

BACKGROUND PAPER FOR THE California State Board of Optometry

Joint Oversight Hearing, February 27, 2017

**Assembly Committee on Business and Professions
and**

Senate Committee on Business, Professions and Economic Development

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS

BRIEF OVERVIEW OF THE CALIFORNIA STATE BOARD OF OPTOMETRY

The Board of Optometry (Board) was created by the California Legislature in 1913 to safeguard the public's health, safety, and welfare through regulation of the practice of optometry. Current law specifies that protection of the public is the highest priority for the Board when exercising its licensing, regulatory, and disciplinary functions.¹ The Board meets its public protection mandates by regulating the practice of optometry in California and by providing public information about its licensees. Board operations are funded entirely by fees collected from applicants and licensees. The Board was last reviewed in 2013.

As a result of AB 684 (Alejo and Bonilla), Chapter 405, Statutes of 2015, the regulation of registered dispensing opticians (RDO) was transferred from the jurisdiction of the Medical Board of California to the Board. This transition increased the regulatory and oversight responsibilities of the Board.

As of June 30, 2016, the end of FY 2016, the Board's regulatory population included over 13,000 active licensees throughout the state including: 1) 6,936 optometrists; 2) 1,011 statement of licensures; 3) 353 branch offices; 4) 1,449 fictitious name permits; 5) 1,017 registered dispensing opticians (RDO); 6) 970 contact lenses dispensers; 7) 2,261 spectacle lens dispensers; and 8) eight non-resident contact lens dispensers. Each licensing category has its own entry-level requirements. In addition, the Board is also responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma. A description of licenses includes the following:

- Optometrist License – Allows a license holder to practice optometry which includes treatment, management, prevention and diagnosis of disorders and dysfunctions of the visual system, as well as rehabilitative optometric services.² In addition, a licensed optometrist may obtain certification to use therapeutic pharmaceutical agents as noted in BPC Section 3041.3 to

¹ Business and Professions Code (BPC) section 3010.1

² BPC Section 3041

diagnose and treat the eye for a range of specified conditions.³

- Statement of Licensure – Required for each practice location other than the licensee’s principal place of practice and other than any Branch Office License location.
- Branch Office License –Required for each location for the practice of optometry and owned by a licensee that is in addition to the licensee’s principal place of practice.
- Fictitious Name Permit – Required if a fictitious name is used in conjunction with the practice of optometry.
- Registered Dispensing Optician Registration – Required for individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Medical Board of California or optometrists licensed by the Board for prescription lenses. As a business, an RDO needs to employ at least one spectacle lens dispenser to fit and adjust spectacle lenses and at least one contact lens dispenser to adjust contact lenses.
- Contact Lens Dispenser Registration – Required to fit and adjust contact lenses.
- Spectacle Lens Dispenser Registration –Required to fit and adjust spectacle lenses.
- Non-Resident Contact Lens Dispenser Registrant –Required for individuals, partnerships, and corporations located outside California that ship, mail, or deliver in any manner, contact lenses at retail to a patient at a California address.

The *mission statement* of the Board, as stated in its 2014-2018 Strategic Plan⁴, is as follows:

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

In order to accomplish this mission, the Board states that it performs the following duties and responsibilities:

- Promulgating regulations governing Board procedures, admission of applicants for examination for an optometric license; minimum standards of optometric and dispensing services offered and performed, the equipment and sanitary conditions in all registered locations;
- Investigating consumer complaints and criminal convictions including, but not limited to substance abuse, unprofessional conduct, incompetence, fraudulent action, and unlawful activity;
- Taking disciplinary action for violations of laws and regulations governing the practice of optometry and dispensing when warranted;
- Accrediting schools and colleges of optometry;
- Establishing educational and examination requirements to ensure the competence of candidates for licensure and registration;

³ BPC Section 3041(b)(e)

⁴ The Board reports that it is currently revising its Strategic Plan, including its mission statement, to account for the significant changes that occurred over the last year.

- Setting and enforcing standards for continued competency of existing licensees;
- Establishing educational and examination requirements for optometrists seeking certification to use for treatment and prescribe certain pharmaceutical agents and other procedures; and,
- Issuing branch offices licenses, statements of licensure and fictitious name permits.

The Board's *vision* as stated in its 2014-2018 Strategic Plan is as follows:

To ensure excellent optometric care for every Californian.

Board Membership and Committees

The Board is comprised of 11 members: five licensed optometrists, five public members, and one registered dispensing member. All but two appointees are appointed by the Governor. One public member is appointed by the Senate Committee on Rules and one public member is appointed by the Speaker of the Assembly. Board members receive a \$100-a-day per diem. The Board meets at a minimum, four times per year. All Board Committee meetings are subject to the Bagley-Keene Open Meetings Act. There are currently no vacancies on the Board. The Board reports that it has not had to cancel any meetings due to a lack of a quorum in the last four years. 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>Madhu Chawla, OD – President, Professional Chawla has been an optometrist at the Kaiser Permanente Woodland Hills Medical Center since 2008. She was a managing optometrist at Eyexam of California from 2005 to 2008 and an optometrist at the South Bay Eye Institute from 2004 to 2005. Chawla worked as an optometrist at the Office of Glenn P. Kimball, M.D. from 2000 to 2004, Pearle Vision Center from 2001 to 2004, Office of Lisa Traveis, O.D. from 1999 to 2000, Office of Frederic Rose, O.D. from 1999 to 2000 and at the Dimock Community Health Center Complex from 1997 to 1999. Chawla earned a Doctor of Optometry degree from the New England College of Optometry.</p>	6/15/12	6/01/19	Governor
<p>Donna Burke - Vice President, Public Burke was an Executive Director of External Affairs for AT&T. She also served as the liaison to local elected officials and their staffs in Sacramento County and the surrounding communities. Ms. Burke serves on several community Boards, including Capital Public Radio, Folsom Lake Foundation, Leadership California and California Women Lead – Sacramento Region.</p>	10/1/10	6/01/19	Senate Rules Committee
<p>Lillian Wang, OD – Secretary, Professional Wang has been an optometrist at the Lafayette Optometric Group since 2004 and an assistant clinical professor at the University of California, Berkeley School of Optometry since 2000. Dr. Wang is a member of the American Academy of Optometry, California Optometric Association and the New England College of Optometry Alumni Association. She earned a Doctor of Optometry degree from the New England College of Optometry.</p>	3/27/15	6/01/18	Governor
<p>Cyd Brandvein, Public Brandvein, having joined AECOM in 1989, serves as a senior corporate officer with experience as a global director for organizational resilience, Chief of Staff to the Americas CEO, regional operations manager and</p>	10/25/13	6/01/17	Governor

director of corporate marketing. She received a B.A., in Political Science from the University of California, Los Angeles, an Executive Certificate in Global Negotiations from Thunderbird School of Global Management, and a Governance Fellow distinction from the National Association of Corporate Directors.			
Martha Garcia - CLD, SLD, Professional Garcia has been an optical manager at Sam's Club Optical since 2008. She was an associate at Downtown Disney Sunglass Icon from 2006 to 2007 and JC Penney Optical from 2005 to 2006, Sears Optical from 2004 from 2005, and diModa from 2002 to 2004.	3/4/16	6/01/19	Governor
Glenn Kawaguchi, OD, Professional Kawaguchi has been a managing optometrist at Eyexam of California since 2011. He was an eye care director at Sears Optical from 2006 to 2011 and a regional optometric practices manager at Eyexam of California from 2000 to 2006, where he was a managing optometrist from 1993 to 2000. He earned a Doctor of Optometry degree from Marshall B. Ketchum University, Southern California College of Optometry	8/10/12	6/01/18	Governor
Debra McIntyre, OD, Professional McIntyre has been an optometrist at West Coast Eyecare since 2013. She was chief executive officer and an optometrist at Accent on Eyes Optometry from 2003 to 2013. Previously, she was chief executive officer and an optometrist at Paradise Optical in Florida from 1999 to 2002. McIntyre is a member of the Escondido Sunrise Rotary and participated in various vision and eye health screening programs in Mexico and Haiti to serve the underprivileged. She earned her Doctor of Optometry degree from Marshall B. Ketchum University, Southern California College of Optometry.	3/15/16	6/01/17	Governor
Rachel Michelin, Public Michelin has been Chief Executive Officer and Executive Director at California Women Lead since 2002, where she was a program and policy director from 2001 to 2002. She was Communications Director for California State Assemblymember Anthony Pescetti from 1999 to 2001 and District Director for California State Assemblymember Bill Campbell from 1996 to 1998.	10/13/14	6/01/19	Governor
Mark Morodomi, Public Morodomi has served as senior counsel at the University of California, Office of General Counsel since 2013. He served as supervising deputy city attorney at the Oakland City Attorney's Office from 2001 to 2013 and as a policy advisor to the Undersecretary of the Treasury, Law Enforcement at the U.S. Department of the Treasury in 2000. Mr. Morodomi served as senior counsel and acting chief of enforcement at the California Fair Political Practices Commission from 1990 to 2000 and was an attorney at Teraoka and Associates from 1989 to 1990. He was a litigation associate at McCutchen, Doyle, Brown and Enersen from 1985 to 1988, and was an extern for the Honorable Stanley Weigel at the U.S. District Court, Northern District of California in 1983.	4/7/15	6/01/18	Governor
Maria Salazar Sperber, Public Salazar Sperber currently serves as the President of the Friends of the Crisis Nurseries, an auxiliary of the Sacramento Children's Home. Previously, Ms. Salazar Sperber was the Government Affairs Specialist for Molina Healthcare Inc., as well as a registered lobbyist. From 1999-2006, Ms. Sperber served as counsel to Senator Abel Maldonado focusing on healthcare issues.	3/4/16	6/01/19	Speaker of the Assembly
David Turetsky, OD, Professional Turetsky has been vice president, optometrist, and partner of Advanced Eyecare, a Professional Optometric Group since 2008. He was optometrist and coordinator at Physicians Network Services from 2005	12/18/13	6/01/17	Governor

<p>to 2008 and held multiple positions at Pearle VisionCare Inc. from 1993 to 2005, including clinical director, director of doctor relations, and area optometric coordinator. Turetsky was managing optometrist at Eyexam 2000 from 1987 to 1993 and an optometrist at Ronald Joelson, O.D. from 1981 to 1987. Turetsky earned a Doctor of Optometry degree from the University of California, Berkeley School of Optometry.</p>			
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Additional biographical information about Board-members may be obtained at: <http://www.optometry.ca.gov/about-us/Board-memb.shtml#mart>.

The Board currently has four standing committees. The Board has one committee designated by statute; the Dispensing Optician Committee.⁵ All other committees are formed as needed and members are appointed by the Board President.

The following standing committees are composed of professional and public members of the Board:

Legislation and Regulation: Responsible for recommending legislative and regulatory priorities to the Board and assisting staff with drafting language for Board-sponsored legislation as well as recommending official positions on current legislation and regulatory additions and amendments.

Practice and Education: Advises Board staff on matters relating to optometric practice, including, standards of practice and scope of practice issues. Reviews staff responses to proposed regulatory changes that may affect optometric practice. The committee also reviews requests for approval of continuing education (CE) courses, and offers guidance to Board staff regarding CE issues.

Consumer Protection: Oversees the development and administration of legally defensible licensing examinations and consulting on improvements or enhancements to licensing and enforcement policies and procedures.

Public Relations – Outreach: Assists with the outreach and development of educational materials.

In addition to standing committees, as a result of AB 684, Chapter, Statutes of 2015, the Board is required to establish a Dispensing Optician Committee to advise and make recommendations to the Board regarding the regulation of dispensing opticians⁶. There are five members required for this committee, they include: two registered dispensing opticians, two public members, and a member of the Board. The Board is responsible for establishing the five initial Committee appointments. After the initial appointments, the Governor appoints the RDOs along with the public members and the Committee will make a recommendation as to the Board member who shall be appointed a member of the Committee.

Currently, the Board has established a Dispensing Optician Committee Development Workgroup comprised of two members to evaluate potential candidates and make recommendations to the full Board for membership. The Board anticipates that the workgroup will begin meeting sometime in early 2017.

Moreover, the Board has established additional workgroups to focus on specific areas. The current workgroups of the Board are as follows:

⁵ BPC section 3020(a)

⁶ BPC section 3020

Children's Vision Workgroup: SB 402 (Mitchell) of 2015 aimed to address the gap in providing eye exams to entry elementary school students as a result of budgetary cuts in the public school system. Among other things, it mandated that children entering school receive a comprehensive eye exam in order to combat the one in three school vision screenings which miss vision problems. Due to the failure of SB 402 to pass out of the Senate Appropriations Committee, the Board created this workgroup, comprised of three members, tasked with meeting with stakeholders on this issue and providing legislation recommendations to the Board for consideration during the 2017 legislative session.

Mobile Clinic Work Group: The Board created the work group to protect and provide families' access to convenient, quality eye care, and to support optometrists so they can continue providing the vision care services Californians need and deserve in many environments. Prior to the workgroup, Senate Bill 349 (Bates) of 2015 was introduced, which focused on creating guidelines for mobile optometric facilities, however, it failed to pass out of the Senate Committee on Business and Professions in 2015. The workgroup, comprised of three members, is tasked with meeting with stakeholders on this issue and providing legislative recommendations to the Board for consideration during the 2017 legislative session.

Foreign Graduate Workgroup: Recognizing that there was no pathway for foreign graduates to become licensed in California after they pass all required state and national examinations, the Board sponsored Senate Bill 496 (Nguyen) of 2015. This bill would have created a pathway for foreign graduates to become licensed in California; however, it was pulled by the author in 2015 after receiving several equivalency concerns from schools/colleges of optometry and the professional association. In order to determine the best avenue to move forward, the Board created this workgroup, comprised of two members, and tasked it to meet with stakeholders, including the accredited schools and colleges of optometry, to provide stronger legislation recommendations to the Board for consideration during the next legislative session.

Staffing Levels

The Executive Officer (EO) is appointed by the Board. The current EO, Jessica Sieferman, has served as the EO since September of 2015. In addition, the Board established an Assistant Executive Officer position. As of July 2016, the Board has authorization for 11.4 staff positions, with 3 staff dedicated to enforcement and 4 to licensing. The Board's staffing authority has not changed during the last four FYs. However, with the addition of the RDO program under the Board's jurisdiction, a Budget Change Proposal (BCP) was approved which provided an additional half-time position to address RDO-related workload. In the future, the Board anticipates an increase in staffing needs depending on the RDO's fund condition. The Board did not request a BCP relative for a staffing augmentation for FY 2017/18.

The Board noted in its *2016 Sunset Review Report* that staffing, turnover, and recruitment issues existed during FY 2015/16. It also highlighted the Board's efforts to address recruitment and retention, succession planning, and staff development efforts.

Fiscal and Fund Analysis

As a Special Fund agency, the Board receives no General Fund (GF) support, relying solely on fees set by statute and collected from licensing and renewal fees. As a result of the transition of RDOs from the Medical Board of California to the Board, the Board now statutorily has two separate funds: the

Optometry Fund (BPC Section 3145) and the Dispensing Opticians Fund (BPC Section 2567). The Fund is not continuously appropriated.

In FY 2011/12, the Board made a \$1 million dollar loan to the GF from the Optometry Fund. As of 2016, the RDO program has not made any loans to the GF.

Optometry Fund

The Board reports that it ended FY 2015/16 with approximately 12 months in reserve and the Board estimates ending FY 2016/17 with approximately 17.4 months in reserve. The increase in reserve funds for FY 2016/17, as reported by the Board, is a result of staff vacancies and the repayment of the outstanding GF loan. The Board anticipates a structural deficit in the future, with higher expenditures than revenues; however, when the structural deficit will occur and the cause of anticipated higher expenditures is unclear. The Board reports that the last fee increase was effective April 29, 2009. All of the optometry license fees, excluding the glaucoma certification fee and the optometrist renewal fee are at the statutory maximum.

Current Optometrist and Statement of Licensure renewals are paid biennially based on the licensees' birth month. Fictitious Name Permit and Branch Office License renewals are paid annually on January 31 and February 1 respectively. All other fees for exams and initial licenses are received and processed on an on-going basis. All license fees limits are specified in statute.

Optometry Fee Schedule and Revenue									
	Fee Type	Authority	Current Fee Amount	Statutory Limit	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	% of Total Revenue
Initial License Application	Optometrist	BPC § 3044 BPC § 3152 CCR § 1524	\$275	\$275	\$97,900	\$111,100	\$105,875	\$89,209	4.7%
	Optometrist Retired	BPC § 3152 CCR § 1524	\$25	\$25	-	-	\$25	\$750	-
	Optometrist Retired Volunteer	BPC § 3152 CCR § 1524	\$50	\$50	-	-	-	\$500	-
	Statement of Licensure	BPC § 3075 BPC § 3152 CCR § 1524	\$40	\$40	\$10,160	\$10,640	\$11,440	\$10,840	0.5%
	Branch Office License	BPC § 3077 BPC § 3152 CCR § 1524	\$75	\$75	\$3,300	\$3,675	\$4,575	\$3,450	0.1%
	Fictitious Name Permit	BPC § 3078 BPC § 3152 CCR § 1524	\$50	\$50	\$7,500	\$8,350	\$8,850	\$7,950	0.4%
Renewal	Optometrist	BPC § 3152 CCR § 1524	\$425	\$500	\$1,435,811	\$1,492,700	\$1,510,723	\$1,577,978	83.2%
	Optometrist Retired Volunteer	BPC § 3152 CCR § 1524	\$50	\$50	-	-	-	\$50	-
	Statement of Licensure	BPC § 3075 BPC § 3152 CCR § 1524	\$40	\$40	\$15,740	\$15,720	\$16,840	\$15,176	0.8%
	Branch Office License	BPC § 3077 BPC § 3152	\$75	\$75	\$25,575	\$25,350	\$25,350	\$24,825	1.3%

		CCR § 1524							
	Fictitious Name Permit	BPC § 3078 BPC §3152 CCR § 1524	\$50	\$50	\$61,400	\$62,275	\$65,650	\$69,150	3.6%
Delinquent	Optometrist	BPC §3152 CCR § 1524	\$50	\$50	\$6,375	\$7,025	\$7,475	\$6,775	0.3%
	Statement of Licensure	BPC § 3075 BPC § 3152 CCR § 1524	\$20	\$20	\$680	\$660	\$680	\$620	-
	Branch Office License	BPC § 3077 BPC §3152 CCR § 1524	\$25	\$25	\$750	\$625	\$725	\$750	-
	Fictitious Name Permit	BPC § 3078 BPC §3152 CCR § 1524	\$25	\$25	\$1,895	\$1,425	\$1,650	\$2,316	-

Certification	Therapeutic Pharmaceutical Agent	BPC § 3152.5 CCR §1524	\$25	\$50	\$8,800	\$9,425	\$8,775	\$7,875	0.4%
	Lacrimal Irrigation and Dilation	BPC §3152 CCR §1524	\$25	\$50	\$8,130	\$8,725	\$8,525	\$8,150	0.4%
	Glaucoma	BPC §3152 CCR §1524	\$35	\$50	\$23,870	\$24,220	\$19,495	\$15,670	0.8%
Other	Cite & Fine	BPC §2545, 3145.5	Various	Various	\$2,236	\$23,866	\$17,128	\$6,476	0.3%
	CE Course Provider	BPC §3152	\$50	\$100	\$4,800	\$5,750	\$6,500	\$11,950	0.6%
	Free Care Participant	BPC §901 CCR §1508.2	\$40	\$40	-	\$40	-	\$160	-
	Replacement	BPC §3152	\$25	\$25	\$14,925	\$14,825	\$15,525	\$10,400	0.5%
	Dishonored Check Fee	BPC §3145.5	Various	Various	\$90	\$175	\$300	\$75	-
	Misc. Serv to Public-General	BPC §3145.5	Various	Various	\$2,953	\$2,525	\$2,550	\$225	-
	Miscellaneous Income	BPC §3145.5	Various	Various	\$528	\$237	-	-	-
	Over/Short Fees	BPC §3145.5	Various	Various	\$62	\$20	\$54	\$32	-
	Surplus Money Investment	BPC §3145.5	Various	Various	\$3,595	\$3,632	\$4,349	\$8,621	0.4%
	Cancelled Warrants	BPC §3145.5	Various	Various	\$630	\$775	\$1,560	\$1,636	-
Total Revenue					\$1,737,670	\$1,834,425	\$1,844,208	\$1,895,940	

*Note: These tables were taken from the Board of Optometry's 2016 Sunset Review Report

Program Expenditures

According to the Board, during the last four FYs, the Board's enforcement program accounts for 35.2% of the Board's expenditures and the licensing program accounts for 19.4%. The remaining 45.4% of Board expenditures are for examination, administration, and pro rata.

Optometry Expenditures by Program Component								
(Dollars in Thousands)	FY 2012/13		FY 2013/14		FY 2014/15		FY 2015/16	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	169	375	298	634	158	417	135	156
Examination	0	12	0	45	0	15	0	20
Licensing	196	102	159	84	274	109	233	111
Administration *	291	110	202	62	410	133	346	125
DCA Pro Rata	0	230	0	258	0	306	0	383
TOTALS	\$656	\$829	\$659	\$1,083	\$842	\$980	\$714	\$795

*Administration includes costs for executive staff, Board, administrative support, and fiscal services. Executive staff members provide oversight over all enforcement, Examination, Licensing, and Administrative units.
**Note: This table was taken from the Board of Optometry's 2016 Sunset Report

BPC Section 3145 sets a six month reserve level of the appropriated operating expenses in any fiscal year for the Board’s Optometry fund. There is no mandated minimum reserve level for the RDO fund; however, BPC Section 128.5 specifies that if the Board has unencumbered funds in an amount that equals or is more than the agency's operating budget for two FYs, the Board must reduce license or other fees during the following FY in an amount that will reduce the surplus funds to an amount less than two years of the Board's annual operating budget.

RDO Program

The Dispensing Opticians Fund ended FY 2015/16 with a \$158,000 reserve balance, which is a 6.1 month reserve. The Board estimates the FY 2016/17 reserve balance to be approximately \$28,000, equaling 1.1 months in reserve.

According to the Board, when the RDO Program transferred to the Board, there was a significant fund imbalance, with expenditures far exceeding revenue. The fee structure, which had not changed since 2000, was found inadequate to support the program. SB 1039 (Hill) Chapter 799, Statutes of 2016 created a new fee structure for the RDO program effective January 1, 2017. SB 1039 established a minimum and maximum application fee amount for nonresident contact lens sellers, registered dispensing opticians, and spectacle lens dispensers and increased minimum and maximum amounts for already established fees. Current RDO registration renewals are paid biennially based on the licensee’s birth month. All other fees for examinations and initial license are received and processed on an on-going basis.

RDO Fee Schedule and Revenue									
	Fee		Current Fee Amount	Statutory Limit	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	% of Total Revenue
Initial Application	Registered Dispensing Optician		\$75	\$100	\$5,700	\$4,500	\$6,225	\$6,975	3.6%
	Contact Lens Dispenser		\$75	\$100	\$7,025	\$4,875	\$5,400	\$6,675	3.6%
	Spectacle Lens Dispenser		\$75	\$100	\$15,225	\$14,775	\$18,023	\$22,275	11.7%

	Non-Resident Contact Lens Dispenser			\$10	\$10	-	-	\$100	\$100	-
Renewal	Registered Dispensing Optician			\$75	\$100	\$33,800	\$41,400	\$38,775	\$35,825	18.9%
	Contact Lens Dispenser			\$75	\$100	\$33,725	\$31,422	\$35,450	\$32,125	16.9%
	Spectacle Lens Dispenser			\$75	\$100	\$73,100	\$74,050	\$74,200	\$77,325	40.7%
	Non-Resident Contact Lens Dispenser			\$75	\$100	\$500	\$400	\$400	\$200	-
Delinquent	Registered Dispensing Optician			\$25	\$25	\$625	\$650	\$1,000	\$700	0.3%
	Contact Lens Dispenser			\$25	\$25	\$1,350	\$825	\$1,775	\$1,250	0.6%
	Spectacle Lens Dispenser			\$25	\$25	\$3,125	\$3,675	\$4,175	\$4,125	2.1%
	Non-Resident Contact Lens Dispenser			\$25	\$25	-	-	-	\$25	-
Replacement	Registered Dispensing Optician			\$25	\$25	\$300	\$175	\$275	\$400	0.2%
	Contact Lens Dispenser			\$25	\$25	\$100	\$125	\$75	\$100	-
	Spectacle Lens Dispenser			\$25	\$25	\$100	\$175	\$150	\$325	0.1%
Other	Citation Fee – RDO			Varies	Varies	-	-	\$2500	-	-
	Surplus Money Investment			Various	Various	\$1038	\$689	\$596	\$750	0.3%
	Cancelled Warrants			Various	Various	\$416	\$350	\$418	-	-
	ICR Probation Monitoring			Various	Various	-	-	\$6,341	-	-
	Other			Various	Various	\$164	-\$506	\$1029	\$348	0.1%
	Total Revenue					\$176,293	\$177,580	\$196,907	\$189,523	

*Note: This table was taken from the Board of Optometry's 2016 Sunset Report

Program Expenditures

The Board reports that for the RDO program 0% of expenditures account for enforcement and 76.9% accounts for licensing. Current enforcement costs are absorbed through the Optometry Fund.

RDO Expenditures by Program Component								
(Dollars in Thousands)	FY 2012/13		FY 2013/14		FY 2014/15		FY 2015/16	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	0	0	0	0	0	0	0	0
Examination	0	0	0	0	0	0	0	0
Licensing	48	84	71	121	74	149	48	120
Administration *	0	0	0	0	0	0	0	0
DCA Pro Rata	0	78	0	45	0	51	0	34
TOTALS	\$48	\$163	\$71	\$166	\$74	\$200	\$48	\$154

*Administration includes costs for executive staff, Board, administrative support, and fiscal services. Executive staff members provide oversight over all enforcement, Examination, Licensing, and Administrative units.

*Note: This table was taken from the Board of Optometry's 2016 Sunset Review Report.

Cost Recovery

The Board seeks cost recovery as authorized in BPC Section 125.3. The Board can utilize cost recovery as a term and condition of probation. The Board may agree to decrease or eliminate cost recovery if it expedites the disciplinary process through settlement. The Board reports that cost recovery is used as a condition of reinstatement. Payment plans may be implemented for individuals who cannot pay the total amount in one lump sum. However, probation cannot be completed and a license cannot be reinstated until cost recovery is paid in full. Since the last review, enforcement expenditures increased 62%; ordered cost recovery increased 64%, and collected cost recovery 16%.

According to the Board, \$231,182 in cost recovery has been ordered for revocations and surrenders. Of that amount, only 21% (\$49,387.71) is being actively collected through probationers on payment plans. Roughly 79% (\$181,794.29) was ordered for revocations, surrenders, and for probationers who are tolling and is believed to be uncollectable. These licensees will only have to repay their cost recovery upon reinstatement or upon returning to practice in California. The majority of them never return to practice in California; therefore, they have no desire or requirement to pay their outstanding balance.

The Board does not have the authority to order cost recovery in cases that result in revocation of registration or licensure by default decision. To date the Board has not used the Franchise Tax Board for cost recovery since cost recovery is ordered upon reinstatement or as part of a probation condition.

Restitution

The Board has no jurisdiction to order restitution unless written into a disciplinary order or stipulated settlement. Restitution may be ordered as a term and condition of probation, as is specified in the Board's Disciplinary Guidelines, and the Board reports it has sought restitution in cases involving insurance fraud. In addition, if the Board obtains evidence of substantial financial harm from a consumer by a licensee, the Board would seek restitution at the hearing or in a stipulated settlement. While the RDO program was under the jurisdiction of the MBC, the MBC did not seek cost recovery or restitution for disciplinary cases.

Licensing

The Board licenses approximately 6,936 optometrists, 1,017 registered dispensing opticians, 970 contact lens dispensers, 2,261 spectacle lens dispensers, and 8 non-resident contact lens dispensers. In addition, the Board issues over 2,800 statements of licensure, branch office licenses, and fictitious name permits.

The licensing population of optometrists has increased since the Board's last sunset review by approximately 17%. In addition, the issuance of fictitious name permits has increased approximately 13%.

On average, the Board issues 781 optometry licenses and permits annually, and renews an average of 5,811. The Board issues approximately 344 RDO registrations annually and renews 1,895.

The Board's licensing program provides public protection by ensuring licenses or registrations are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial.

The Board's required timeframes for issuing or denying applicants for licensure are specified in 16 CCR sections 1564 and 1564.1. The Board is required to inform an optometrist applicant within 45 days of receiving their application, whether the application is complete or if the application is deficient, or what, if any, specific information is missing. Within 120 days of receiving a complete application, the Board is required to inform the applicant whether or not he or she meets the requirements for licensure. The Board has established an internal timeframe of 90 days to inform an applicant if he or she meets the qualifications for licensure. Upon approval of the application and supporting documents, a license is issued.

The Board requires primary source documentation for any educational transcripts, experience records, license verification from other states, and professional certifications. As part of the licensing process, all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the Department of Justice and the Federal Bureau of Investigation (FBI). The Board is not aware of any licensees that have not been fingerprinted.

The Board began querying the National Practitioner Databank (NPDB) for all out-of-state applicants in June of 2016. The Board does not query the NPDB for all applicants, but reports that it is currently looking into the feasibility of requiring a query for all applicants and renewals.

An optometrist applicant licensed outside of California must satisfy California-specific educational requirements in order to become licensed in California as specified in BPC section 3057. The applicant cannot have his or her license revoked or suspended in another state at any time.

Military Education

The Board reports that in 2016, it began requesting optometric applicants to identify their military status. Applicants who report that they are currently serving or have previously served in the military are given priority and the applications are expedited. Current applications for an RDO license do not inquire about military service.

In addition, the Board approved regulation language to update its optometrist license applications to include questions relating to military history. Board staff is currently in the rulemaking process to implement the updated application. Additionally, online applications submitted through the BreZE system contain questions to elicit this information.

To date, the Board has not received an application in which military education, training, or experience was submitted towards meeting licensing requirements for purposes of expediting the application.

The Board has not received any notifications or request to waive renewal fees for any licensees or applicants being called to active duty; therefore Board revenues have been unaffected by BPC section 114.3. Similarly, the Board has not had any applicants indicate they are currently married to, or in a domestic partnership or other legal union with an active duty military member; thus, the Board has not been impacted by BPC section 115.5.

Continuing Education

As specified in BPC section 3059, and in 16 CCR sections 1536, licensed optometrists are required to complete 40 hours of continuing education (CE) every two years in order to renew their license. Those licensed optometrists who are certified to use therapeutic pharmaceutical agents must complete 50 hours of CE, and of those 50 hours, 35 hours must be in the diagnosis, treatment, and management of ocular disease in any combination of the following areas: glaucoma, ocular infection, ocular inflammation, topical steroids, systemic medication, and pain medication. Glaucoma certified licensees must complete 10 (of the 35) hours of glaucoma specific CE. RDOs, Registered Spectacle Lens Dispensers, Registered Contact Lens Dispensers, and Nonresident Contact Lens Sellers are not required to complete CE at this time.

The Board has the authority to make exceptions to CE requirements for reasons of health, military service, or other good cause. According to the Board, there have been two exemptions since FY 2015.

The Board's Practice and Education Committee approves CE provider courses. Providers must apply for CE course approval on an approved form and pay a \$50 application fee. The application must be accompanied by any course presentation materials and the curriculum vitae of all instructors and/or lecturers involved. Between FY 2012/16, 849 requests for CE approval were submitted and 814 were approved. The Board does not currently audit CE providers.

Continuing Competency

The Board has not reviewed its CE policy for the purpose of moving toward performance based assessments of licensees continuing competence. The Board notes that it may address this issue at a future Board meeting.

CE Review and Audit Process

The Board requires licensees to certify, under penalty of perjury, that he or she meets the CE requirements 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 completion, the Board conducts random CE audits. The Board recognizes and utilizes the Association of Regulatory Boards in Optometry's Online Optometric Education Tracker system as proof of CE course attendance as specified in 16 CCR section 1536(h). Proof of all other CE attendance must be submitted to the Board.

The Board began conducting random CE audits in December 2009. However, due to staffing issues, and time constraints, CE audits have not been consistently conducted.

In the past four FYs, a total of 375 CE audits were conducted with a failure rate of less than 10%. The audit failures have been resolved with the submission of additional credits.

Enforcement

As a result of the Consumer Protection Enforcement Initiative (CPEI), each healing arts Board is responsible for determining its performance measure (PM) targets in order to meet the goal of reducing the average enforcement completion timeline for healing arts boards from 36 months to between 12 and 18 months. The Board's PM targets are reflected in the table below.

Performance Measure	Definition	Target	Actual FY 2012/2013		Actual FY 2013/2014		Actual FY 2014/2015		Actual FY 2015/2016	
			OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO
Volume	Number of complaints and convictions received	-	253	47	213	53	376	29	238	46
Intake	Average cycle time from complaint receipt to the date the complaint was assigned to an investigator	7	7	8	1	1	2	1	1	11
Intake and Investigation	Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General (AG) or other forms of formal discipline	90	191	196	188	80	117	262	220	153
Formal Discipline	Average number of days to complete the entire enforcement process for cases resulting in formal discipline	540	889	738	783	716	797	939	1200	638
Probation Intake	Average number of days from monitor assignment to the date the monitor makes first contact with the probationer	25	1	N/A	1	N/A	1	N/A	1	412
Probation Violation Response	Average number of days from the time a violation is reported to a program, to the time the assigned probation monitor responds.	14	1	1	1	N/A	1	N/A	1	N/A
*Prior to January 1, 2016 (mid-FY15/16), all enforcement for the RDO Program was conducted by the MBC										

***Note: This table was taken from the Board's Sunset Review Report 2016*

Currently, the Board is meeting all of the performance measures except two: (1) intake and investigation and (2) cases resulting in formal discipline. The Board notes that increased cycle times are largely due to staffing challenges the Board has faced over the last four years.

The Board reports a 61% increase in disciplinary actions since its last sunset review. The Board follows the Department of Consumer Affairs' (DCA) Complaint Prioritization Guidelines for Health Care Agencies. The Board prioritizes the following as the most urgent complaints:

- Patient harm
- Potential patient harm
- Fraud

- Convictions
- Unlicensed Practice

Settlement Reporting Requirements

There are three mandatory reporting requirements:

BPC section 801(a): requires that every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of section 800 shall send a complete report to that agency. The report must include any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages that resulted in death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

BPC section 802: Requires optometrists (or attorney, if represented by counsel) to report any settlement, judgment, or arbitration award over \$3,000 of a claim or action for damages that resulted in death or personal injury caused by the licensee's negligence, error or omission in practice, or by rendering of unauthorized professional services.

BPC section 803: Requires the clerk of a California court to report, within 10 days after judgment any person who holds a license from the Board who has committed a crime or is liable for any death or personal injury resulting from a judgment for an amount in excess of \$30,000 caused by his or her negligence, error or omission in practice, or by rendering of unauthorized professional services.

Any settlement, judgment, or arbitration award of \$3,000 or more must be reported to the Board.

Although these are mandatory reporting requirements, the Board receives a very small number of these reports each year.

During the last four FYs, the Board received a total of 18 reports. However, because the agencies charged with the submission of these reports are largely outside of the authority of the Board, correction of this problem has been challenging. Over the prior four FYs, the average dollar amount of settlements reported to the Board is \$189,699.48.

Disciplinary Reporting Requirements

Optometrists are required to disclose any disciplinary actions taken in other states as part of their renewal process. Other state boards are also mandated by federal law to report disciplinary actions to the NPDB and any other state board where an individual holds a license. States often, like California, request information of other state licenses on the initial application, but they do not capture disciplinary information acquired after licensure.

Insurance companies are mandated by federal law to report any negative actions taken against a provider (e.g., removed or suspended from the panel) to the NPDB, but they are not required to report those actions to regulatory Boards.

The Board is subject to a statute of limitations as specified under BPC section 3137, which requires accusations to be filed within three years from the date the Board discovers the alleged act or violation or within seven years from the incident date, whichever occurs first. Cases regarding procurement of a license by fraud or misrepresentation are not subject to the statute of limitations. Specific exemptions pertaining to fraud, willful misconduct, unprofessional conduct and sexual misconduct are provided for in statute.

Since the Board's last report, 38 optometry cases have been closed due to the statute of limitations. Of those, two were based on complaints that were filed over seven years after the alleged incidents had occurred. Fifteen cases involved convictions prior to licensure, which were too old and outside the Board's authority. Twenty-one of the cases were related to convictions and/or subsequent arrest notifications the Board received as part of the 2010 requirement to have licensees re-fingerprinted for purposes of submitting prints to the FBI. The Board reports that all of the cases involved convictions that were old enough to be outside the Board's authority.

The RDO Program does not have a statute of limitations.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed in 2013 by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection (Renamed in 2015 to: Assembly Committee on Business and Professions) in 2013. During the previous Sunset Review, the Committee staff raised issues and provided recommendations. Below are actions which have been taken over the last four years to address those issues. For those which were not addressed and which may still be of concern, they are fully discussed under the Current Sunset Review Issues for the California Board of Optometry section.

Recommendation 1: In line with the recommendations made during the 2002 Sunset Review hearing, the Committee recommended that the Board take immediate action to conduct an occupational analysis (OA).

Board Action: The Board was unsuccessful in securing funds through the BCP process. However, the Board requests Committee reconsideration of the occupational analysis of optometric assistants. In light of legislative and regulatory amendments made since SB 929 (described below) and the current pursuit of an OA of optometrists and the National Board of Examiners in Optometry (NBEO) examination, the Board believes there is adequate consumer protection without pursuing an OA specific to optometric assistants.

While it wasn't mentioned in the 2012 Sunset Report, optometric assistants were addressed again in 2010 through AB 2683 (Hernandez), Chapter 604, Statutes of 2010. That bill did the following:

- Authorized an assistant to fit prescription lenses and perform those additional duties in any setting where optometry or ophthalmology is practiced, under the direct responsibility and supervision of a physician and surgeon, optometrist, or ophthalmologist, respectively
- Defined "setting" for purposes of this provision to include, without limitation, any facility licensed by the State Department of Public Health or the State Department of Social Services.
- Made conforming changes to related provisions.

The analysis stated the following:

Use of Assistants. This bill was amended on May 17, at the request of the California Medical Association to clarify that assistants under the direct oversight of an ophthalmologist or optometrist may carry out certain tasks and functions in any setting where ophthalmology or optometry is practiced. Formerly, the law specified that these assistants may carry out these functions in the office of a physician and surgeon or optometrist.

Writing in support of these amendments, the Chairman of the UC Davis Eye Center states that ophthalmology practices have traditionally employed specialized ophthalmic technicians who are not usually formally trained as medical assistants, but have training that is specifically relevant to eye care. In order to provide efficient and affordable health care, amendments were made by SB 929 in 2000, which authorized assistants to administer medications under the direct supervision of a physician and surgeon or optometrist. Since that time, however, the Department of Public Health has interpreted that amendment as not applying to practice operating in hospital-based clinics, which are under its licensing jurisdiction. Prohibiting supervised technicians from administering drops under direct supervision “greatly impairs our ability to render care in an efficient and cost-effective manner. Moreover, the nature of the practice in academic health centers which often care for larger numbers of patients with more serious health problems seriously impairs our ability to care effectively.”

“The care delivery activities involved in practicing ophthalmology and optometry are no different when performed in a hospital-based clinic compared with a private office. Given that technicians have been administering these medications for decades in private offices (and indeed in hospital-based clinics for nearly that long until the recent DPH challenge) without known issue, this clarification in law only serves to restore what had reasonably been intended in the first place.”

In addition, optometrists’ scope of practice expanded in 2010 (AB 1164) and 2013 (AB 761), which included additional educational requirements set forth in BPC Section 3041 and CCR Section 1571. Everything an optometric assistant can perform must be done under the “direct responsibility and supervision of an ophthalmologist or optometrist.” If any violations occur, the optometrist is held accountable. The legislature and the Board have enhanced optometrists’ educational requirements as scope expanded.

Further, the Board is currently pursuing funds to perform an occupational analysis of the optometric profession and the NBEO examination. That analysis will include optometrists’ current knowledge and supervision level of optometric assistants. Based on the result of that OA, the Board would have more information to see if the current structure is sufficient or if additional regulations are needed for the optometric assistants.

Recommendation 2: The Committee recommended the Board work with DCA to ensure that it is provided the funds to apply for the NPDB and the Health Integrity and Protection Databank (HIPDB).

Board Action: The Board was unsuccessful in securing funds for the NPDB. However, in May 2013, the HIPDB merged with the NPDB; information previously disclosed through the HIPDB is now collected and disclosed through the NPDB. With this merge, the cost went from \$6.50 per licensee per year to \$3.00.

Although the Board was unsuccessful in securing funds through the BCP process, it began submitting out of state applicants through NPDB’s continuous query (meaning the Board receives automatic

notifications for reports rather than a one-time query) in October 2015 and is absorbing the costs. In October 2016, costs were reduced to \$2.00 per licensee per year.

While the Board is able to absorb the costs for out-of-state applicants now, it believes the public is better protected if all licensees are submitted through NPDB's continuous query program. Many applicants become licensed in other states after receiving a license in California. The Board would not know to submit those individuals to the NPDB. In addition, if an applicant does not disclose he/she is licensed in another state (where they have been disciplined), the Board would not know to check NPDB.

Though reporting agencies are required to notify the Board when an action is taken, it is very rare and it could be years after the action was posted. Further, those agencies would have to know if the optometrists are licensed with the Board. If other states were not notified of licensure in California, they would never know to notify the Board.

Currently, there could be several licensees who have been disciplined in another state without the Board's knowledge. This poses a threat to public safety, because those optometrists who have been disciplined in another state may be practicing in California, despite having been deemed a threat to public safety in another state.

In the future, in order to fund submitting each applicant and licensee through the continuous query, the Board would need to increase its initial application fee \$2.00 and renewal fee \$4.00. This has not been implemented.

Recommendation 3: The Committee recommended that the Board specify what additional measures can be taken to expedite processing of enforcement cases.

Board Action: The Board's Enforcement Unit was completely restructured in FY 2015/16. While it experienced turnover, vacancies, and participated in BreEZe, the Board's restructure focused on capitalizing on its current resources by dramatically changing duty statements and reclassifying enforcement positions.

Recommendation 4: The Committee requested the Board provide a plan for increasing the workload of its enforcement officers in consideration of the existing budget and staffing constraints.

Board Action: AB 684 granted the Board the authority to inspect locations where an optometrist and RDO were co-located. SB 836 expanded it to cover wherever optometry was being practiced. The Board is researching inspection programs within DCA to determine best inspection implementation methods given its limited resources. In addition, the Board is working with DCA to determine the best way to track inspections within the BreEZe system. One of the enforcement positions was re-classed to a higher level analyst in order to help develop and implement the Board's inspection program.

Recommendation 5: The Board should inform the Committee of its plan to continue carrying out its various duties if no additional staff is allocated for the Board. The Committee also suggested exploring the possibility of hiring temporary or part-time staff to assist with completing critical tasks.

Board Action: As mentioned above, the Enforcement Unit has completely restructured in hopes to maximize efficiencies within the unit. Positions were re-classed, duties were reassigned, and processes

were changed. In addition, overtime is being offered to help address the backlog. Once fully staffed and trained, the Board anticipates significant improvements in the Enforcement Unit. This will be demonstrated by fewer pending cases and shorter cycle times.

Recommendation 6: The Board should make every attempt to comply with BPC section 115.5 in order to expedite licensure for military spouses. In addition, the Committee recommended the Board consider waiving the fees for reinstating the license of an active duty military licensee.

Board Action: Several military bills have passed over the past few years. The Board is working with DCA to implement all new changes in the BreZze system. In addition, the Board's revised license application includes new military questions in compliance with the applicable bills.

In December, 2016, the Board submitted its required sunset report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. A copy of the Board's Sunset Review Report 2016 can be obtained at <http://www.optometry.ca.gov/about-us/sunsetreview.pdf>. According to the Board, the following are some of the more important programmatic and operational changes, enhancements, proposals and other important policy decisions or regulatory changes made:

- Sponsored the following legislation:
 - AB 1253 (Steinorth) Chapter 125, Statutes of 2015, established requirements for an optometrist seeking a retired volunteer service designation license who has not held an active license in more than three years.
 - AB 1359 (Nazarian) Chapter 443, Statutes of 2015, revised the criteria for obtaining certification to administer and prescribe therapeutic pharmaceutical agents for licensed optometrists.
 - SB 349 (Bates) of 2015 would have required the Board to promulgate regulations establishing a registry for mobile optometric facilities. *Held in the Senate Committee on Business, Professions and Economic Development.*
 - SB 402 (Mitchell) of 2015 would have required a pupil's vision to be examined by a physician, optometrist, or ophthalmologist, as specified. *Held in the Senate Committee on Appropriations.*
 - SB 496 (Nguyen) of 2015 would have expanded and specified requirements for a graduate of a foreign university to be eligible for California licensure. *Held in the Senate Committee on Business, Professions and Economic Development.*
- Adopted a 2014-2018 Strategic Plan.
- Acquired the regulation and enforcement of the RDO Program from the MBC.
- The EO attended the annual meeting of the Association of Regulatory Boards of Optometry.
- Revised board membership to replace an optometrist appointee with an RDO.
- Conducted a fee audit of the RDO Program.
- Moved to its current headquarters location in 2011
- Acquired an Assistant Executive Officer.

CURRENT SUNSET REVIEW ISSUES FOR THE BOARD OF OPTOMETRY

The following are unresolved issues pertaining to the Board, or those which were not previously addressed and other areas of concern for these Committees to consider along with background information concerning the particular issue. There are also recommendations the Business and

Professions Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: Long term fund condition — optometry fund.

Background: The Board reports that it ended FY 2015/16 with approximately 12 months in reserve (optometry fund) and the Board estimates ending FY 2016/17 with approximately 17.4 months in reserve. The increase in reserve funds for FY 2016/17 as reported by the Board is a result of staff vacancies and the repayment of the \$1 million GF loan. Although the reserves are projected to increase in the next FY, the Board reports that the reserve will dip to 16.4 months in FY 2017/18 as the Board anticipates a structural deficit in future FYs with higher expenditures than revenues. It is unclear from the Board's projections what the reasons may be for higher expenditures and if the incorporation of the RDO program impacts current budget operations of the Board. The Board reports that the last fee increase for optometry licenses was effective April 29, 2009. All of the optometry license fees, excluding the glaucoma certification fee and the optometrist renewal fee are at the statutory maximum authorization.

Optometry Fund Condition						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Beginning Balance	\$961	\$1,270	\$1,438	\$1,517	\$1,902	\$2,823
Revenues and Transfers	\$1,737	\$1,834	\$1,844	\$1,896	\$2,831	\$1,834
Total Revenue	\$1,737	\$1,834	\$1,844	\$1,896	\$1,831	\$1,834
Budget Authority	\$1,694	\$1,895	\$1,851	\$1,835	\$1,889	-
Expenditures	\$1,432	\$1,668	\$1,753	\$1,469	\$1,907	\$1,945
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid From General Fund	\$0	\$0	\$0	\$0	\$1,000	\$0
Fund Balance	\$1,270	\$1,438	\$1,518	\$ 1,902	\$ 2,823	\$2,712
Months in Reserve	9.1	9.8	12.4	11.9	17.4	16.4

**Note: This table was taken from the Board's Sunset Review Report 2016.*

Staff Recommendation: *The Board should advise the Committees on its projected Optometry Fund structural deficit projections, including when the structural deficit will occur, and how it plans to address the projected deficit given that license fees are at the statutory maximum.*

ISSUE #2: Should the RDO and Optometry funds be merged? Should the RDO program be merged into the Optometry Practice Act?

Background: AB 684 (Alejo and Bonilla), Chapter 405, Statutes of 2015 directed the transfer of all funds, duties, powers, purposes, responsibilities, and records from the Medical Board of California to the Board to regulate the RDO practice act and its fund. As a result, the Board now operates *separate funds* (the Optometry Fund and the Registered Dispensing Opticians Fund) for licensing and administrative purposes. Currently, the Board absorbs all enforcement-related costs for the RDO program. AB 684 did not provide for the combination of funds and yet, the Board is responsible for enforcement, licensing, regulations, and has regulatory authority over all of the licensees of the RDO program. Licensing fees, citations, and other administrative costs are collected and deposited into the appropriate fund based in accordance with current statute. Although the Board reports that it attempts to capture and separate the appropriate expenditures and revenues based on the fund, there may be times when the administration may overlap in auditing, licensing, and enforcement. Because the Board administers two separate funds, there may be duplicate administrative work, such as reviewing two separate fund expenditure and revenue reports, and separating each application, audit report, or fine to make sure it was charged to the appropriate fund.

Currently, the Board reports that no enforcement-related costs for the RDO program are charged to that program, meaning any enforcement-related costs for RDOs are attributed to the Optometry Fund.

Merging the funds of DCA regulated entities would not be unique to this Board. In 2011, SB 933 (Runner), Chapter 449, Statutes of 2011, combined the acts applicable to speech-language pathologists, audiologists, and hearing aid dispensers and combined the funds from each of the previous regulatory entities. AB 180 (Bonilla), Chapter 395, Statutes of 2015, combined the acts applicable to the cemetery and funeral acts and merged the funds from each of the previous regulated entities under the Cemetery and Funeral Bureau's jurisdiction. AB 179 (Bonilla), Chapter 510, Statutes of 2015 combined the funds of the vocational nurses and the psychiatric technicians under the Board of Vocational Nursing and Psychiatric Technicians. AB 177, Chapter 428, Statutes of 2015, consolidated the separate funds of the Board of Professional Land Surveyors, Engineers, and Geologists.

Staff Recommendation: *The Committees may wish to inquire of the Board if there has been any discussion about consolidating the separate funds in an effort to streamline administrative costs and reduce administrative burdens. The Committees may wish to inquire of the Board how merging the practice acts would improve consumer protection and enhance administrative efficiencies for the Board.*

LICENSING ISSUES

ISSUE #3: Should NPDB queries be a part of the process for renewal and initial licenses?

Background: Under current law (BPC section 144), all applicants for licensure are required to submit fingerprints, a criminal background check, and to disclose prior convictions, pending convictions, and

disciplinary actions taken by any healing arts licensing authority (in or outside of California) on the application for licensure. The Board also requires license verification from all boards that issued a license or certificate to the applicant as one of the verification requirements to identify prior disciplinary actions.

Information contained in the NPDB is provided by state regulatory agencies and other entities that are required to report disciplinary information about specified professionals.

The Board reports that it began querying the NPDB in June 2016 for all out-of-state applicants only. Part of this check includes enrolling the applicants into the continuous query feature. Therefore, the Board is notified whenever discipline or any other reportable action is reported to the NPDB – similar to subsequent arrest notifications through DOJ. Currently, the Board does not require individuals residing in California or optometrists renewing their license to query the NPDB to check for any outstanding practice violations which may have occurred in other states. There is a cost to query the NPDB of \$2. Currently, the Board is not collecting the fee from out-of-state applicants, but is instead absorbing the cost. Since initial optometrist license fees are at the statutory maximum, the Board would need statutory authority to collect any additional fees.

The Board reports that it is currently researching the feasibility of enrolling all applicants and licensees into the NPDB to further its consumer protection mandate. The Board notes that this is "a necessary fix, as it eliminates the possibility of the Board having no knowledge of another state's discipline by way of an applicant's failure to disclose that they have been licensed in another state."

Staff Recommendation: *The Board should advise the Committees as to what it needs in order to fully utilize the resources offered by the NPDB to help protect consumers and more thoroughly examine a potential licensee's professional background and criminal history.*

ISSUE #4 Examination Passage Rates – Are there any concerns about the perceived low passage rates for the National Spectacle Examination and the National Contact Lens Examination?

Background: In order to be registered with the Board as a Spectacle Lens Dispenser or a Contact Lens Dispenser, an applicant must have taken and passed a national examination. Spectacle Lens Dispenser candidates are required to pass the American Board of Opticianry (ABO) examination and Contact Lens Dispenser candidates are required to take and pass the National Contact Lens Examination (NCLE). Both national examinations are developed and administered by the ABO and are available in English and Spanish. The results are neither divided by language nor tracked by first time test takers versus re-takers.

Both examinations are available through computer based testing and can be taken at PSI testing sites around the country. Both tests are two hours each and are available to take during a two week period, 4 times a year.

Although the Board is not responsible for administering or creating the examinations for these two registrant categories, and the passage rates reflect the national average, the low passage rates for these examinations may be of concern.

National Spectacle Examination		
Developed and Administered By: American Board of Opticianry		
2012	# of Candidates	4343
	Pass %	58.3%
2013	# of Candidates	3935
	Pass %	62.5%
2014	# of Candidates	3473
	Pass %	62.7%
2015	# of Candidates	3249
	Pass %	55.0%
Date of Last OA		2013
Name of OA Developer		American Board of Opticianry
Target OA Date		-

National Contact Lens Examination		
Developed and Administered By: National Contact Lens Examiners		
2012	# of Candidates	1496
	Pass %	66.9 %
2013	# of Candidates	1414
	Pass %	53.5%
2014	# of Candidates	1320
	Pass %	56.0%
2015	# of Candidates	1439
	Pass %	56%
Date of Last OA		2013
Name of OA Developer		National Contact Lens Examiners
Target OA Date		-

**Note: These tables were taken from the Board's Sunset Review Report 2016.*

Staff Recommendation: *The Board should advise the Committees if it has any concerns with the perceived low passage rate. Additionally, the Board should advise the Committees of when the next OA of these national examinations may occur.*

ISSUE #5: Pathways to Licensure: Graduates of a Foreign University & Out-of-State Licensees.

Background:

Foreign Graduates

Optometrists must complete a four year Doctor of Optometry degree program meeting California educational requirements and pass the NBEO examination to be eligible for California licensure. The Board also has pathways for individuals who are licensed in other states. However, both foreign graduates and out-of-state licensees face challenges in California with obtaining a license to practice in California.

Pursuant to BPC Section 3057.5 and 16 CCR Section 1530.1, the Board is authorized to sponsor "foreign graduates" or individuals who obtained their education from institutions outside of the United States to sit for the NBEO examination. As noted by the Board, these individuals request the board to issue a Letter of Sponsorship (LOS) to allow the foreign graduate to take the NBEO. In order for the Board to issue a LOS, Board staff must determine if the applicant's education obtained through the foreign university is equivalent to the education earned at a U.S. school of optometry. This is done by requesting the applicant have his or her transcripts evaluated by an evaluation service. If the education is deemed equivalent, Board staff will issue the LOS. If the education does not meet the equivalency, the Board provides the applicant with a list of the U.S. schools of optometry that provide courses to obtain the education needed to qualify for the examination. While California offers a means for foreign graduates to sit for the NBEO, there is no real pathway for a license to practice as they have not met the educational requirements as specified in BPC Section 3046.

Currently there is no fee charged by the Board to foreign applicants seeking an LOS. As noted by the Board in its Sunset Review Report 2016, one of the challenges of this program is that foreign graduates may be issued a sponsorship to take the NBEO, but they cannot obtain licensure in California, as they do not meet the educational requirements specified in California law.

While the Board expends staff resources on verifying qualifications to sit for the NBEO, the Board is not compensated, and these graduates cannot obtain licensure in California as there is no current pathway other than acquiring new education.

Foreign graduates are able to remediate missing education for purposes of sitting for the national examination as there are institutions that provide an "accelerated course" to meet the educational requirements. This is referred to as an "Advanced Standing Program" which customizes a curriculum based on a foreign graduate's transcripts. As noted by the Board, these programs can take between two-to-four years to complete and they are only offered at three institutions which are not located in California.

To address this problem the Board sponsored SB 496 (Nguyen) of 2015 to create a pathway for foreign graduates to become licensed in California. The bill was ultimately held in the Senate Business, Professions and Economic Development Committee. In response, the Board created the foreign

education workgroup and tasked it to meet with stakeholders, including the accredited schools and colleges of optometry, to provide recommendations to the Board for consideration in 2017.

The Board discussed this issue at its January 27, 2017, meeting. The agenda noted that offering the LOS has proven to create confusion among foreign applicants because they believe the process will lead to licensure in California, but until they obtain a degree from an accredited college of optometry, the time-consuming review process will not benefit California or the foreign graduate. The Board-staff's recommendation was to remove the Board's statutory authority to conduct the LOS.

Out- of -State

Coupling with the challenge for foreign graduates seeking licensure in California, out-of-state licensees face similar obstacles to obtaining licensure in California as a result of the strict requirements with respect to disciplinary actions which may have occurred in another state.

BPC section 3057(a)(6) specifically prohibits the Board from considering any applicant from out-of-state who has ever "had his or her license to practice optometry revoked or suspended in any state where the person holds a license."

Currently, subdivision (h) of section 3110, provides the Board with the discretion to suspend or deny a license if the person has been subject to disciplinary action, whereby the Board is required review that action to determine if it presents sufficient evidence of a violation of the practice act to warrant the submission of additional information from the person or the denial of the application for licensure. In addition, BPC section 3057(h)(5) per a signed release, allows the Board to review information with the NPDB, and the Drug Enforcement Administration to determine if there is evidence to warrant the submission of additional information from the person or the denial of the application for licensure.

The two above mentioned sections provide the Board with the authority to review any disciplinary activity of an out-of-state licensee to determine if the action would warrant a licensure denial in California; however, BPC Section 3057(a)(6) challenges the Board's authority to review out-of-state applicant's disciplinary actions and instead strictly prohibits anyone who has ever had his or her license to practice optometry revoked or suspended in any state. Therefore, any disciplinary action taken outside of California is grounds for automatic denial according to that subparagraph, while the subparagraph above provides the Board with discretion to review disciplinary actions to determine if they would warrant licensure denial. In the Board's *2016 Sunset Review Report*, the Board identified this as a new issue and stated it is seeking consideration to "assess and remove unnecessary license barriers, such as BPC Section 3057(a) (6), while still adequately protecting the health and safety of California consumers."

The Board-staff's recommendation was to remove the strict prohibition on out-of-state licensees as referenced in BPC Section 3057(a)(6) and allow the Board to use its current authority to determine if the disciplinary action(s) warrants licensure denial.

Staff Recommendation: *The Board should advise the Committees on the progress of the foreign graduate workgroup and any recommendations for changes to the acceptance of foreign graduates for licensure purposes. In addition, the Board should inform the Committee on the time and resources that are expended to sponsor foreign graduates and whether or not there should be a fee charged for such services. In addition, the Board should explain how revising the disciplinary review procedures for out-of-state licensees would expand the pool of eligible licensees in California*

and if there are any concerns that changing BPC Section 3057(a)(6) would decrease consumer protection in California.

ISSUE #6: Continuing Education

Background: The Board requires licensees to certify, under penalty of perjury that they meet the CE requirements, as specified in existing law, and if a licensee fails to certify completion of the required CE, the license renewal is held until the licensee certifies completion of the required CE. A licensee may not practice with an expired or delinquent license; therefore, all CE must be completed and submitted in order to renew a license to continue to legally practicing optometry.

In order to verify completion of CE requirements, because an applicant for licensure renewal only has to self-certify that they have completed the required CE, the Board conducts random CE audits. As part of that process, the Board recognizes and utilizes the Association of Regulatory Boards in Optometry's Online Optometric Education (OE) Tracker system as proof of CE course attendance (16 CCR section 1536(h)) for those courses taken through the national association. Proof of all other CE attendance must be submitted to the Board.

The Board began conducting random CE audits in December 2009; however, the Board notes that due to staffing issues, and time constraints, CE audits have not been consistently conducted. In the past four FYs, the Board reports conducting a total of 375 CE audits (FY 2012/13: 81; FY 2013/14: 150; FY 2014/15: 144; and FY 2015/16: 0) with a failure rate of less than 10%.

Licensees that fail a CE audit are subject to fines of up to \$2,500 (16 CCR section 1579). If a licensee fails to remediate the deficiencies and/or pay the determined fine, an enforcement hold is placed on the license, making the license ineligible for renewal until all conditions are met.

The issue of CE audits was raised during a November 2016 board meeting in which, the Board discussed requiring licensees to utilize the "CE tracking system" currently used by the national association. The Board accepts OE TRACKER certificates for audit verification purposes, (16 CCR 1536(a)(8)), and Board staff has determined that the OE TRACKER would be the most efficient way to audit licensees. However, until optometrist licensees are mandated to take CE units as provided by the national association, staff must still verify each licensee's reported CEs through the audit process.

The Board stated in its *Sunset Review Report 2016*, that "as a result of the Board restructuring, additional resources are now available to conduct more audits. The Board is also researching more efficient ways to increase the number of CE audits, strengthening consumer protection."

Currently, RDOs, Registered Spectacle Lens Dispensers, Registered Contact Lens Dispensers, and Nonresident Contact Lens Sellers are not required to complete CE.

Staff Recommendation: *The Board should update the Committees on its plan and timeline to increase the number of CE audits conducted annually. In addition, the Board should advise the Committees on any plans to transition to an electronic tracking system and any potential impact on licensees.*

ISSUE #7: Different License Types.

Background: Current law authorizes an optometrist to own one optometric office without being required to obtain a separate license to operate that facility. However, BPC section 3077 requires optometrists who have ownership interest in more than one office to obtain a separate "branch office

license" from the Board. The law specifies that an optometrist may own or operate more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time the offices are open for professional practice. In an effect, this limits the optometrists to only one additional office (one branch office).

An initial application for a branch office license is \$75 and the renewal fee is \$75 and both license fees are at their statutory maximum. Branch office licenses are required to be renewed annually, as opposed to an optometrist license which is renewed biannually.

The establishment of the branch office license took effect in 1959. Presumably, the intent of the branch office license was to provide consumer protection by ensuring that a licensed optometrist was present at his or her optometric practice. However, it is unclear if the concerns of 1959 are the same today. It may be prudent for the Board to review the branch office license to determine if any changes are warranted, or if there are any risks to consumer protection if the license requirements change.

Staff Recommendation: *The Board should advise the Committees on the continued usefulness of the branch office license. In addition, the Board should advise the Committees if other states have a similar branch office license or other practice location restrictions.*

ISSUE #8: Regulations.

Background: BPC section 3025 authorizes the Board to make and promulgate rules and regulations governing procedures of the Board, the admission of the applicants for examination for a license as an optometrist, and the practice of optometry as specified in the practice act. In order to prepare a rulemaking action, the Board is required to: (1) express terms of proposed regulation (the proposed text), (2) determine fiscal impact, (3) create a statement of reasons for that regulation, and (4) post notice of proposed rulemaking.

In the Board's *Sunset Review Report 2016*, the Board reported that since the Board's last sunset review in 2013, only two regulatory changes were made, one related to out-of-state licensees providing free health care and the other to implementing the Uniform Standards for Substance Abuse and Disciplinary Guidelines. Currently, the Board reports that it has eight outstanding regulation changes in the process, either approved by the Board and in the DCA review phase or pending at the Office of Administrative Law. These regulation packages pertain to the important oversight authority of the Board including, regulations aimed at reducing enforcement timeframe to codifying the Board's accreditation process. The timely submission and implementation of regulation packages help to ensure the smooth administrative operations by providing the Board with the appropriate authority to implement the provisions of the Optometry Act. Delaying the regulation process can amplify administrative hurdles for the Board and potentially derail legislative mandates. Although, all of the Board's pending regulations are important, the Board reports that regulations are still outstanding to implement BPC section 2556.1, which requires optometrists who are co-located in settings with RDOs to report that business relationship to the Board.

Staff Recommendation: *The Board should advise the Committees on the current status of its outstanding regulations and when it anticipates the regulations to take effect. In addition, the Board should update the Committees on how these regulations will improve Board operations.*

ENFORCEMENT ISSUES

ISSUE #9: Enforcement timeframes.

Background: In 2010, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas: 1) Administrative Improvements; 2) Staffing and IT Resources; and, 3) Legislative Changes. Upon implementation, it was anticipated that healing arts boards would be able to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months.

The Board reports in its *2016 Sunset Review Report*, that it is meeting all of its internal timeframes with the exception of intake and investigation and cases resulting in formal discipline. For intake and investigations, the Board established an internal target date of 90 days, but it is taking over 200 days for the optometry program and over 150 days for the RDO program. This trend has been consistent for the last four FYs for both programs, with the exception of the RDO program in FY 2013/14 when it was under the jurisdiction of the Medical Board of California where intake and investigation was completed within 80 days. For those cases that have been referred to formal discipline, the Board's internal timeframe is 540 days; however the Board reports that in FY 2015/16 formal discipline took 1200 days for the optometry program and 638 days for the RDO program.

The Board reports in its *Sunset Review Report 2016* that when the RDO program transitioned under the Board's jurisdiction, 92 additional cases were added to the Board's workload without sufficient staffing resources. A BCP was approved to add a 0.6 enforcement staff position, but the RDO program's budget was unable to sustain the position and as a result the RDO cases that would be investigated by the RDO enforcement personnel are being absorbed by the optometry program, as there is currently no enforcement budget for the RDO program.

In addition, the Board reports that enforcement staff spent a significant amount of time in 2015 participating in the design, development, and testing of the BreZE system, which reportedly impacted the pending caseload and average cycle times to case closure.

The Board notes that it has established an improvement plan to address the enforcement timeframes starting with restructuring the enforcement unit, instructing the enforcement unit to work more closely with the DOJ, and revising the enforcement procedure manuals.

Staff Recommendation: *The Board should advise the Committees about where it believes the bottlenecks are in its investigation processes and disciplinary actions. In the Board's opinion are the proposed solutions referenced in the Board's Sunset Report 2016 working to reduce the exceptionally high delays relative to intake and investigation and formal discipline? Would merging the Optometry and the RDO practice acts and the funds help address the enforcement backlog?*

ISSUE #10: What is the status of the Board's inspection program?

Background: In the 2014 staff background paper for the Board, the issue of authorizing the Board to inspect optometric practices was raised. At that time, the Committee staff's recommendation was to allow the Board to administer an inspection program. As noted in the 2014 staff background paper, "...the Committee agrees that the Board's enforcement unit should be granted the authority to inspect an optometrist's practice location. However, the Committee also notes the Board's inability to carry

out its current enforcement duties due to budget constraints and a lack of staff." Ultimately, the staff recommendation requested the Board to provide a plan for increasing the workload of its enforcement officers considering the existing budget and staffing constraints.

At that time, the Board responded "in order for the Board to successfully implement inspections in a way that would benefit public safety, the Board would need to seek statutory authority. That proposal would also need to include a request for a new position ...if current staff were to attempt to take on this increased workload, it would cause a negative ripple effect on all enforcement activities because current duties would be neglected."

In the Board's *Sunset Review Report 2016* it was noted that from the time of the Board's last sunset review, it was provided with inspection authority to inspect locations where an optometrist and a RDO are co-located as a result of AB 684 (Alejo and Bonilla), Chapter 405, Statutes of 2015, SB 836 (Committee on Budget and Fiscal Review), Chapter 31, Statutes of 2016, and SB 1039 (Hill), Chapter 799, Statutes of 2016. These bills constructed the Board's authority and mandate to inspect an optometric practice wherever optometry is being practiced.

The inspection process is an important element of AB 684, as it requires the Board to inspect co-located practices to ensure they are meeting the prohibitions in existing law including the authority to inspect leases and premise locations for compliance with BPC section 655 (dealing with the concerns pertaining to kick-back arrangements). However, neither the MBC nor the Board collected data on how many locations are co-located, so there is no concrete data on how many registrants are subject to inspection and what the Board's inspection program will look like. The Board reports that it is currently researching inspection programs within the DCA to determine the best way to implement an inspection program, given the Board's current resources, and how to incorporate a new inspection program into the current process.

At the Board's January 2017 meeting, the issue of the Board's inspection authority was discussed by the Board as one of the recent bills, SB 1039 (Hill) specifically permitted the board "at any time inspect the premises in which optometry is being practiced or in which spectacle or contact lenses are fitted or dispensed. The board's inspection authority does not extend to premises that are not registered with the board. Nothing in this section shall be construed to affect the board's ability to investigate alleged unlicensed activity or to inspect premises for which registration has lapsed or is delinquent."

As noted by the Board, the intent of the language was to give the Board inspection authority for all locations optometry is being practiced and where dispensing is taking place. However, the Board notes that "the current language appears to unintentionally limit the inspection authority and, at least, causes confusion as to what exactly the Board's authority is." As a result, Board staff recommended "that the Board support a legislative proposal to amend the statute to the following: The board, or its designated agent, may at any time inspect the any premises in which optometry is being practiced or in which spectacle or contact lenses are fitted or dispensed".

The Board agreed with the staff's proposal, and currently the outcome of the legislative proposal is pending.

Staff Recommendation: *The Board should advise the Committees on its plans to implement an inspection program and if the Board can begin inspections prior to any proposed legislation as recommended at the Board's January 26-27, 2017 meeting.*

TECHNOLOGY ISSUES

ISSUE #11: What is the status of BReZE implementation by the Board?

Background: In 2009, the DCA began an IT project to replace multiple antiquated standalone information technology systems used by the boards, bureaus, and committees within its jurisdiction, with one fully integrated system.

The Board was part of the Release 2 plan for BreZE rollout which went live on January 19, 2016. Because of the recent transition of the RDO program, it is not currently accessible through the Board's BreZE system.

The Board notes that it has made a successful transition into the BreZE system. The Board attributes this to its active participation in design, configuration, and testing of the BreZE system. The Board currently has 54 pending system enhancement requests.

The Board will continue to help improve the BreZE system by soliciting feedback and suggestions from consumers, applicants, licensees, and staff. This will ensure that the system will continue to improve over time.

In addition, the Board is currently processing RDO applications in the BreZE system under the MBC's domain. The DCA's Office of Information Services team is working with the Board to move the RDO Program to the Board's domain. The effort can best be summarized as a mini-BreZE Project for DCA and the Board as it involves creating four new licenses types within the Board – effectively doubling the Board's BreZE footprint.

The project is scheduled to complete in April of 2017; however, BreZE resources are extremely taxed which makes the RDO effort susceptible to delay should critical emergencies arise that divert resources. Once implemented, all applicants will be able to apply and renew online. Cycle times are also expected to decrease significantly.

The chart below identifies what the Board and RDO Program has paid for the system (through FY 2015/16) and what the anticipated costs of the system are through FY 2018/19.

BreZE Funding Needs

PROJECT (FY)								MAINTENANCE (FY)	
2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Actual	Actual	Actual	Actual	Actual	Actual	Actual	Budget	Budget	Budget
427,051	1,495,409	5,349,979	6,753,287	14,825,159	16,657,910	27,468,154	23,497,000	22,456,000	21,530,000
427,051	1,495,409	3,198,486	4,818,002	5,806,881	7,405,427	7,430,456	2,080,000	2,080,000	2,080,000

-	-	2,151,493	1,935,285	9,018,278	9,252,483	20,037,698	21,417,000	20,376,000	19,451,000
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2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Actual	Actual	Actual	Actual	Actual	Actual	Actual	Budget	Budget	Budget
1,482	5,092	19,772	16,661	33,349	64,652	138,369	134,349	135,000	131,000
527	-	7,053	10,869	22,226	24,089	50,866	49,226	50,000	47,000

Note: This table was taken from the Board's 2016 Sunset Review Report.

Staff Recommendation: *The Board should update the Committee about when it estimates that the RDO program will be accessible through the BreEZe program. In addition, the Board should advise the Committees on the implementation of the Board's BreEZe program and whether or not it has provided administrative efficiencies for the Board.*

ISSUE #12: Newsletters and Consumer Information.

Background: The Board's website is a tool for disseminating important resources to applicants, licensees, and the general public on board-related issues and general subjects related to the practice of eye care and eye health. The website features links to the Board's laws and regulations, forms and publications, the BreEZe system, disciplinary actions against licensees, Board activities, newsletters, and links related to the various professions and associations. The website also offers a feature for individuals to enroll in a Subscriber List which provides an e-mail notification to subscribers when new information is added on the website, including board meeting updates. The Board reports that since the last sunset report, the Board has grown its social media presence through *Facebook, Twitter, LinkedIn, Snapchat, Instagram, and Google+*.

Public outreach and education through the use of the Board's website is an important resource to keep consumers updated on issues relevant to the practice of eye care and consumer protection and for keeping licensees informed about important changes to the laws regulating the practice of Optometry. Although much of the information provided on the Board's website is current and up-to-date, there are important resource areas that have not been updated during the last four FYs.

Below is a summary of the Board's latest "board publications" relevant to consumers and the "newsletters" (accessible on the Board's Internet website) which are beneficial to professionals and consumers which have not been updated (with the exception of the strategic plan) within the last four FYs:

Board Publications:

Optometry Laws and Regulations Book Posted: July 8, 2013
 California State Board of Optometry Sunset Review Report 2012 Posted: November 5, 2012
 California State Board of Optometry - Focus on Consumer Protection Posted: March 27, 2012
 Cosmetic Contact Lenses - Change the Look of Your Eyes Safely and Legally Posted: March 27, 2012
 Focus on Your Eyes - What to Expect at an Eye Examination Posted: March 27, 2012
 Board Member Handbook 2016 Posted: December 13, 2016
 Strategic Plan 2014-2018

Newsletters:

Summer 2013 Newsletter Posted: September 13, 2013

Winter 2012 Newsletter Posted: February 6, 2013

Spring 2012 Newsletter Posted: May 15, 2012

Fall 2011 Board of Optometry Newsletter Posted: October 10, 2011

Winter 2011 Board of Optometry Newsletter Posted: February 9, 2011

Spring 2010 Board of Optometry Newsletter Posted: April 19, 2010

Summer 2009 Board of Optometry Newsletter Posted: July 31, 2009

With the recent transition of the RDO program to the Board and the consumer protection issues surrounding non-prescription contact lenses and emerging online eye-care technologies, it is vital that the Board maintain an up-to-date website that focuses on providing timely and informative information to both consumers and licensees. As noted in its Sunset Review Report 2016, the Board anticipates being able to devote more resources to consumer outreach, including reinstating the Board's newsletter.

Staff Recommendation: *The Board should advise the Committee on its current plan to update its website with more current consumer information and when it anticipates reinstating a newsletter.*

ISSUE #13: What is the status of the RDO Committee?

Background: As a result of AB 684 (Alejo and Bonilla), Chapter 405, Statutes of 2015, the Board is required to establish an RDO Committee to advise and make recommendations regarding the regulation of RDOs (BPC section 3020). The committee is to consist of five members, two RDOs, two public members and one member of the Board. Initial appointments are made by the Board, and after that the Governor will appoint the RDO and public members. Effective January 1, 2016, the oversight of the RDO Committee began under the Board's operation, however, to date, the Board has not appointed an RDO Committee and no meeting has taken place. The Board created a "DOC Appointments Committee", comprised of two Board members, to vet potential candidates and make recommendations to the full Board. According to the Board's *Sunset Review Report 2016*, it anticipates the DOC will begin meeting in 2017. This issue was not on the Board's meeting agenda for the January 26-27 Board meeting and the next Board meeting is currently scheduled for April 21, 2017.

Staff Recommendation: *The Board should advise the Committees on its proposed timeframe for formally appointing the RDO Committee membership and when it anticipates the first RDO Committee meeting.*

ADMINISTRATIVE ISSUES

ISSUE #14:

Background: As a result of the North Carolina case, in October of 2015 the Committees held a joint informational hearing titled *North Carolina State Board of Dental Examiners v. Federal Trade Commission: Implications for Department of Consumer Affairs (DCA) Boards*. The intent of the hearing was to explore the Court's decision, apply its holding to the operations of DCA boards, and consider recommendations. Some of the questions which guided the presentations at the information hearing included: 1) what constitutes a "controlling number" of active market participants? 2) To what extent do California's existing oversight mechanisms satisfy "active state supervision"? 3) What laws

or processes must be changed to guard against anticompetitive behavior? 4) How can the state ensure that Board members are indemnified?

Subsequent to the hearing, Senator Hill introduced SB 1195 of 2016 which, among other provisions, would have authorized the Director of the DCA to review, veto, or modify actions and decisions of DCA boards to ensure such actions or decisions conform with public policy; and prohibit any board EO from being an actively licensed member of the profession the board regulates. While that bill was held on the Senate Inactive File, SB 1194 (Hill) of 2016 was later amended to revise the director's authority to review specified board decisions, rules and regulations to ensure that a mechanism exists for independent state review of regulatory board actions is available. Ultimately, SB 1194 was held in the Assembly Committee on Business and Professions with no resolution to the concern over anti-trust issues. In the Board's *Sunset Review Report 2016*, it noted the North Carolina case as a new issue and stated that it "acknowledge the governance implications of United States Supreme Court's North Carolina decision and work with the Legislature to develop an operational framework that honors its consumer protection obligation while retaining a level of technical expertise."

Staff Recommendation: *The Board should advise the Committees on any concerns it has relative to the recent North Carolina decision and operations of the Board. Does the Board believe there are proactive actions that it should take to prevent anti-competitive behavior?*

ISSUE #15: New and Emerging Technologies.

Background: Currently, the traditional business model for a consumer to receive optometric services is by visiting an optometric practice at a brick and mortar establishment. At a traditional site, a comprehensive eye examination is typically provided. Recent technological advances are beginning to reshape consumers' access to eye care services. An online refractive test is a service provided through a website. It is a vision test which can be used as a tool by eye care practitioners to determine an individual's needs for an eyeglass or contact lens prescription. Consumers take the test online, pay a fee for services and can then receive a prescription for eyeglasses or contact lenses from a licensed eye care practitioner (either and Optometrist or an Ophthalmologist). These online examinations require consumers to utilize a computer or a smartphone and the examination can be conducted in the privacy of an individual's home.

A quick Google search demonstrates a variety of options for persons interested in acquiring a prescription through online service providers. According to one company's website (*Opternative*), the way it works is that a consumer registers online and answers questions to ensure eligibility, once approved, the consumer then utilizes a smartphone and a computer for the test (for free), after the examination, the consumer pays a \$40 fee for an Ophthalmologist to review and approve a prescription, which then a consumer can take and fill accordingly.⁷ This type of service is not considered to be a "comprehensive examination" as it only measures the need for a person's prescription for eyeglasses or contact lenses. As noted by *Opternative* on its website,

"*Opternative* is not a replacement for a comprehensive eye health examination. Our licensed Ophthalmologists use *Opternative* online technology to evaluate a patient's visual acuity and a portion of the ocular health profile, diagnose refractive error, and issue a prescription for corrective eyewear, where clinically appropriate. Our services are limited to patients between the ages of 18 and 50 who are in good health. All tests are conducted and all prescriptions are

⁷ Retrieved from <https://www.opternative.com/>

issued based on the independent clinical judgement of an ophthalmologist. Because our services are not a replacement for an eye health examination, we encourage everyone to obtain a comprehensive eye health exam at least once every 2 years. We prohibit patients from taking an Opternative test more than 4 consecutive years without certifying that they have received a comprehensive eye health exam first. If you need help finding an eye care professional near you, please contact us at info@opternative.com."⁸

According to the Optometric Association, "vision screening programs can't substitute for regular professional vision care. Children or adults who pass a vision screening could still have an eye health or vision problem."

While these services are not purported to offer a full service eye health screening to detect more serious eye conditions, there is concern that consumers may not be aware and mistake a vision screening on-line program as a replacement for a more comprehensive service. It may be beneficial for the Board to ensure consumers are aware of the differences in services offered including information about where and to whom consumers can raise concerns with quality of care issues.

Staff Recommendation: *The Board should advise the Committees on whether or not there is a method to verify that the online examinations are valid for what they purport to be. Further the Board should advise the Committees on what, if anything, the Board is doing to provide consumers with information regarding online vision service providers. Lastly, the Board should advise about the current relationship between online examinations and Optometric telehealth.*

TECHNICAL CLEANUP

ISSUE #16: Technical Cleanup.

Background: There may be a number of non-substantive and technical changes to the Board's practice acts as it may be prudent to strikeout outdated references and obsolete code sections. The Board should recommend cleanup amendments for this section.

Staff Recommendation: *The Board should recommend cleanup amendments. to the Committees.*

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT BOARD

ISSUE #17: Should the licensing and regulation of optometrists and RDOs be continued and be regulated by the Board?

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Board with oversight over those professionals in the optometric field, including RDO's.

Although the Board faces numerous challenges in the next four years including updating outdated regulations, establishing a new RDO committee focused on the regulation of a new licensure category

⁸ *Ibid.*

for the Board, instituting a robust inspection program, establishing the appropriate pathway to licensure for out-of-state licensees, auditing CEs to ensure a compliant and well-informed licensee population, enhancing enforcement timeframes and adjusting to the changing practice of optometric care through online or other practices. The Board should be continued with a 4-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Staff Recommendation: *Recommend that the in order to protect the interests of the public and be reviewed once again in four years, and that the Board update the appropriate policy committees of the Legislature in four years on the issues raised earlier in this report.*