

December 31, 2019

Alexis Podesta, Secretary
California Business, Consumer Services and Housing Agency
915 Capitol Mall, Suite 350-A
Sacramento, CA 95814

Dear Ms. Alexis Podesta,

In accordance with the State Leadership Accountability Act (Leadership Accountability), the State Board of Optometry submits this report on the review of our internal control and monitoring systems for the biennial period ending December 31, 2019.

Should you have any questions please contact Shara P. Murphy, Executive Officer, at (916) 575-7184, Shara.Murphy@dca.ca.gov.

GOVERNANCE

Mission and Strategic Plan

The Board's mission is to protect the health and safety of California consumers through licensing, education, and regulation of the practices of Optometry and Ophthalmic Lens Dispensing. The Board accomplishes its mission through the following 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;
- Promulgating regulations governing Board procedures, approvals of applications for registration as an Ophthalmic Lens Dispenser; minimum standards of 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;
- Setting and enforcing standards for continued competency of existing licensees and registrants;
- Establishing educational and examination requirements for optometrists seeking certification to use and prescribe certain pharmaceutical agents and other procedures.

California became the third state to regulate the optometry profession in 1903, and a new Optometry Practice Act, enacted in 1913, created the Board, defined its duties and powers, and prescribed a penalty for violations of the Act. The Act was later incorporated in the Business and Professions Code

(BPC). Empowered with rulemaking authority (BPC Sections 3025 and 3025.5), the Board promulgated the first rule for the practice of optometry in 1923. In the same year, the legislature passed a law requiring all applicants for licensure to meet certain educational requirements, i.e., graduate from an accredited school or college of optometry and charged the Board with the responsibility of accrediting these schools. Prior to this time, individuals desiring to practice were not required to have any specific formal education.

On January 1, 2016, Assembly Bill 684, moved the RDO Program under the Board's jurisdiction, and created a Dispensing Optician Committee, comprised of two public members, two dispensers, and one Board Member to advise the Board on dispensing-related matters and education for registered opticians. Assembly Bill 684 replaced one of the Board's professional members with registered optician.

The Board's Strategic Goals and Objectives are:

GOAL 1: LICENSING

The Board provides applicants and licensees a method for obtaining and maintaining license registration, business licenses, and certifications required to practice optometry in California.

- 1.1 Streamline the initial license and renewal process, including paperless options and synchronizing multiple license renewal dates, to improve staff efficiency and licensee compliance.
- 1.2 Review the possibility of including continuing education requirements for both spectacle and contact lens dispenser licenses to protect consumers and maintain licensee competence.
- 1.3 Continue monitoring and exploring opportunities to enhance BreEZe utilization (e.g. 100% continuing education compliance, usage of national database, etc.) to increase staff productivity and promote licensee compliance with continuing education requirements.

GOAL 2: EXAMINATION

The Board works to provide a fair, valid and legally defensible licensing exam (California Law and Regulation Examination) and exam process to ensure that only qualified and competent individuals are licensed to provide optometric services in California.

- 2.1 Recruit more subject matter experts to create examination questions in order to strengthen the diversity of the test.
- 2.2 Analyze the examination requirements to evaluate for competency and the validity of the examination.
- 2.3 Create a budget change proposal to secure funds so the Board can perform an occupational analysis on the registered dispensing optician program in order to check for validity of the examination.
- 2.4 Consider the feasibility of developing a state law exam for opticians to verify their familiarity with California laws.

GOAL 3: LAW AND REGULATION

The Board works to establish and maintain fair and just laws and regulations that provide for the protection of consumer health and safety and reflect current and emerging, efficient and cost-effective practices.

- 3.1 Review federal law to identify methods that will strengthen existing California legislation regarding the sale of contact lenses and eye glasses as a means of improving enforcement and enhancing consumer protection.
- 3.2 Contact members of congress and the Federal Trade Commission regarding the current 48 hour law to obtain information that would assist in closing existing loopholes.
- 3.3 Continue prioritization for review and updates to existing statutes, legislation, and regulations, for both optometry and dispensing opticians, in order to identify whether or not they are the cause of enforcement delays and determine promulgation of new regulations.
- 3.4 Continue partnering with the Medical Board of California to identify potential loopholes regarding online and kiosk refraction administration to enhance consumer protection.
- 3.5 Review current methods and explore new opportunities to increase access to care (e.g. scope of practice, mobile clinics, new technology, tele-medicine).
- 3.6 Review and identify existing practice requirements with regards to unnecessary licensing barriers in an effort to reduce barriers to entry, enhance consumer access to care, and maintain consumer protection.
- 3.7 Explore the feasibility of proposing legislation to synchronize the expiration dates of all license types for a given individual.
- 3.8 Explore the feasibility of proposing legislation to merge the RDO and Optometry funds to stabilize the long-term Optometry fund condition.
- 3.9 Explore the feasibility of proposing legislation to merge the RDO program into the Optometry Practice Act.
- 3.10 Work in conjunction with all stakeholders to ensure consumer protection is weighed equally with consumer choice so legislation and/or regulation promotes fair access to goods and services while informing consumers of the risks and benefits such goods and services afford.
- 3.11. Develop and implement a new inspection program using best practices from other existing programs within DCA. If necessary, sponsor/approve legislation or regulatory amendments to improve inspection authority language.

GOAL 4: ENFORCEMENT

The Board protects the health and safety of consumers of optometric services through the active enforcement of the laws and regulations governing the safe practice of optometry in California.

- 4.1 Review enforcement timing between initial offense and when it is conveyed to the Board to act upon in order to protect the consumer and maintain patient access to care.

- 4.2 Explore the feasibility of participating in the FBI rap back program to expedite and enhance enforcement efforts.
- 4.3 Research the possibility of changing the statute to require licensees to self-report to the Board within thirty days of conviction or other disciplinary action as a means of expediting and enhancing enforcement efforts.
- 4.4 Research the possibility of requiring licensees to enroll in the national practitioner's databank to expedite and enhance enforcement efforts.
- 4.5 Develop proactive methods to enforce the unlicensed sale and distribution of cosmetic contact lenses.
- 4.6 Establish a partnership with DCA Boards and county and state organizations to identify and address unlicensed activity (e.g. contact lens sales and expired prescriptions) in an effort to protect consumers.
- 4.7 Review the corrective action for compliance (and revise if necessary) in order to deter unlicensed activity.
- 4.8 Analyze the 2012 disciplinary guidelines for optometrists and revise where necessary, to promote consistency and fairness with enforcement decisions and enhance consumer protection.
- 4.9 Adopt disciplinary guidelines for opticians to promote consistency and fairness with enforcement decisions and enhance consumer protection.
- 4.10 Improve working relationships with the Attorney General's Office, Division of Investigation, District Attorneys and other Government Agencies to identify and fix enforcement bottlenecks and streamline enforcement processes.
- 4.11 Develop and implement a new inspection program using best practices from other existing programs within DCA. (Issue #10)

GOAL 5: OUTREACH

The Board proactively educates, informs, and engages consumers, licensees, students, and other stakeholders on the practice of optometry and the laws and regulations which govern it.

- 5.1 Review and educate licensees about the scope of practice for optometric assistants, opticians, RDO's, CLD's and SLD's to mirror the letter and chart sent to optometrists clarifying privileges for specific licensing certifications in order to enhance consumer protection.
 - 5.2 Educate practitioners about current federal law regarding contact lens prescription release (48 hour law).
 - 5.3 Educate licensees and registrants about advertising requirements (e.g. free eye exams, free 2nd pair of glasses, etc.) to avoid misleading the public and reduce licensee confusion.
 - 5.4 Educate the public on how to adequately fill contact lens prescriptions based on expiration dates and quantity limits to increase awareness and enhance consumer protection.
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5.5 Develop a public relations campaign to educate unlicensed sellers regarding contact lens distribution laws to mitigate future violations, therefore protecting consumers.

5.6 Promote BreEZe's online renewal capability to licensees to decrease manual entries and improve staff efficiency.

5.7 Develop a communication plan utilizing technology to communicate more effectively with stakeholders, patients, and licensees.

5.8 Develop a communication plan to raise awareness of the importance of children's vision health and wellness.

5.9 Conduct an in depth audit the Board's website and update information for consumers, licensees, and registrants. (Issue #12)

GOAL 6: ORGANIZATIONAL EFFECTIVENESS

The Board works to develop and maintain an efficient and effective team of professional and public leaders and staff with sufficient resources to improve the Board's provision of programs and services.

6.1 Provide customer service training for staff to improve communication with stakeholders.

6.2 Investigate technology options for conducting committee and special meetings to broaden access to stakeholders and consumers.

6.3 Provide teambuilding training or exercises to Board members to improve Board functioning.

6.4 Provide teambuilding exercises between Board members and staff to improve relationships.

6.5 Improve communication and build relationships between the Governor's office, legislators, and the Board to effectively achieve the Board's objectives.

Control Environment

The Executive Leadership Team demonstrates integrity and ethical values in all of their decisions and actions.

Oversight of the Board's Executive Officer (EO) is conducted by the Board. The Board also provides oversight on the promulgation of new laws and regulations, educational and examination requirements, continuing competency requirements, issuance of disciplinary guidelines, and disciplinary actions taken against licensees and registrants.

Board staff are organized into three units: administration, licensing, and enforcement. The licensing and enforcement units each have lead analysts that serve to provide a resource for information, clarification on procedures or processes, and first-line review of the work product of unit analysts and technicians. All staff have access to the Executive Leadership Team, consisting of the EO and the Assistant Executive Officer (AEO), as a resource for information, clarification on procedures or processes, feedback on work product, direction, support, and oversight.

The Executive Leadership Team and Board staff participate in the following:

- Monthly meetings with staff and management to identify and discuss potential trends or issues, legislative or regulatory changes that will affect work process or workload, upcoming staff absences, process and procedure updates, and review key performance measures.
- Quarterly Public Board meetings
- Quarterly Public Committee meetings
- Regular Executive Leadership meetings

The Executive Leadership Team is conducting a long-term project to create or update the processes and procedures used by staff. Completed procedures will be available to staff electronically in the office shared drive. Any updates to procedures are shared with staff by email, with updates made to procedure documents as needed.

Including the Executive Officer, the Board has 15 staff members. As a small office, any vacancy can greatly impact productivity. When filling a vacant position, Board staff follow an aggressive timeline for the hiring process to expedite the onboarding of the new staff member. To ensure that the new staff member is the best fit for the position and our Board, applications are reviewed against a screening matrix that measures experience, skills, and training. Only those with the highest scores are interviewed. Interview questions are built by the Executive Leadership Team to be specific to the needs of the position and each question has a corresponding scoring matrix that helps ensure interview responses are weighed in an objective and fair manner. All staff members have access to training, educational resources, opportunities for cross-training, and support for professional growth.

The Executive Leadership Team evaluates staff performance on a regular basis by reviewing completed work products, analyzing statistical data for trend anomalies, and conducting meetings to address potential issues. The Executive Leadership Team enforces accountability by making detailed requests with clear deadlines and following up in a consistent manner to ensure the task is completed as requested.

Information and Communication

Board staff prepares statistical reports, billing reports, program update reports, and other relevant reports used by other staff, the Executive Leadership Team, Committees, and the Board for operational, programmatic & financial decision making.

Staff, lead analysts, and the Executive Leadership Team communicate directly through various methods that include in-person meetings, emails, and teleconferences. Board staff, lead analysts, and the Executive Leadership Team communicate directly with staff from other organizations and external stakeholders through various methods that include in-person meetings, emails, telephone calls, and teleconferences.

Staff are encouraged to report inefficiencies and inappropriate actions to management by email or in-person meetings, depending on staff preference. The agendas for monthly unit meetings include a space for discussion of potential process inefficiencies.

MONITORING

The information included here discusses the entity-wide, continuous process to ensure internal control systems are working as intended. The role of the executive monitoring sponsor includes facilitating and

verifying that the State Board of Optometry monitoring practices are implemented and functioning. The responsibilities as the executive monitoring sponsor(s) have been given to:
Shara P. Murphy, Executive Officer.

To ensure the effectiveness of internal control systems and respond to vulnerabilities as they are identified, the Board utilizes the following monitoring activities:

- Statistical reports tracking key performance measures are prepared and presented to Board members for review at quarterly Board meetings
- Statistical reports tracking key performance measures are published quarterly on the Department of Consumer Affairs (DCA) website
- Statistical reports tracking key performance measures are prepared and presented to Board members for review by fiscal year at Board meetings
- Statistical reports tracking key performance measures are published by fiscal year on the DCA website
- Audit conducted by DCA Internal Affairs
- Audit conducted by Department of Justice
- Sunset Review process
- Routine Strategic Plan updating

When vulnerabilities are identified, the Executive Leadership Team may meet with members of staff to determine the best party to assume responsibility for addressing the vulnerability. That may be the staff person with the most experience addressing the particular issue, or it may be a staff person with the skills and background most suited to addressing the vulnerability. Once a staff person has been assigned to address the vulnerability, the Executive Leadership Team will monitor the staff person's progress until the vulnerability has been reduced.

RISK ASSESSMENT PROCESS

The following personnel were involved in the State Board of Optometry risk assessment process: executive management, and staff.

The following methods were used to identify risks: employee engagement surveys, consideration of potential fraud, and performance metrics.

The following criteria were used to rank risks: likelihood of occurrence, potential impact to mission/goals/objectives, timing of potential event, and tolerance level for the type of risk.

RISKS AND CONTROLS

Risk: Process Silos

The Board currently relies on a small group of highly skilled staff members to operate its licensing program. Each of these staff members is an expert in the completion of the application processes within their responsibility, and only one staff member is responsible for each application process. When a staff member is out, their applications cannot be processed by another staff member in their absence. Written procedures are insufficient and incomplete. Cross-training has not occurred for most of the application processes.

Should any staff member leave or require an extended absence, their workload of applications would quickly become a backlog – increasing application approval times and delaying the entry of qualified professionals into the California labor force.

Control: Staff Development

Cross-train staff so that more staff members are skilled at a variety of tasks, including the processing of various application types.

Encourage collaboration between staff members so that skills and knowledge can be shared.

Staff collaboration and cross-training will help reduce the number of "process silos", or tasks that only one staff member can perform, by ensuring that more staff members have these skills.

Control: Process Documentation

- Map business processes for clarity of principle functions
- Ensure procedures and procedure desk manuals are up to date
- Examine current work processes to determine possible efficiencies

Risk: Telehealth

The presence of telehealth - the provision of Optometric services to a patient who is not physically present - in the vision care industry is steadily increasing and the Board currently does not have regulations or guidance around the use of this delivery system. Without sufficient information, the Board is unable to determine if additional regulations, educational requirements, or license types are needed to ensure the health and safety of California vision care patients.

Control: Same Professions, Different States

Research Telehealth requirements in other states to determine how telehealth is regulated, assess the educational and experience requirements imposed by other states, and consider the methods of enforcing the minimum standard of care for telehealth providers. This research will help inform and direct the Board's decisions regarding telehealth in Optometry.

Control: Different Professions, Same State

Research telehealth requirements in other California licensed health care professions to determine how telehealth is regulated, assess the educational and experience requirements imposed on other licensed health care professions, and consider the methods of enforcing the minimum standard of care for telehealth providers. This research will help inform and direct the Board's decisions regarding telehealth in Optometry.

Risk: Fi\$cal Impacts to Operations and Decision Making

Accurate and timely revenue and expenditure reports are not currently available from the Fi\$Cal system and this ultimately results in DCA being unable to produce timely reconciled monthly and year-end financial statements to Boards. Specifically, the Board is unable to access timely reports and readily validate the accuracy of data postings. This results in information lags as well as in poor, and

inaccurate, real-time reporting to the Board. Further, reports generated from the system often track awkward reconciliation points or contain incomplete or not user-friendly data. Accurate and usable reports are needed to make prudent budget and operational decisions. Special funds often have structural funding concerns, so understanding cash balances and expenditure status is essential. Board staff, as a result, often manually track unresolved Fi\$Cal issues in hopes of providing better real-time data to executive-level managers. This adds significant staff time, and the manual preparation of reports outside of the system opens the Board up to a larger opportunity for making unintended errors.

Control: Elevating Issues to DCA

The Board is in communication with DCA on a regular basis to resolve open items which include posting corrections, programming concerns, and report suggestions within the system.

Control: Independently Tracking Data

The Board relies on data tracking outside of the Fi\$cal system and regularly works with budget, accounting, and business services staff at DCA to track issues and make forecasting projections. This information is often utilized for meeting materials. Additionally, the Board requests information as needed from DCA to try to identify and fix errors.

Risk: Regulations

The Department of Consumer Affairs issues licenses, certificates, registrations, and permits in over 250 business and professional categories through 37 regulatory entities comprised of boards, bureaus, committees, a program, and a commission. These 37 entities set and enforce minimum qualifications for the professions and vocations they regulate, which requires them to promulgate regulations.

Prompted by an increase in the number of regulatory rulemaking submissions disapproved by the Office of Administrative Law, in late 2016, the Department and the Business, Consumer Services and Housing Agency (Agency) changed the process for reviewing rulemaking submissions. The resulting enhanced scrutiny from the Department and Agency successfully reduced the number of disapproved regulations because it led to a more thorough examination of those rulemaking submissions. But while disapproval rates plummeted, a consequence was lengthened timelines to adopt regulations.

As the Board has a small staff size, the additional work created by the enhanced scrutiny and extended timelines can be burdensome.

Control: Increased Staffing

The Department was authorized in the 2019 Budget Act to hire six attorneys, a senior legal analyst, and a research program specialist II to increase its capacity for developing, reviewing and issuing regulations.

Control: Staff Development

The Office of Administrative Law is training the Department's attorneys to review regulations. To improve regulation packages and their processing timelines, the Department is providing additional training to all staff involved in the regulations approval process.

Control: Development of Tracking Database

Additionally, the Department is developing a database to manage and track the regulation review process to streamline the process and provide more complete tracking of the process.

CONCLUSION

The State Board of Optometry strives to reduce the risks inherent in our work and accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies as appropriate. I certify our internal control and monitoring systems are adequate to identify and address current and potential risks facing the organization.

Shara P. Murphy, Executive Officer

CC: California Legislature [Senate (2), Assembly (1)]
California State Auditor
California State Library
California State Controller
Director of California Department of Finance
Secretary of California Government Operations Agency