO and consists of the following three parts:

Part 1 – Applied Basic Science

Part 2 – Patient Assessment & Management

Part 3 – Patient Encounters and Performance Skills, formerly referred to as the *Clinical Skills Examination*

The Board has required passage of NBEO Parts I, II, and III for licensure since 2001. Parts I and II of the NBEO examination are offered to students while still in optometry school and are computer-based tests offered at Pearson-VUE testing centers. There are approximately 30-available testing centers throughout California. However, the administration of Part III of the NBEO is conducted in person, with a testing site located exclusively in North Carolina. Currently, all 50 states, the District of Columbia, and Puerto Rico all use the NBEO examination for licensure. During the COVID-19 pandemic, there were challenges for applicants to fly from their home states to North Carolina in order to take the examination. SB 509 (Wilk, Chapter 219, Statutes of 2021) created a temporary optometrist license for individuals who were immediately unable to take the required Part III of the national examination for licensure, due to the state of emergency declaration during the Covid-19 pandemic, but had met all other licensure requirements. To date, no temporary licenses were issued pursuant to the provisions of that bill.

For dispensing optician registrations, those seeking the contact lens dispenser registration and the spectacle lens dispenser registration are required to take and pass the Contact Lens Registry Examination and the National Opticianry Competency Examination, respectively. These examinations are offered by the American Board of Opticianry & National Contact Lens Examiners (ABO-NCLE). Once applicants take and pass these examinations, they obtain certification from the ABO-NCLE, but they must additionally be registered by the Board in order to provide services in California.

Continuing Education (CE)

There are no mandated CE requirements for any of the optician registrations. Optometrist licensees must complete a minimum number of hours of CE based upon the certifications associated with their license. Licensees with no additional certifications are required to complete 40 hours of CE within the two years immediately preceding the license expiration date. Optometrists certified in the use of therapeutic pharmaceutical agents (TPA) are required to complete 50 hours of CE, with 35 of the

required 50 hours on the diagnosis, treatment, and management of ocular disease. An optometrist who has a glaucoma certification is required to complete 10 of the 50 hours specifically on glaucoma. All applicants who graduated after 2008, are TPA and glaucoma certified and must complete the same CE requirements of 50 hours, with 35 hours in ocular disease and 10 hours in glaucoma.

The Board has robust regulations related to CE for optometrists. The Board provides a myriad of opportunities for licensees to complete CE. Recently, in August 2023, the regulations were amended to allow for “live and interactive” courses, including webinars. In addition, licensees can obtain hours through self-study, attending Board meetings during open public session, writing or publishing articles, completing a CPR course, among others. (16 CCR § 1536)

Optometry licensees are required to certify under penalty of perjury that they meet the CE requirements pursuant to 16 CCR § 1536, each renewal cycle. If a licensee fails to certify completion of the required CE, the license renewal is held until the licensee certifies completion of CE. A licensee may not practice with an expired or delinquent license.

In order to verify that licensees comply with the mandated CE, the Board conducts random CE compliance audits. During the Board’s prior sunset review, the Board noted a record 321 audits with 101 audits failing for either not having the required number of CE hours, or being deficient in completing specific CE requirements respective to license certifications (such as TLG). The CE compliance failure rate was 31%

The Board reports that no CE compliance audits were conducted in FYs 2020-21 and 2021-22. However, the last two FYs (2022-23 and 2023-24), the Board resumed CE compliance audits, and noted the following results: 1) FY 2022-23: 72 audited, 14 failed; 19% failure rate; and 2) FY 2023-24: 141 audited, 42 failed; 30% failure rate. Compared to the Board’s prior sunset review, the CE compliance audit failure rate is lower, but the Board has audited fewer licensees during the past four years.

Enforcement

The Board follows the DCA’s Consumer Protection Enforcement Initiative (CPEI) guidelines. The CPEI was launched by the DCA in 2009 to help address extreme delays in enforcement processes for boards and bureaus. At one time, enforcement cases were aging for extended timeframes (up to three years).

Licensees, insurers, state and local governments, prosecutors, and courts are all required to report to the Board information regarding settlements, judgements, and arbitration awards, pursuant to BPC § 801, 801.1, 803.5, and 803.6. In addition, the Board receives reports from the National Practitioner Data Bank. The Board received nine settlement reports in the last four FYs. The total amount of those settlements is \$1,881,249, with an average settlement amount of \$209,027.

In addition, pursuant to BPC 655(c)(3), the Department of Managed Health Care (DMHC) is required to forward to the Board any consumer complaints it receives alleging that an optometrist has violated the Optometry Practice Act (act). The DMHC and the Board are required to 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 act that DMHC encounters in the course of administering the Knox-Keene Health Care Service Plan Act. To date, the Board reports that it has not received any notifications from DMHC.

The Board is subject to a statute of limitations. Pursuant to BPC § 3137, the Board must file an Accusation within three years after the board discovers the alleged act or omission as the ground for disciplinary action, or within seven years after the alleged act or omission as the ground for disciplinary action occurs, whichever occurs first. The Board has not lost any cases due to statute of limitations.

The table below shows the timeframes for the last four FYs for intakes, investigations and disciplinary action. While the Board has a relatively low enforcement case load, the timeframes for disciplinary action continue to increase.

Performance Measure	Target – Average Days	Actual FY 2020-21	Actual FY 2021-22	Actual FY 2022-23	Actual FY 2023-24
Intake	7	4	6	5	2
Intake and Investigations	90	192	308	328	195
Disciplinary Action	540	461	703	682	932
Probationer Intake	25	2	10	1	1
Probationer Violation	10	9	12	0	1

The Board seeks cost recovery pursuant to BPC § 125.3. The Board reports that it seeks cost recovery for all investigative and prosecution costs in all disciplinary cases (licensees only). Cost recovery may be ordered as a condition for the reinstatement of a surrendered or revoked license, or as a condition of probation. The Board accepts payment plans; however, it requires outstanding balances to be paid in full six months before the completion of probation.

The amount of cost recovery ordered is calculated based on the resources the Board spent investigating and prosecuting the case. When the cost recovery order is due upon reinstatement of a revoked or surrendered license, the Board considers whether the cost recovery would likely be collected. According to information provided by the Board in the table below, ordered cost recovery account for less than 5% of the Board’s reported enforcement related costs.

While the cost recovery tables below provide information on the amount ordered and collected in one FY year, it may not reflect the actual amount collected for what is ordered in any FY. In FY 2020/21, the table below shows that the Board collected \$1,000 more than was ordered because the amount collected in that FY year includes the collection of amounts ordered in previous FYs, as individuals may pay months after the close of a FY budget.

Cost Recovery				
	(list dollars in thousands)			
	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Total Enforcement Expenditures	\$632,000	\$703,000	\$885,000	\$722,000
Potential Cases for Recovery *	6	3	7	6
Cases Recovery Ordered	4	3	6	6
Amount of Cost Recovery Ordered	\$20,000	\$15,000	\$60,000	\$35,000
Amount Collected	\$21,000	\$11,000	\$7,000	\$7,000

Citation and Fine Program

Pursuant to BPC § 125.9 and 148, the Board is permitted to issue a citation and fine against a licensee, registrant, or unlicensed individual for violations of the optometry or dispensing optician practice acts. Pursuant to BPC 125.9, fines cannot exceed \$5,000 per violation. Per regulations established by the Board (16, CCR § 1579), fines assessed for a violation of the optometry practice act fall in a range of A, B, or C depending on the severity of the violation. Fines range between \$250 and \$5,000.

Fines assessed for a violation of the optician program are capped at \$2,500 per Board regulations (16, CCR § 1399.276), and for certain violations the Board is only authorized to issue a citation between \$100 and \$1,000. Fines are not assessed in the same manner as those for the optometry practice act, which are based on the severity of the violation. Fines for the optician program are specifically tied to the statute in which the fine is attributed to.

In the past four FYs, the Board issued a total of 105 citations, 75 for violations of the optometry practice act and 30 for violations of the optician program. The Board did not issue any citations for either optometry or optician program in FY 2020-21. During the past four FYs, the average fine pre-appeal was \$2,246 and the average fine post-appeal was \$2,106.

The five most common violations for which citations are issued are as follows:

1. Failing a CE audit
2. Unlicensed practice
3. Unprofessional Conduct
4. Criminal Conviction
5. Advertising

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Legislature through sunset review in 2020-2021. During the previous sunset review, 22 issues were raised. In January 2025, the Board submitted its required sunset report to the Committees. In this report, the Board described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. For those which were not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under “Current Sunset Review Issues.”

- Appointed a new Executive Officer in 2022.
- Implemented regulations pursuant to AB 896 (Low, Chapter 121, Statutes of 2020) related to Mobile Optometric Offices effective January 1, 2025.
- Updated its 2021-2025 Strategic Plan to include “diversity, equity, inclusion, and belonging” into the Board’s mission and values.
- Conducted, in conjunction with the DCA’s Office of Professional Examination Services, an occupational analysis to evaluate the role of unlicensed individuals working as optometric assistants.
- Merged the optometry and optician funds to create one Optometry Fund.
- Reinstated CE audits
- Completed a scope of practice assessment for optician professions.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Board or areas of concern that should be considered, along with background information for each issue. There are also recommendations Committee staff have made regarding particular issues or problem areas the Board needs to address. The Board and other interested parties have been provided with this Background Paper and the Board will respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATIVE ISSUES

ISSUE #1: DISPENSING OPTICIAN COMMITTEE (DOC). The DOC has not met for a number of years. Is this committee still necessary?

Background: BPC § 3020 establishes a dispensing optician committee (DOC) under the jurisdiction of the Board. The DOC is required to advise and make recommendations to the Board regarding the regulation of dispensing opticians, spectacle lens dispensers, and contact lens dispensers. The Committee is comprised of five members, including one registered dispensing optician, either one spectacle lens dispenser or contact lens dispenser, two public members, and a current member of the Board. Because the term “registered dispensing optician” is defined in BPC § 2550 to mean a spectacle lens dispenser, a contact lens dispenser, a nonresident ophthalmic lens dispenser, or a registered dispensing ophthalmic business, the registered dispensing optician member-could be any one of the four registrant classification. All appointments to the DOC are gubernatorial appointments. Unlike the full Board, no members of the DOC are appointed by either the Speaker of the Assembly or the Senate Rules Committee. The DOC is required to meet twice a year, and as needed to conduct business. Any recommendations made by the DOC regarding scope of practice or regulatory changes must be approved, modified, or rejected by the Board within 90 days. If the Board rejects or significantly modifies the intent or scope of a recommendation, the DOC may request that an explanation be provided in writing within thirty days.

Between the years 2017-2021, the DOC met at least twice a year as required by statute. However, the DOC has not met since April 2021, due to a lack of appointed committee membership. This is the second sunset review of the Board since the establishment of DOC.

Staff Recommendation: *The Board should advise the Committees as to the necessity of continuing the DOC Committee as a statutorily mandated committee and if so, what is the Board doing to ensure member appointments are a priority?*

ISSUE #2: (EMAIL ADDRESSES) Should licensees and applicants be required to provide the Board email addresses?

Background: Several DCA boards including the Board of Behavioral Sciences, the MBC, the Dental Board, the Physical Therapy Board, and the Board of Psychology are now permitted to require applicants, registrants, and licensees to provide their respective boards with a current email address if they have one during the initial application or renewal process. To protect the privacy of applicants,

registrants, and licensees, the email address provided to the Board will not be considered a public record that is subject to disclosure, unless required by an order of a court.

As reported in the Board's *2025 Sunset Review Report*, the Board believes including a similar requirement for its licensing population would be useful as well. Board-communication via email allows the Board to communicate timely information about licensure renewal and law changes in a more expeditious and cost efficient manner. As noted by the Board, the current examination vendor communicates with applicants via email, and requiring an applicant email (if they have one) would assist the Board in providing timely updates about examination status. In addition, the recent wildfires have demonstrated how quickly important paper documents, including licensing information can be lost or destroyed or the mail can be delayed with little warning or expedited solution. With the use of email, the Board should be able to communicate important licensing and emergency response updates to its licensees and registrants more swiftly. The Board reports that it spent approximately \$43,000 on printing and posting in FY 2023-24, including mailing renewal notices along with other printing and postage. Although the Board does not have estimated fiscal savings, communication via email will likely streamline staff time and other Board resources.

Staff Recommendation: *The Committees may wish to consider adding a statutory requirement that an applicant or licensee during the renewal process, who has a current email address, provide it to the Board. Consistent with other regulatory Boards that have received such authorization, the email address shall not be a public record.*

ISSUE #3: (MOBILE OPTOMETRIC OFFICES QUARTERLY REPORTING REQUIREMENTS) Should reporting requirements be streamlined?

Background: AB 896 (Low, Chapter 121, Statutes of 2020) authorized a new pathway under the optometry practice act that permitted the operation of Mobile Optometric Offices (MOOs), without a requirement that the MOO be connected to an optometry school. The MOO program now allows a nonprofit (501(c)(3)) or a charitable organization (501(c)(4)) to provide mobile optometric services to patients regardless of the patient's ability to pay, under a registration program administered by the Board.

Prior to the implementation of AB 896, mobile optometry services could only be provided if the mobile facility was connected to an educational institution (an optometry school), to which the Board had established regulations for such operations. As specified in Health and Safety Code § 1765.160, a mobile unit may operate as long as it has *written policies established by the governing body of the licensee to govern the services that the mobile unit provides*. Those policies must include, at a minimum, policies related to patient care, personnel training and orientation, personnel supervision, and evaluation of services provided by the mobile unit. Because of the requirements in the HSC, the Board had established regulations which permitted MOOs to operate, but only if connected to a school, as part of a school teaching program. There were a number of charitable organizations who found new opportunities to provide consumers with access to optometric care outside of the traditional Brick-and-Mortar office, through the use of mobile vans or mobile clinics. However, the strict prohibition on MOOs operating without being attached to a university, placed mobile office providers in a difficult position-operate in violation of the law-or stop providing services. Mobile optometric services have

become important tools, especially within the education community with the reduction of many school-based eye care services.

AB 896 established safeguards in order to ensure that the optometric care provided in MOOs is consistent with care provided for current optometric practice. MOOs must be owned solely by a nonprofit or charitable organization, they must register with the Board, no more than 12 MOOs can be operated by one owner or operator within the first renewal period, and medical operations are to be directed solely by a licensed optometrist. Additionally, MOOs must provide the Board with details about business operations, including the name and license number of all optometrists, optician registration numbers, a catalog of complaints, dates of operations, and the counties or cities served by the MOO.

BPC § 3070.2 requires an owner and operator of a MOO to file a quarterly report with the Board that contains detailed information including the following: a) A list of all visits made by each MOO, including dates of operation, address, care provided, and names and license numbers of optometrists and opticians who provided care. b) A summary of all complaints received by each MOO, the disposition of those complaints, and referral information. c) An updated and current list of licensed optometrists, registered opticians, and any other persons who have provided care within each MOO, since the last reporting period. d) An updated and current list of licensed optometrists who are available for follow-up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments. e) Any other information the Board deems appropriate to safeguard the public from substandard care, fraud, or other violations of the optometry practice act. Because reports are required quarterly, the owner or operator of a MOO is subject to Board enforcement for any non-compliance. Although MOOs are required to report quarterly to the Board, there is no statutory directive for the Board to do anything with the information provided in those reports.

In addition, current law requires the owner or operator of a MOO to provide each patient, and if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the Board with specified information including an optometrist's license number, contact information, a statement on how the patient can obtain copy of the medical records, information on follow up care, and upon request a copy of the patient's prescription. Current law already requires an optometrist to provide a copy of a prescription to a patient. The consumer information and reporting requirements for MOOs is vital to the Board's consumer protection mandate; however, current law does not specify what the Board is to do with the quarterly information provided by the MOOs, and it's unclear why duplicative prescription information is needed in statute.

Staff Recommendation: *The Board should explain to the Committees if there are any places where the reporting requirements as prescribed in BPC 3070.2 can be streamlined to ensure the Board only receives information that is necessary for the regulation and enforcement of MOOs. The Board should advise Committees if it believes the prescription requirements for MOOs should be consistent with existing law.*

BOARD BUDGET ISSUES

ISSUE #4: (PROJECTED FUND DEFICIT) Will the Board seek a fee increase?

Background: As noted by the Board in its *2025 Sunset Review Report*, the Board has been operating with a structural deficit for the last three FYs, and the Board's projected reserve level is one month in FY 2025-26. According to updated budget information which was provided at the Board's February 14, 2025 meeting, the Board is now projected to have a negative reserve level in FY 2027-28. In order to address the Board's current structural deficit, the Board reports that it has relied on a combination of spending reserves and salary savings through staff vacancies to manage the fund. In addition, effective July 1, 2024, the Board, via regulations raised the majority of its licensing and registration fees to their statutorily maximum (16, CCR § 1524). As the Board may continue to sacrifice staff positions for salary savings, there is concern that the Board will not be able to maintain its current licensing timeframes and further extend the already long enforcement process. During FYs 2022-23 and 2023-24, the Board has reduced its administration expenses from 26% in FY 2021-22 to 19%. In addition, the Board expended less on enforcement in FY 2023-24, then it did during the previous three FYs. The Board has slowly increased fees to the statutory maximum over the last decade through the regulatory process. The last two statutory fee increases for this Board occurred in 1993 and 2009 respectively.

Staff Recommendation: *The Board should advise the Committees on its current budget projections and whether it believes a fee increase will be necessary.*

ISSUE #5: (MANDATORY RESERVE) Is the current statutorily prescribed fund reserve amount still feasible?

Background: Pursuant to BPC § 3145, the Board is prohibited from maintaining a fund reserve balance that is greater than six months of the appropriated operating expenses of the Board in any FY. The Board notes in the *2025 Sunset Review Report*, that it had reserve levels up to 15 months in FY 2020-21, 13 months in FY 2021-22, and eight months in FY 2023-24, well above the six-month limit.

For all other boards and bureaus under the DCA, with the exception of the Contractors State License Board and the Respiratory Care Board, they abide by BPC § 128.5, which prohibits board and bureaus from having a fund reserve greater than two-years operating budget. If the funds have more than two-years, they are to reduce licensing fees. Is the Board's 6-month reserve level appropriate or should the Board be able to hold reserves up to two-years in order to address potential expensive enforcement cases or other unforeseen fiscal impacts to the Board.

Staff Recommendation: *The Board should update the Committees on whether it believes the reserve limit should be increased from six months to 24 months consistent with many other boards and bureaus under the DCA?*

ISSUE #6: (UC FUNDING) A portion of licensee fees is provided to the University of California. Is additional accountability necessary?

Background: Under current law, \$16 of each renewal fee assessed for an optometry license is required to be paid by the Director of Consumer Affairs to the University of California. BPC § 3148 specifically states the \$16 fee, “shall be used at and by the University of California solely for the advancement of optometrical research and the maintenance and support of the department at the university in which the science of optometry is taught.”

At this time, there is not a statutory requirement for the University of California to provide either the Board or the Legislature with an annual report or any detailed information about how the revenue is allocated, or any research outcomes based on the funding received from optometrist licensees. Currently, there is only one school of optometry at a University of California school; UC Berkeley.

Staff Recommendation: *The Board should provide an update to the Committees on the total amount provided to the University of California. The Legislature may wish to require an annual report on the expenditure of these funds to determine if the allocation of licensing fees to the University should be continued.*

ISSUE #7: (PRO RATA) Is the Board receiving appropriate services for the amount it pays in Pro Rata?

Background: The DCA charges “pro rata” to recover its costs for centralized administrative services provided to all boards and bureaus. According to BPC § 201, “A charge for the estimated administrative expenses of the department, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance.”

Through its divisions, the DCA provides centralized administrative services to all boards, committees, commission and bureaus. Most of these services are funded through a pro rata calculation that is based on “position counts.” Other functions (call center services, complaint resolution, and correspondence unit) are based on past-year workload. The pro rata charges fund DCA operations, including administrative staff salaries and benefits. Staff salaries and benefits for board administrative staff are not included in pro rata expenses. Most distributed costs are based on workload and approximately one-third is distributed based on the authorized positions of the board or bureau. The DCA is required to submit an annual report to the legislature of the accounting of pro rata.

Part of the DCA’s pro rata calculations are based on position authority, rather than actual number of employees, which may inflate pro rata charges. In recent years, there have been a number of statewide efforts to reduce expenditures and staffing levels throughout state government. Those cost-control measures reduced staffing levels at the boards, and it was unclear if or how pro rata charges were adjusted as a result of staffing reductions. As a result of questions from the Committees in 2015 about the calculations of pro rata, SB 1243, (Lieu Chapter 395, Statutes of 2014) required the DCA to submit an annual report to the Legislature by July 1 on the accounting of its pro rata. This Board reports that it

has relied upon the utilization of vacant staff positions to help achieve budget savings. However, DCA is likely counting these vacant positions when calculating the Board's share of pro rata costs to the DCA. For FY 2024-25, the Board is projected to spend 24% of its budget on pro rata costs.

Because pro rata expenses are a portion of license, renewal, registration and other fees assessed by all of the boards and bureaus, it's important to understand if the services they receive from the DCA are valuable and whether or not they are paying a cost that is too high, especially when a board operates with a structural deficit.

Staff Recommendation: *The Board should update the Committees on the value of services it receives from the DCA to account for its share of pro rata.*

BOARD LICENSING ISSUES

ISSUE #8: (OPTOMETRIC ASSISTANTS AND UNREGISTERED INDIVIDUALS). Is there any likelihood of consumer harm if the public receives services from individuals who are not regulated?

Background: Current law (BPC § 2544) permits an optometric assistant, under the direct responsibility and supervision of an optometrist or ophthalmologist, to perform delineated tasks in any setting where optometry or ophthalmology is practiced. These tasks include fitting prescription lenses, preparing patients for an examination, performing noninvasive testing of visual acuity, performing automated visual field testing, ophthalmic photography and digital imaging, among other tasks. In 2021, AB 407 (Salas, Chapter 652, Statutes of 2021) authorized optometric assistants to also perform preliminary subjective refraction procedures subject to the following conditions 1) The optometric assistant has at least 45 hours of training in subjective refraction procedures from documented formal coursework, or prior qualifying supervision acceptable to the supervising ophthalmologist or optometrist, or from the supervising physician and surgeon or optometrist; 2) any preliminary subjective refraction procedures must be in conjunction with an in-person examination and performed when the supervising physician or surgeon or optometrist is physically present at the location where the services are being performed and does not involve telehealth services; 3) a supervising ratio of no more than three optometric assistants per supervising ophthalmologist or optometrist during a given work shift. AB 407 additionally prohibited an optometric assistant from prescribing glasses or contact lenses. That bill also required optometric assistants to have completed 45 hours of documented training in subjective refraction acceptable to the supervising physician and surgeon or optometrist, which may include performing preliminary subjective refraction procedures to accomplish that training. Because these individuals are not licensed or registered with the Board, there is no way to verify who has accomplished the training and a formal determination of what the training should include is subjective and left up to the supervising optometrist or ophthalmologist. Currently, a supervisor is limited to supervising only three assistants during their shift. While these assistants have broad task authority, they are not subject to Board-regulation although they are required to take education or gain experience. The Board is limited to verify or take action for insufficient training or education.

For those in the opticianry profession, pursuant to BPC § 2544, unlicensed and unregistered individuals may perform the services of a spectacle lens dispenser or contact lens dispenser if they are acting under the supervision of the licensed physician and surgeon or optometrist. Further, BPC § 2550(g) defines “unregistered” individuals who work with contact lenses and spectacle lenses as follows:

- “Unregistered individual” means an individual who is not registered with the board pursuant to this chapter. The unregistered individual may perform any of the following:
 - Fitting and adjusting of spectacle lenses under the direct responsibility and supervision of a duly registered spectacle lens dispenser pursuant to Section 2559.1.
 - Fitting and adjusting of contact lenses under the direct responsibility and supervision of a duly registered contact lens dispenser pursuant to Section 2560.

There are not specified requirements for unlicensed or unregistered individuals working under supervision of a contact lens dispenser or spectacle lens dispenser to obtain training or education prior to providing any services under supervision. If there are any complaints related to unlicensed or unregistered individuals, there is no recourse for the Board to take action against the unlicensed or unregistered individuals. Any issues with the care provided by unlicensed or unregistered individuals are tethered to the supervisor of the unlicensed or unregistered individual.

The Board conducted an evaluation, as part of its 2021-2025 Strategic Plan, on the role of unlicensed individuals working as optometric assistants through a study conducted by the OPES under the DCA. The purpose of the evaluation was to identify overlap in the scope of practice of three opticianry occupations: optometric assistant, spectacle lens dispenser, and contact lens dispenser and to determine whether any health and safety concerns necessitate a new licensing system. Although the study had reportedly low participation of subject matter experts (SMEs), it concluded the following:

The conclusions and recommendations resulting from the opticianry scope of practice study were based on the expert opinions of optometrists, contact lens dispensers, and spectacle lens dispensers. The SMEs identified tasks that they believe do not belong on the optometric assistant description of practice because optometric assistants do not possess the necessary level of knowledge and training to safely perform them. The SMEs made recommendations regarding the optometric assistant profession based on regulations and training implemented by other states. The SMEs recommended that a clear definition of the role of optometric assistants should be established, and optometric assistants should be registered with the Board to ensure the role is adhered to. The definition of the role should detail the tasks optometric assistants can perform and the intent of the tasks.

To date, the Board has not taken any formal action on the outcome of the evaluation. The Board and the Committees have raised the issue of optometric assistants and their role in the delivery of optometric care since the early 2000s, as part of the Board’s sunset review.

Staff Recommendation: *The Board should advise the Committees on whether or not it has received consumer complaints about unlicensed or unregistered individuals. In addition, the Board should provide the Committees with feedback in response to the OPES study.*

ISSUE #9: (FICTITIOUS NAME PERMITS) Are there any issues with the current process for issuing a fictitious name permit?

Background: BPC § 3078 prohibits the practice of optometry under a false or assumed name, or to use a false name in connection with the practice of optometry. However, the Board is authorized to issue a written permit, that authorizes a licensed optometrist, an optometric group, or corporation to use a different name specified in that written permit in connection with the optometry practice. To that end, the Board issues a “fictitious name permit” (FNP or permit) to those individuals or businesses who choose to operate their practice under a name other than that issued on a personal license to practice. To date, the Board has only revoked one permit.

Pursuant to 16 CCR § 1518, permits may not be deceptive and must contain either “optometry” or “optometric” in the name, and the Board has discretion in approving the request for the permit. In addition, the Board is authorized to revoke or suspend the permit if a licensee’s personal license has been revoked or suspended, or the Board can revoke or suspend the permit if the Board finds that the permit holder no longer meets the requirements to hold such permit.

Applicants are required to provide the following information to the Board when applying for a permit:

- Copy of a Lease, if applicable
- Proof of ownership of building, if applicable.
- A partnership agreement, if applicable
- Letter from previous practice owner relinquishing the fictitious name, if purchasing an existing practice.

Both the application and renewal fee for the permit is \$50 and permits expire on January 31st of each year. There is a \$25 delinquent fee for a permit not renewed by January 31. All signs, cards, envelopes, billheads, letterheads or advertising of any nature must match the approved fictitious name requested.

Staff Recommendation: *The Board should advise the Committees about any concerns with the current permit program and if there are circumstances where the Board is unable to issue a permit to an applicant.*

ISSUE #10: (CONTINUING EDUCATION) Are additional coursework topics necessary?

Background: Pursuant to BPC § 3059, the Board is required to adopt regulations requiring all optometrist licensees to complete CE coursework as a condition of licensure renewal. Licensees must complete 40 CE hours, unless they are certified to use therapeutic pharmaceutical agents, then they

must complete 50 CE hours. Regulations adopted by the Board, 16 CCR § 1536, detail the methods and types of coursework that can be counted towards the CE hours. BPC § 3059 requires the Board to *encourage* licensees to take a course in pharmacology and pharmaceuticals and further requires the Board to *consider* requiring courses in child abuse detection and elder abuse detection for those licensees that are likely to come into contact with abused or neglected children or elders. The current regulations currently take these courses into consideration for giving credit for CE.

At the Board’s August 25, 2024 meeting, the Board considered and approved a legislative proposal to encourage optometrist licensees to include CE coursework in Diversity, Equity, Inclusion, and Belonging (DEIB). According to the Board’s *2025 Sunset Review Report*, “Greater diversity among health professionals is associated with improved access to care for racial and ethnic minority patients, greater patient choice and satisfaction, better patient–provider communication, and better educational experiences for all students in training.” The Board requests a statutory change to encourage licensees to take coursework in DEIB.

Staff Recommendation: *The Committees may wish to consider amending current law to encourage optometrist licensees to take coursework in DEIB as part of their current CE requirements.*

OPTOMETRIC AND OPTICIAN BUSINESS ISSUES

ISSUE #11: (ONLINE OPTICAL BUSINESSES: CALIFORNIA REGISTRATION REQUIREMENTS) What is the prevalence of businesses providing services to California consumers beyond the Board’s regulatory framework?

Background: There continue to be a variety of optical services offered online, including both the filling and sale of prescription glasses and contact lenses, along with online vision screenings. The most common online opticianry services are the delivery of prescription contact lenses, the fabrication of prescription eye glasses, and the delivery of those prescriptions eye glasses.

Under current law, opticians who fit, sell, adjust, or dispense prescription lenses, are required to register with the Board as either a registered dispensing ophthalmic businesses, a registered spectacle lens dispenser, registered contact lens dispenser or a nonresident ophthalmic lens dispenser (those that are not located in this state), depending on which of the optician services are provided. The Nonresident Ophthalmic Lens Dispensers Registration Act (nonresident ophthalmic business) requires anyone located outside of California who ships, mails, furnishes, or delivers ophthalmic lenses (spectacle and contact lenses) at retail to a patient at a California address to register with the Board. Many of these businesses operate via internet websites with e-commerce storefronts and can be based outside of California or outside of the Country. There are currently 23 registered nonresident ophthalmic dispensers, up from 15 in FY 2020-21. However, the total landscape of online businesses that sell, mail, fit, adjust or otherwise furnish lenses to California residents is unknown, because not all online optical companies have registered with the Board. Only a California licensed optometrist or physician and surgeon is permitted to issue a prescription for lenses to a California resident.

In addition to acquiring prescription lenses online, vision screenings are also conducted online, followed by the issuance of a prescription for lenses, if necessary, along with an opportunity to

purchases the lenses through a website. Many consumers enjoy the convenience and ease of renewing their prescription with an online visual acuity test without an in-person eye examination.

According to the Vision Council, in a January 2024 press release, the U.S. Optical industry was a \$65 billion industry in 2023, demonstrating growth in both the volume of eye examinations and prescription eyewear sold. Although current law prohibits selling into California without a registration, the reach of the Board to enforce or punish businesses outside of California who are not registered with the Board as required may be limited. As noted by the Board, those out-of-state, and in some cases out-of-country internet businesses that dispense lenses are particularly difficult to locate and bring into compliance. In some cases, these businesses may not know of their obligation to be regulated by the Board, and in other cases, they operate with the intention of evading any regulatory oversight at all.

As noted by the Board, it relies on a variety of research tools to determine whether or not online retail optical businesses are complying with existing law. The Board reports that its enforcement unit searches for unlicensed activity through internet searches to find optometry offices that are advertising fictitiously without the proper permit. Board staff also search for unlicensed optician practice by utilizing the internet to locate dispensing optical businesses, both in-state and out-of-state, that are unregistered with the Board. The Board reports that it does attempt to bring unregistered entities into compliance with the registration requirements specified in current law. However, if unsuccessful, the Board will utilize various enforcement tools and pursues disciplinary action, including citations.

Staff Recommendation: *The Board should advise the Committees on the number of entities that may not be in compliance with California’s current registration or licensure laws. Does the Board need additional enforcement tools or resources to increase compliance with current registration requirements?*

ISSUE #12: (LANDLORD-TENANT RELATIONSHIPS: REGISTRATION OF OPTICAL BUSINESSES) Are statutory updates necessary?

Background: AB 684 (Alejo and Bonilla, Chapter 405, Statutes of 2015) entrusted the Board with responsibility to enforce laws and regulations governing the business relationships between optometrists and opticians. The bill additionally made a number of changes to the requirements for optical retailers to make eye exams available to customers and enacted a myriad of new consumer protections in exchange for clarifying what types of relationships between optometrists and retailers would be lawful. As a result, the majority of optical retailers in California are able to additionally offer eye examinations without inappropriately intermingling the sale of optometric products and the optometric care provided to a patient.

In order to avoid perceived conflicts of interest where a licensed optometrist’s judgement would be impacted by a retailer’s financial interest, that bill established a robust framework for landlord-tenant relationships between licensed optometrists and retail optical ventures which allow optometrists to lease space from an optician, optical company or health plan, while maintaining the ability to practice professionally and independently. AB 684 did not create the requirement for dispensing opticians to be registered in California or to have a bright line between the practice of optometry and the selling and dispensing of lenses. The regulation of individuals selling prescription eyewear and related products began in the 1930s, although it was under the jurisdiction of the MBC. It does not appear the legislative intent of AB 684 was to reduce California’s regulatory oversight of those entities who

dispense prescription eyewear or to in anyway jeopardize the distinct and independence of optometrists and optical companies.

Although it's been almost a decade since the enactment of AB 684, the Board reports continued problems with optical companies and retailers not abiding by the current registration requirements. Pursuant to BPC § 655(f), an ophthalmologist or their corporation are authorized to contract with, or employ optometrists and unlicensed optometric assistants, and enter into a contract or *landlord-tenant relationship* with a health plan, optical company, or registered dispensing optician to provide both optometric care and retail sales of prescription eyewear at one location.

According to the Board, it is aware of optical retail establishments who claim their use of corporate structure and contractual relationships, eliminate any Board authority to regulate them. As noted by the Board, there is a retailer in California with multiple locations, which they claim are exempt from Board regulation because they contract with an ophthalmologist who subleases space from their retail store. This retailer also claims not to dispense or fit and adjust any lenses because all fitting, adjusting, and dispensing is performed in the subleased space by the ophthalmologist and their employees or agents. The distinction is invisible to the consumer.

As defined in BPC 2550, a registered dispensing ophthalmic business is “an entity that is registered with the board...that offers, advertises, and performs optical services for the general public.” The Board notes that some retailers advertise through electronic means, including television and online. BPC § 655(a)(2) defines an “optical company”, as “a person or entity that is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or optometric appliances or devices or kindred products.” There is not a definition of “optical company” under the optician practice act. The Board has found that some retail establishments masquerade as “optical companies” while advertising and offering prescription optometric products to consumers while also performing optical services for the general public.

In order to enhance current law to make it clear that ANY retail entity which offers, advertises, or performs optical services for the general public must be registered with the Board, the Board recommends the Legislature consider, amending current law to require registration as a dispensing ophthalmic business for all *optical companies that manufacture, sell, or distribute lenses, frames, and other optical or optometric supplies and products, to physicians and optometrists, when the optical company also acts as a landlord and subleases space to the physician or optometrist, and their corporation, and when the optical company offers, advertises, and performs optical services for the general public.*

Staff Recommendation: *The Board should advise the Committees on how the proposed statutory change would encourage or ensure compliance with California laws for optometry and optical business arrangements, and any other potential statutory changes that may be helpful.*

ISSUE #13: (DEFINITION OF PERSON IN BPC § 3040) Is an updated definition necessary?

Background: BPC § 3040 makes it unlawful for a *person* to engage in the practice of optometry or to advertise or hold themselves out as an optometrist without a valid, unrevoked California optometrist license; however, there is not a current definition of “person” in the optometry practice act.

Until a recent enforcement case brought by the Board, the lack of a definition for “person” in the optometry practice act had not been an issue for the Board. During a recent enforcement case, the Board issued a citation which alleged a violation of BPC § 3040, because the business was advertising or holding themselves out as an optometrist. In an administrative law hearing the judge determined that, “*By its own terms, section 3040 applies to natural persons. Nowhere in the Optometry Practice Act is ‘person’ defined to include a business entity.*” Although the Board argued against the judge’s reading of the law, the judge determined that “*if the legislature wished to define “person” in the Optometry Practice Act to include a business entity it could have done so, as it has done elsewhere.*”

Without a definition of “person” within the optometry practice act, the Board could face additional challenges in taking enforcement actions against entities operating as “optometrists” without the appropriate license. There are other practice acts within the BPC that have defined “person” including the following:

- **BPC 653:** The word “person” as used in this article includes an individual, firm, partnership, association, corporation, limited liability company, or cooperative association.
- **BPC 2032:** “Person” means any individual, partnership, corporation, Limited Liability Company or other organization, or any combination thereof, except that only natural persons shall be licensed under this chapter.
- **BPC 7025(b):** “Person” as used in this chapter includes an individual, a firm, partnership, corporation, Limited Liability Company, federally recognized tribe, association or other organization, or any combination thereof.

Included in the Board’s *2025 Sunset Review Report* is a request to statutorily define “person” in the optometry practice act to clarify that only a natural person may be licensed as an optometrist. The Board proposes to add the following definition to BPC § 3040: *For purposes of this chapter, “Person” means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof, except that only a natural person shall be licensed as an optometrist under this chapter.*

Staff Recommendation: *The Board should advise the Committees on how this change may improve the Board’s enforcement capabilities and if there are any similar changes needed for the statutes governing opticians.*

PREMISES AND BUSINESSES

ISSUE #14: (LIMIT ON THE NUMBER OF MOBILE OPTOMETRIC OFFICES) Does the current cap of 12 offices still make sense?

Background: Prior to 2019, a licensed optometrist was technically allowed to own only two physical locations. While there was no formal cap stated in the law, optometrists were required to be personally in attendance at each of their practices, at least 50% of the time that the office was open for services. That 50% requirement changed as a result of SB 1386 (McGuire, Chapter 334, Statutes of 2018), which statutorily increased to 11, the number of offices that an optometrist, or two or more optometrists in partnership, could own. MOOs were established legislatively after the enactment of SB 1386, therefore a cap on the number of MOOs was not considered as part of that legislation.

In 2021, during the Board's last sunset review, AB 1534 (Low, Chapter 630, Statutes of 2021), among other changes, established an arbitrary limit of 12 for the number of MOOs that a nonprofit corporation or charitable organization could own and operate for the first licensure period. After the first renewal period, the cap of 12 is lifted and the MOO registrant is permitted to own and operate as many MOOs as they choose. This contrasts with the limit on the number of optometric practices that optometrists are permitted because that cap of 11 is maintained throughout the life of the license.

Although it is likely that the cap of 12 for MOOs was included to match the current cap on the number of Brick-and-Mortar optometry offices; the benefit is unclear as to why an initial cap of 12 for MOOs is necessary and what consumer protection benefits it provides, given that they are allowed to increase to more than 12 after the initial licensure period.

The Board only recently began accepting applications for the MOO program beginning in January 2025. Although AB 896 was chaptered into law four years ago, it took the Board a number of years to establish the regulations for the registration program. During the time period after the bill was signed into law, MOOs were able to provide services pending the Board's progress in establishing regulations. Given that MOO operators are non-profit or charitable organizations, the limit on the number of mobile offices could impact services for vulnerable populations. It is unclear what the consumer protection benefit is to a limited number of MOOs during the first renewal period.

Staff Recommendation: *The Board should advise the Committees on whether it believes the cap of 12 mobile optometric offices for the initial licensure period is necessary or if the cap should be increased during the first renewal period.*

BOARD ENFORCEMENT ISSUES

ISSUE #15: (PROBATIONARY REGISTRATION) Should the Board have additional authority to issue probationary registrations?

Background: When an applicant applies for an optometrist license, the Board has three options: 1) approve the application, 2) deny the application, or 3) issue a probationary license. The same is not true for the registered dispensing business, spectacle lens dispenser or contact lens dispenser applicants-the Board may only approve or deny a registration application, as there is no current authority for the Board to issue a probationary registration to the optician registrations.

An applicant, if granted a license with probationary terms and conditions, may be able to demonstrate competent and safe practice. A probationary license is subject to specified terms and conditions that can be modified or terminated at the discretion of the Board. Pursuant to BPC § 3091, the Board “may issue a probationary license to an optometrist applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation: (1) Practice limited to a supervised, structured environment in which the licensee’s activities shall be supervised by another optometrist licensed by the board. (2) Total or partial restrictions on drug prescribing privileges for controlled substances. (3) Continuing medical or psychiatric treatment. (4) Ongoing participation in a specified rehabilitation program. (5) Enrollment and successful completion of a clinical training program. (6) Abstention from the use of alcohol or drugs. (7) Restrictions against engaging in certain types of optometry practice. (8) Compliance with all provisions of this chapter. (9) Any other terms and conditions deemed appropriate by the board.

In 2018, AB 2138 (Chiu and Low, Chapter 995, Statutes of 2018) was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, that bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. The Board has not issued any probationary optometrist licenses under this provision during the last four FYs; however, the Board believes this authority provides it with an important tool that can be beneficial to certain applicants, while allowing the Board to meet its mission of consumer protection.

The laws that govern optician registrations do not provide the Board with the same discretion to issue a probationary license absent the formal denial process; which includes a formal denial of the license, through filing a Statement of Issues and a settlement or an order by an Administrative Law Judge followed by an appeal from the applicant.

When a formal action and appeal is filed, the Board is subject to enforcement costs including attorney general office legal rates coupled with the lengthy administrative enforcement process. The Board

notes that if it had the ability to issue a probationary license, it would eliminate the lengthy and costly administrative process, allow registrants to practice subject to certain probationary terms and conditions, while allowing the Board to closely monitor the registrant, per the Board's conditions to protect consumers. This authority, for optometrists, was originally granted to the Board via legislation enacted in 2005.

As noted in the Board's *2025 Sunset Review Report*, the Board is requesting a statutory change to allow the Board to issue a probationary registration to optician registrants, consistent with their authority for optometric applicants.

Staff Recommendation: *The Board should advise the Committees on: 1) the number of applicants who may benefit from a probationary registration, 2) the number of registrations denied where a probationary registration would have been more appropriate, and 3) if the Board could provide any estimated enforcement cost savings.*

ISSUE #16: (CITATION AND FINE PROGRAM AND COST RECOVERY) The Board expends significant resources on enforcement efforts that are not always recouped. Are statutory updates necessary?

Background: Under current law, the Board is authorized to issue citations and fines against licensees, registrants, and unlicensed persons for violations of the optometry practice act and the laws governing opticianry pursuant to BPC §§ 125.9 and 148. BPC §§ 2556 and 3095 provides the Board authority, by regulation, to impose and issue administrative fines and citations. The assessment of citations and fines is typically used in those situations where there is no case of patient harm or the licensee or registrant has committed only minor violations where the Board's goal is to bring those actors into compliance rather than move through the formal disciplinary process, which can be costly and time consuming. The highest number of citations issued by the Board was in FY 2023/24, and that was for optometry practice act violations.

Per regulations established by the Board (16, CCR § 1579), fines assessed for a violation of the optometry practice act fall in a range of A, B, or C depending on the severity of the violation. Fines range between \$250 and \$5,000. Fines assessed for a violation of the optician program are capped at \$2,500 per Board regulations (16, CCR § 1399.276), and for certain violations, the Board is only authorized to issue a citation between \$100 and \$1,000. Fines are not assessed in the same manner as those for the optometry practice act, which are based on the severity of the violation. Fines for the optician program are specifically tied to the statute in which the fine is attributed to. As the statutes pertaining to dispensing opticians have been revised, some of the attributable statutory code sections in the Board's regulations to determine the violation are no longer applicable or missing altogether.

To recover cost for formal discipline cases, cost recovery may be ordered as a condition for the reinstatement of a surrendered or revoked license, or as a condition of probation. However, the Board is not permitted to obtain cost recovery in those cases when only a citation is issued. According to enforcement data provided by the Board in its *2025 Sunset Review Report*, the Board issues more citations than takes formal discipline actions, and the Board expends enforcement resources issuing those citations.

In addition, during the Board’s previous sunset review, the issue was raised regarding an optical retailer who the Board issued a total of 21 citations to individual locations of the retailer, across the state for various violations of the law, including failure to obtain or maintain a registration to practice as a dispensing optician as well as advertising violations. The total fines for all citations issued was \$655,000. Although the Board did not collect on the citations from the retailer, it did spend significant resources on the enforcement program for the citation issuance. The Board reported in 2020, that it spent almost \$250,000 on the investigation and legal defense of the citations, and in two budget years the Board requested emergency budget augmentations to have the funds to continue the legal defense of the citations. The Board has no authority to seek cost recovery for any of enforcement expenditures on that case.

In FY 2023-24, the Board’s total enforcement expenditures were approximately \$722,000 and there were only six cases eligible for potential cost recovery. The Board has only collected \$7,000 out of the \$35,000 ordered for that year-well below the amount expended on enforcement. Many of those enforcement dollars were tied to citations, which the Board is not authorized to pursue cost recovery. Cost recovery for citations may be an additional tool for the Board to pursue enforcement actions when necessary. There is one other entity under the DCA’s jurisdiction with authority to assess cost recovery in cases of citations.

Staff Recommendation: *The Board should update the Committee on any statutory changes that might enhance the citation and fine program or the Board’s cost recovery efforts.*

BOARD TECHNOLOGY ISSUES

ISSUE #17: (TELEHEALTH AND EMERGING TECHNOLOGY) Are statutory updates necessary?

Background: The practice of optometry has been regulated in California since the 1930s. Over the last 70 years, the practice has witnessed the advancement and creation of emerging technologies in the field of eye care. Advanced optometric technologies have altered the traditional Brick-and-Mortar model for the delivery of optometric healthcare, from advancements in optometric equipment, to the acceptance and wide availability of telehealth, along with the use of the internet for vision screening services. Consumers have more access to purchase glasses and contact lenses than ever before as prescription lenses can be bought and delivered solely through an online marketplace, without stepping foot into an optometrist’s office.

As technologies continue to emerge and debate persists, the Board will need flexibility to adapt its regulatory oversight responsibilities to changing telemedicine practices in its mission to protect consumers. The use of technology does not absolve a licensee or registrant from current laws and regulations related to the standard care of optometry. Current law requires a California licensed optometrist or physician and surgeon to issue a prescription prior to dispensing any lenses to a patient and all patient records must be maintained, pursuant to Board regulations. BPC § 3112 prohibits an optometrist from providing optometric services to any patient who scheduled their appointment for optometry services through an individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the Board. The Board is authorized per BPC §

3025.5 to adopt rules and regulations governing the optometric profession including those to ensure public protection.

In a December 2022, article in “Telemedicine and e-Health”, titled *The Role of Optometry in the Delivery of Eye Care via Telehealth: A systematic Literature Review*, it was noted that “The increase in the uptake of telehealth to deliver optometry care during the Covid-19 has caused the optometry profession to reimagine the role of telehealth.” The American Association of Optometry notes in a 2022 position statement regarding telemedicine in optometry, “...telemedicine in optometry can serve to expand patient access to care, and enhance communication among all health care practitioners involved in the case of a patient.”

Telehealth is broadly defined in California law as the “the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care.” BPC §686 authorizes a licensed health care practitioner, including an optometrist, to provide services via telehealth, and BPC § 3041(f), as specified in the optometry practice act, requires licensees to follow current laws that govern the use of telehealth in California under BPC § 2290.5 generally. There is not a specific definition in the optometry practice act, nor a scope of practice specific to the optometric services that may be provided through the use of telehealth. Telehealth is widely utilized by many of the healing arts licenses (physicians and surgeons, licensed therapists, veterinarians, nurses, osteopathic physicians and surgeons, among others) and all rely on the same telemedicine requirements as specified in BPC § 2290.5. Conversations centered on the Board’s role in regulating the use of telemedicine to ensure patient safety and consumer protection should continue.

An example of an issue which is part of the ongoing dialogue around telehealth and optometrist’s practice, focuses on the distinction between a “vision screening” and a “comprehensive eye exam”. According to information provided on the American Optometric Association’s website, vision screenings are intended to identify vision problems, but cannot provide the same results of a comprehensive eye examination, which requires special equipment and procedures that are not included in a “vision screening.” The information further notes limitations of vision screenings include limited testing, untrained personnel conducting the screenings, and limitations on the types of equipment used to conduct the testing. Many online vision screening providers note that the online vision screening assessment tool is not a comprehensive eye examination and have voluntary, internal limits on the number of times a consumer can utilize the vision screening service before requiring the consumer to seek a “comprehensive eye exam”. There is not a current definition of “comprehensive eye examination” in the optometry practice act, nor is there a requirement that a “comprehensive eye examination” be completed in order to obtain a prescription, although current law requires a prescription be issued in order to obtain prescription glasses or contact lenses. Current law is also silent on how often a consumer should complete an eye examination or vision screening.

Along with the emerging telemedicine marketplace, is the rapid technological advancement of Artificial Intelligence (AI). AI can create opportunities to automate routine and common tasks that once needed humans to complete. Optometric practice will adapt as AI tools help streamline routine care tasks and may open up certain tasks to others in the eye care space to allow optometrists to expand care and access. As AI becomes a more widely used tool in the delivery of healthcare, including eye

care, it is necessary to gain a better understanding of the role of AI in the current scope of practice of optometry. Additional research and insights into how AI will streamline patient care and better understanding the tasks and practitioner roles that will be enhanced through the use of AI is vital to the Board's consumer protection mandate.

On September 6, 2023, the Governor issued Executive Order N-12-23, to address challenges and opportunities arising from the advancement of AI, which the order references as generative artificial intelligence (GenAI). Among the reasons for the state to take action, the EO states (in part):

GenAI can enhance human potential and creativity but must be deployed and regulated carefully to mitigate and guard against a new generation of risks; and

[T]he State of California is committed to accuracy, reliability, and ethical outcomes when adopting GenAI technology, engaging and supporting historically vulnerable and marginalized communities, and serving its residents, workers, and businesses in a transparent, engaged, and equitable way; and

[T]he State of California seeks to realize the potential benefits of GenAI for the good of all California residents, through the development and deployment of GenAI tools that improve the equitable and timely delivery of services, while balancing the benefits and risks of these new technologies...

The Governor's Executive Order includes direction for various state entities, including, "Legal counsel for all State agencies, departments, and boards subject to my authority shall consider and periodically evaluate for any potential impact of GenAI on regulatory issues under the respective agency, department, or board's authority and recommend necessary updates, where appropriate, as a result of this evolving technology."

It is imperative for the Board's oversight of the optometry and optician professions align with emerging technologies and trends in the profession. This will likely require the Boards to update statutes and regulations to ensure that current trends in the profession are subject to regulatory oversight. As AI becomes more integrated into the modern optometric profession, developing and understanding the Board's role in regulation is ever important. For example, under current CE requirements, optometrists are not mandated to take CE coursework in emerging technologies or the use of AI, although there may be courses available. Should mandated CE in new technologies be required?

In the meantime, the Board has continued to meet and discuss what sort of telemedicine laws would be effective for its regulatory and enforcement efforts. As noted in the Board's last sunset review staff background paper, this topic will continue to be of interest to the Committees as the Legislature seeks to balance patient safety and convenient access to care.

Staff Recommendation: *The Board should update the Committees on the issues of telehealth and AI, including whether the Board believes any statutory changes may be necessary.*

OTHER ISSUES

ISSUE #18: (FEDERAL CONTACT LENS RULE AND CONFLICT WITH CALIFORNIA STATUTE)

Background: Pursuant to the current federal contact lens rule, (Title 16, Chapter 1, Subchapter C, Part 315), a prescriber (an optometrist or physician and surgeon) is required to provide a patient with a copy of their prescription, whether it is requested or not, and the prescriber must maintain documentation that they provided the copy of the prescription to their patient. The federal rule was established in 2004 and most recently updated in 2020.

Under California law, BPC § 2541.2(c), a prescriber is required to 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. However, the federal contact lens rule does not permit an exemption for specified types of lenses.

As noted in the Board's 2025 *Sunset Review Report*, the Board is seeking clarification as to whether state and federal law conflict and a potential resolution to conform state law to federal law by deleting the exemption for contact lens dispensers to provide the patient a copy of their prescription.

Staff Recommendation: *The Board should advise the Committees on whether it believes California law should be amended to remove any discretion for a prescriber to not provide a patient's contact lens prescription to conform to the federal rule.*

ISSUE #19: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACT AND BOARD OPERATIONS) There are amendments to the Act that are technical in nature but may improve Board operations and the enforcement of the Act.

Background: There may be a number of non-substantive and technical changes to the optometry practice act and the optician practice act to correct deficiencies or other inconsistencies in law. Because of numerous statutory changes and implementation delays, code sections can become confusing, contain provisions that are no longer applicable, make references to outdated report requirements, or cross-reference code sections that are no longer relevant. The Board's sunset review is an appropriate time to review, recommend, and make necessary statutory changes. For example, in August 2024, the title of Part III of the national examination changed from *Clinical Skills* to *Patient Encounters and Performance Skills*. As a result, there are two sections in BPC § 3046.1 where the reference to *Clinical Skills* should be updated with the revised name of the examination, the *Patient Encounters and Performance Skills*.

Staff Recommendation: *The Committees may wish to amend the Act to include technical clarifications.*

CONTINUED REGULATION BY
THE CALIFORNIA BOARD OF OPTOMETRY

ISSUE #20: (CONTINUED REGULATION BY THE BOARD.) Should the licensing and regulation of optometrists and dispensing opticians be continued and be regulated by the current Board membership?

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Board with oversight over the optometry profession and the profession charged with fitting, adjusting, selling, distributing, or otherwise providing prescription lenses. The Board should continue its enforcement work to ensure all entities who fall under the Board's regulatory jurisdiction comply with current California law. In addition, the Board should focus on emerging technologies and trends and continue assessing the impact within the oversight of opticianry practices.

Staff Recommendation: *The Board should be continued, and reviewed again on a future date to be determined.*