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To: Board Members **Date:** August 26, 2016

From: Joanne Stacy **Telephone:** (916) 575-7182
Policy Analyst

Subject: **Agenda Item 15 – Discussion and Possible Action on Regulations Impacting the Practice of Optometry**

A. Amendment to California Code of Regulations (CCR) § 1582 Unprofessional Conduct and Amendment to CCR § 1516 Application Review and Criteria for Rehabilitation Following Disapproval

Background:

At its August 16, 2013 meeting, the Board voted to initiate a rulemaking to give the Board authority to compel an applicant to submit to a psychological or physical examination, and further define unprofessional conduct. The rulemaking action was printed in the California Regulatory Notice Register on October 18, 2013, and the 45-day comment period for the public started on October 18, 2013 and ended on December 2, 2013. The hearing was to be held December 2, 2013 in Sacramento at the Department of Consumer Affairs. However, due to the Executive Officer's absence for medical leave and the loss of the Board's Policy Analyst, the hearing was not held.

Due to time constraints, and at the recommendation of the Department of Consumer Affairs' Legal Division, the Board restarted the process concerning the rulemaking package pertaining to CCR Section 1516. On August 1, 2014, a Notice of Decision Not to Proceed was printed in the California Regulatory Notice Register in order to withdraw the Board's October 18, 2013 Notice. Staff resubmitted the unchanged rulemaking package to the Office of Administrative Law, which was printed in the California Regulatory Notice Register on August 8, 2014. A 45-day public comment period began on August 8, 2014 and concluded on September 22, 2014.

The rulemaking action was printed in the California Regulatory Notice Register December 12, 2014, and the 45-day comment period for the public started on December 12, 2014 and ended on January 26, 2015. The hearing was held on January 26, 2015. There were no comments or public speakers at the hearing. The rulemaking package was approved by the Department of Consumer Affairs and Agency.

On December 4, 2015, the Board received a Decision of Disapproval of Regulatory Action for the rulemaking package. In order to resolve all issues, Board counsel

prepared an Addendum to the Initial Statement of Reasons and Modified Text which must be available for a 15 calendar day public comment period. Any comments made regarding the addendum must be presented to the Board for consideration and be summarized and responded to in the Final Statement of Reasons.

The Board approved the Addendum and Modified Text and directed staff to send it out for the required 15-day comment period. In the absence of any adverse comments, direct staff to resubmit the rulemaking packet to OAL for approval, and request an extension from the appropriate agency if necessary.

Update:

The rulemaking package has been completed by staff and is going through the check and approval process at DCA. It was necessary to request a deadline extension from the Office of Administrative Law (OAL) to allow for internal approval. The deadline extension was granted making the packet due to OAL October 25, 2016.

Action Requested:

None

B. Proposed Amendment to CCR § 1399.260 RDO Fees, § 1399.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees

Background:

During the November 20, 2015 Board meeting, the Board voted to adopt proposed amendments to the applicable CCR sections, raising each fee to its statutory cap, in order to temporarily address the RDO Programs current fund condition. However, if the minimum fee is set in statute, via the pending SB 1039, there would no longer be a need to adopt the proposed language.

Update:

Staff is preparing the rulemaking package for notice.

Action Requested:

None

C. Amendment to CCR § 1523 Licensure Examination Requirements to Update Form 39A-1. Rev. 7-09, Form OLA-2, Rev. 11/07, and Form LBC-4, rev. 2/07

Background: During the February 2016 Board meeting, the Board approved amendments to the Continuing Education (CE) Course Approval Request Form and delegated authority to the Practice and Education Committee to approve CE courses.

However, during the April 2016 Practice and Education Committee meeting, the Committee requested additional minor changes to the form in order to ensure the Committee receives the necessary information to determine whether a course meets the requirements specified in CCR § 1536.

In May 2016, the Practice and Education Committee voted for a final version of the form and text, and the suggested changes were brought before the full Board. The forms were approved at the May 2016 Board Meeting.

Update:

None at this time

Action Requested:

None

D. Amendments to CCR § 1536 Continuing Optometric Education; Purpose and Requirements

Background:

In August 2013, the Board approved the Continuing Optometric Exemption/Extension Form for licensees requesting CE exemptions/extensions, pursuant to CCR § 1536. However, the form needs to be updated to accurately reflect current law and incorporated by reference.

Similarly, CCR § 1536 allows the Board to approve continuing education courses meeting the criteria set in CCR § 1536 (g). Currently, CE Providers seeking course approval submits a completed CE Course Approval form and the applicable fee. However, the form should be updated to reflect current law, approved by the Board, and incorporated by reference.

Based on the above, staff drafted the proposed amendments to CCR § 1536. The Board approve the revised forms and proposed amendments to CCR § 1536 and directed staff to prepare the proper rulemaking documents and set the matter for public hearing.

Update: Staff has completed the packet and submitted it to DCA for internal check and approval. The packet is due to the Office of Administrative Law (OAL) on September 25, 2016. OAL has 30 working days to approve or disapprove the rule making packet. Regulations go into effect quarterly; if the packet is approved then it will go into effect January 1, 2017.

Action Requested:

None

E. Proposed Revision to CCR § 1514.1 Co-Location Reporting Requirement

Background:

During the November 20, 2015 Board meeting, the Board voted to adopt the proposed addition to CCR § 1514.1 and related form. However, the Board also requested the Administration's assistance in amending BPC Section 2556.1 to expand the reporting requirement to registered dispensing opticians.

Update:

In response to the Board's request, the Administration included the requested amendment in the trailer bill, which is has now passed. Board staff is working on amending the applicable form and regulatory language and will bring proposed amendments to the next Board meeting.

Action Requested:

None

F. Amendment to CCR § 1502 Delegation of Functions

Background:

As described above, CCR § 1536 allows the Board to approve continuing education courses meeting the criteria set in CCR § 1536 (g) and approve CE extension requests. In order for staff to approve these courses and CE extension requests, the Executive Officer (EO) should be given the delegated authority from the Board. Otherwise, the way the regulation is currently written, each course and request for CE extension would have to go before the Board for approval.

The proposed regulatory revision would also authorize the EO to accept default decisions and stipulated surrenders of a license. In May 2013, the Board voted against delegating authority to accept default decisions and stipulated surrenders based on the low volume of disciplinary matters it receives and the belief that delegating such authority prevented the Board from weighing in on disciplinary decisions. However, given the addition of several new license types and imperfect information regarding the potential volume of licensing and disciplinary actions, Board legal counsel has suggested that the Board may want to revisit this decision.

As a consumer protection agency, the Board is obligated to protect California consumers and patients. Please note that in cases of defaults, the respondent, applicant or cited person has two mechanisms available to get to a hearing on the merits. In cases of stipulated surrenders, the respondents, often times represented by attorneys, have agreed to no longer practice in California. Here, the issue is timing, as any delay may allow respondents with admitted alcohol/drug addictions to continue treating patients and/or allow those who admitted to providing gross negligent, incompetent and/or substandard care to continue providing said care.

In February 2016, The Board voted to approve the proposed amendments to CCR § 1502 and directed staff to prepare the proper rulemaking documents and set the matter for public hearing.

Update:

None at this time

Action Requested:

None

G. Amendment to CCR § 1530.1 Qualifications of Foreign Graduates

Background:

In order for foreign graduates to obtain sponsorship to sit for the National Board of Examiners in Optometry (NBEO) examination, applicants were required to submit the Application for International (Foreign) Graduate Sponsorship. In addition, applicants were required to submit fingerprints and have their education evaluated by a professional credential evaluation service. However, the application and additional requirements need to be updated to reflect current law, approved by the Board, and incorporated by reference.

In February 2016, the Board approved the proposed form and amendments to CCR § 1530.1 and directed staff to prepare the proper rulemaking documents and set the matter for public hearing.

Update:

None at this time

Action Requested:

None

H. Amendment to CCR § 1506 Certificates –Posting

Background:

In August 2015, the Board adopted a Consumer Notice describing what each certification means to the consumer. In addition, the Board adopted language

amending CCR § 1506 to clarify existing language. These amendments align with the Board's Strategic Plan Goal 3, objective 3.3.

Update:

None at this time

Action Requested:

None

I. Amendment to CCR § 1523.5 Abandonment of Applications

Background:

The Board does not have the authority to abandon any license/permit applications. In order to issue licenses/registrations/permits, the Board must receive the necessary information, documentation, and/or other materials. Some applicants, however, may apply and never submit the required information even after frequent requests from staff for the missing items.

Consequently, the Board maintains application files that may never be issued and will always be reported as "pending" workload; these files are in a sort of perpetual holding pattern, which is neither efficient nor productive. Staff must store and monitor these files and keep them open even though the application may have been sitting dormant for years. The Board appears to be one of the few DCA entities who do not have this authority.

To rectify this, Board approved the proposed addition to CCR § 1523.5 in May 2016 and directed staff to prepare proper rulemaking documents and set the matter for public hearing.

Update:

None at this time

Action Requested:

None

J. Proposed Addition to CCR § 1503 Relating To Accreditation of Schools and Colleges of Optometry

Background

Business and Professions Code (BPC) § 3023 mandates the Board "accredit schools, colleges, and universities in or out of this state providing optometric education, that it finds giving a sufficient program of study for the preparation of optometrist."

BPC § 3025.2 allows the Board, through regulation, to "... recognize, accept, or adopt the advice, recommendation, accreditation or approval of a nationally recognized accrediting agency or organization." However, the Board does not have any such supporting regulation.

The Board only accepts schools and colleges of optometry who have received accreditation through the Accreditation Council on Optometric Education (ACOE). As stated on their website, ACOE "is the only accrediting body for professional optometric degree (O.D.) programs, optometric residency programs and optometric technician programs in the United States and Canada.

Both the U.S. Department of Education and the Council on Higher Education Accreditation recognize the ACOE as a reliable authority concerning the quality of education of the programs the Council accredits. ACOE accreditation means the programs that have attained accredited status:

Meet the Council's standards of educational effectiveness; and

Show a demonstrated commitment to quality assessment and improvement.”

In order to align the Board’s process with law, Board staff and legal counsel recommend adopting the attached proposed regulatory language (Attachment 1).

Action Requested:

Please review, consider, and vote to approve the proposed language. If approved, please delegate authority to the Executive Officer to initiate the rule making process and circulate the language for the required time period.

Attachment

1. Proposed Addition to CCR § 1503. Accreditation

Proposed Addition to CCR § 1503. Accreditation

150x . For the purposes of the Optometry Practice Act, those colleges and universities offering optometric educational programs leading to the issuance of a Doctor of Optometry degree and accredited by the Accreditation Council on Optometric Education (ACOE) shall be deemed accredited by the board. Accreditation under this section shall automatically terminate upon termination of the program's accreditation by ACOE.