



CALIFORNIA STATE BOARD OF  
**OPTOMETRY**

# **Board Meeting**

**Teleconference**

**Thursday, January 5, 2012**

**10:00 a.m.**



Governor Edmund G. Brown Jr.  
State of California

Brian Stiger, Senior Chief  
Deputy Director  
Department of Consumer Affairs



Lee Goldstein, OD, MPA  
President

Alejandro Arredondo, OD  
Vice President

Monica Johnson  
Secretary

Donna Burke  
Member

Alexander Kim, MBA  
Member

Kenneth Lawenda, OD  
Member

Fred Naranjo, MBA  
Member

Board Staff

Mona Maggio  
Executive Officer

Administration

Andrea Leiva  
Elizabeth Bradley  
Krista Eklund

Licensing

Jeff Robinson  
Nancy Day  
Elvia Melendrez

Enforcement

Lydia Bracco  
Dillon Christensen  
Cheree Kimball  
Brianna Miller  
Jessica Sieferman

**California State Board of Optometry  
2450 Del Paso Road, Suite 105, Sacramento, CA 95834  
Teleconference Board Meeting  
Thursday, January 5, 2012  
10:00 a.m.  
Agenda**

**The California State Board of Optometry will meet via telephone on January 5, 2012, beginning at 10:00 a.m. at the following locations:**

- 2450 Del Paso Road, Suite 105, Sacramento, CA 95834
- 8907 Wilshire Blvd. Third Floor, Beverly Hills, CA 90211
- 1919 So. State College Blvd., SC8310 Anaheim, CA 92806
- 75 Alanui Ke Alii Dr. Kihei, Maui, Hawaii, 96753
- 4029 Stresa Way El Dorado, CA 95762
- 329 Bryant Street Suite C, San Francisco, CA 94107
- 4695 MacArthur Court, Suite 310, Newport Beach, CA 92660

**FULL BOARD OPEN SESSION**

1. Call to Order - Establishment of a Quorum
2. Discussion and Possible Action To Initiate a Rulemaking to Adopt California Code of Regulations (CCR), Article 2.1 Sponsored Free Health Care Events – Requirements for Exemption:
  - CCR §1508. Definitions
  - CCR §1508.1. Sponsoring Entity Registration and Recordkeeping
  - CCR §1508.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event
  - CCR §1508.3. Termination of Authorization and Appeal
3. Consideration of Comments Submitted During the 15-Day Comment Period of the Proposed Rulemaking for CCR §1513. Registered Name Only, §1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern, and §1525.1. Fingerprint Requirements
4. Consideration of Comments Submitted During the 45-Day Comment Period of the Proposed Rulemaking for CCR §1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
5. Public Comment for Items Not on the Agenda  
*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code §11125, §11125.7(a)]*
6. Suggestions for Future Agenda Items
7. Adjournment

*Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.*

**NOTICE:** The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Krista Eklund at the Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834, or by phone at (916) 575-7172, no later than one week prior to the meeting. If you have any questions please contact the Board at (916) 575-7170.

2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
(916) 575-7170, (916) 575-7292 Fax  
[www.optometry.ca.gov](http://www.optometry.ca.gov)

**To:** Board Members

**Date:** January 5, 2012

**From:** Dr. Lee Goldstein, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** **Agenda Item 1– Call to Order – Establishment of a Quorum**

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Lee Goldstein, O.D., M.P.A., Board President

Alejandro Arredondo, O.D., Vice-President

Monica Johnson, Secretary

Donna Burke

Alexander Kim, M.B.A.

Kenneth Lawenda, O.D.

Fred Naranjo, M.B.A.

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**To:** Board Members

**Date:** January 5, 2012

**From:** Andrea Leiva  
Policy Analyst

**Telephone:** (916) 575-7182

**Subject: Agenda Item 2: Discussion and Possible Action to Initiate a Rulemaking to Adopt California Code of Regulations (CCR), Article 2.1 Sponsored Free Health Care Events – Requirements for Exemption**

**Action Requested:** First, staff requests that the Board review the proposed language and forms, and make edits if necessary. Second, if this regulatory proposal is to the members' satisfaction, staff requests that the Board approve the proposed language and forms so that staff can begin the regulatory process.

**Background:** Assembly Bill 2699 (Bass, Ch. 270, 2011) added Business and Professions Code (BPC) §901 which requires an out-of-state optometrist to obtain authorization from the Board prior to participating in a sponsored free health care event in California. Care can only be provided free of charge to uninsured/underinsured persons, on a short-term voluntary basis, and in association with a sponsoring entity registered with the Board and the county health department in which the health care services will be provided.

This law can only be implemented with the development of regulations. With the assistance of the Department of Consumer Affairs, the Board has prepared proposed regulations, the registration form for the sponsoring entity and the authorization request form for the out-of-state optometrist.

This proposal will add the following article and regulations to Division 15 of Title 16 of the California Code of Regulations:

**Article 2.1 Sponsored Free Health Care Events – Requirements for Exemption**

1508. Definitions

1508.1. Sponsoring Entity Registration and Recordkeeping

1508.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event

1508.3. Termination of Authorization and Appeal

Please see Attachment 1 for the proposed language, Attachment 2 for the sponsoring entity registration form, and Attachment 3 for the out-of-state optometrist authorization request form.

**Attachments:**

- 1) Proposed Language
- 2) Sponsoring Entity Registration Form
- 3) Out-of-State Optometrist Authorization Request Form

**BOARD OF OPTOMETRY  
PROPOSED LANGUAGE  
DRAFT 2**

**Highlighted text are topics of discussion.**

Add Article 2.5 and Sections 1508, 1508.1, 1508.2, 1508.3 and 1508.4 to Division 15 of Title 16 of the California Code of Regulations to read as follows:

**Article 2.5 Sponsored Free Health Care Events - Requirements for Exemption**

**§1508. Definitions**

For the purposes of Section 901 of the Code:

(a) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of optometry but who holds a current valid license or certificate in good standing in another state, district, or territory of the United States to practice optometry.

(c) "In good standing" means that a person:

- (1) Is not currently the subject of any investigation by any governmental entity or has not been charged with an offense for any act substantially related to the practice of optometry by any public agency.
- (2) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon the person's professional conduct or practice, including any voluntary surrender of license; or,
- (3) Has not been the subject of an adverse judgment resulting from the practice of optometry that the Board determines constitutes evidence of a pattern of incompetence or negligence.

Note: Authority cited: Sections 901 and 3025, Business and Professions Code. Reference: Section 901, Business and Professions Code.

**§1508.1. Sponsoring Entity Registration and Recordkeeping Requirements.**

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the Board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the Board by submitting to the Board a completed Form OPT901-A (01/2012), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The Board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form 901-A on behalf of

the Board. The Board or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of Form OPT901-A (01/2012) in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The Board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by Section 901 as well as a copy of the authorization for participation issued by the Board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the Board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by Section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the Board. In addition, the sponsoring entity shall provide copies of any record required to be maintained by Section 901 of the Code to any representative of the Board within 15 calendar days of the request.

(d) Notice. A sponsoring entity shall place a notice visible to patients at every station where patients are being seen by an optometrist. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:

#### **NOTICE**

Optometrists providing health care services at this health fair are either licensed and regulated by the California Board of Optometry or hold a current valid license from another state and have been authorized to provide health care services in California only at this specific health fair.

For more information, or if you have a complaint or concern please contact the California Board of Optometry at 1-916-575-7170; [www.optometry.ca.gov](http://www.optometry.ca.gov)

(e) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the Board.

(f) Report. Within 15 calendar days following the provision of health care services, the sponsoring entity shall file a report with the Board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

- (1) The date(s) of the sponsored event;
- (2) The location(s) of the sponsored event;
- (3) The type(s) and general description of all health care services provided at the sponsored event; and

- (4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

Note: Authority cited: Sections 901 and 3025, Business and Professions Code. Reference: Section 901, Business and Professions Code.

### **§1508.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event**

(a) Request for Authorization to Participate. An out-of-state practitioner (“applicant”) may request authorization from the Board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the Board to provide those services. Authorization must be obtained for each sponsored event in which the applicant seeks to participate. (Not specific in statute.)

(1) An applicant shall request authorization by submitting to the Board a completed Form OPT901-B (01/2012), which is hereby incorporated by reference, accompanied by a non-refundable and non-transferable processing fee of \$50.

(2) The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the Board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history check. This requirement shall apply only to the first application for authorization that is submitted by the applicant.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the Board shall notify the sponsoring entity and the applicant whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

(1) The Board shall deny a request for authorization to participate if:

(A) The submitted Form OPT901-B (01/2012) is incomplete and the applicant has not responded within seven calendar days to the Board’s request for additional information; or

(B) The applicant has not graduated from an accredited school or college of optometry approved or recognized by the Board; or

(C) The applicant does not possess a current valid license in good standing; or

(D) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial under Section 480 of the Code of an application for licensure by the Board; or

(E) The Board has been unable to obtain a timely report of the results of the criminal history check.

(2) The Board may deny a request for authorization to participate if:

- (A) The request is received less than 20 calendars days before the date on which the sponsored event will begin.
- (B) The applicant has been previously denied a request for authorization by the Board to participate in a sponsored event.
- (C) The applicant has previously had an authorization to participate in a sponsored event terminated by the Board.
- (D) The applicant has participated in **three** or more sponsored events during the 12 month period immediately preceding the current application. **Do we want to restrict the # of times per year? Medical Board does not restrict.**

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1508.3.

(e) Notice. An out-of-state practitioner who receives authorization to practice optometry at a sponsored event shall place a notice visible to patients at every station at which that person will be seeing patients. The notice shall be in at least 48-point type in Arial font and shall include the following statement and information:

#### **NOTICE**

I hold a current valid license to practice optometry in a state other than California. I have been authorized by the California Board of Optometry to provide health care services in California only at this specific health fair.

California Board of Optometry  
916-575-7170  
[www.optometry.ca.gov](http://www.optometry.ca.gov)

Note: Authority cited: Sections 144, 901, and 3025, Business and Professions Code.  
Reference: Sections 144, 480 and 901, Business and Professions Code.

#### **§1508.3. Termination of Authorization and Appeal.**

(a) Grounds for Termination. The Board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

- (1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the Board.
- (2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the Board.
- (3) The Board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The Board shall provide both the sponsoring entity or local government entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the Board may provide the notice to any representative of the sponsored event on the premises of the event.

(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the Board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) Appeal of Termination. An out-of-state practitioner may appeal the Board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act.

(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer or his or her designee may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

Note: Authority cited: Sections 901, and 3025, Business and Professions Code. Reference: Section 901, Business and Professions Code.



STATE BOARD OF OPTOMETRY  
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## SPONSORED FREE HEALTH CARE EVENTS

### REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901

In accordance with California Business and Professions Code §901(d), a non-government organization administering an event to provide health care services to uninsured and underinsured individuals at no cost may include participation by certain health care practitioners licensed outside of California if the organization registers with the California licensing authorities having jurisdiction over those professions. This form shall be completed and submitted by the sponsoring organization **at least 90 calendar days prior to the sponsored event.** *Note that the information required by BPC §901(d) must also be provided to the county health department having jurisdiction in each county in which the sponsored event will take place.*

[Only one form (per event) should be completed and submitted to the Department of Consumer Affairs. The Department of Consumer Affairs will forward a copy of the completed registration form to each of the licensing authorities indicated on this form.]

#### PART 1 – ORGANIZATIONAL INFORMATION

**1. Organization Name:** \_\_\_\_\_

**2. Organization Contact Information (use principal office address):**

Address Line 1

Phone Number of Principal Office

Address Line 2

Alternate Phone

City, State, Zip

Website

County

**Organization Contact Information in California (if different):**

Address Line 1

Phone Number of Principal Office

Address Line 2

Alternate Phone

City, State, Zip

Website

County

**3. Type of Organization:**

Is the organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code?

Yes  No

If not, is the organization a community-based organization\*?

\_\_\_\_ Yes      \_\_\_\_ No

**Organization's Tax Identification Number:** \_\_\_\_\_

**Please describe the mission, goals and activities of the organization (*attach separate sheet(s) if necessary*):** \_\_\_\_\_

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\* A "community based organization" means a public or private nonprofit (including a church or religious entity) that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

<b>PART 2 – RESPONSIBLE ORGANIZING OFFICIALS</b>
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**Please list the following information for each of the principal individual(s) who are the officers or officials of the organization responsible for operation of the sponsoring entity.**

**Individual 1:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
County

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Alternate Phone

\_\_\_\_\_  
E-mail address

**Individual 2:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
County

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Alternate Phone

\_\_\_\_\_  
E-mail address

**Individual 3:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Alternate Phone

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
E-mail address

\_\_\_\_\_  
County

*(Attach additional sheets to list additional principal organizational individuals)*

**PART 3 – EVENT DETAILS**

**1. Name of event, if any:** \_\_\_\_\_

**2. Date(s) of event (not to exceed ten calendar days):** \_\_\_\_\_

**3. Location(s) of the event (be as specific as possible, including address):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Describe the intended event, including a list of all types of healthcare services intended to be provided (*attach additional sheet(s) if necessary*):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. Attach a list of all out-of-state health care practitioners intending to apply for authorization to participate in the event, as known by the organization at the time of submittal of this form. The list should include the name, profession, and state of licensure of each identified individual.**

\_\_\_ *Check here to indicate that list is attached.*

**6. Please check each licensing authority that will have jurisdiction over an out-of-state licensed health practitioner that intends to participate in the event:**

- |                                     |   |
|-------------------------------------|---|
| ___ Acupuncture Board               | ___ Physical Therapy Board  |
| ___ Board of Behavioral Sciences    | ___ Board of Podiatric Medicine   |
| ___ Board of Chiropractic Examiners | ___ Board of Psychology   |
| ___ Dental Board                    | ___ Board of Registered Nursing   |
| ___ Dental Hygiene Committee        | ___ Respiratory Care Board  |
| ___ Medical Board                   | ___ Speech-Language Pathology,<br>Audiology & Hearing Aid Dispensers<br>Board |
| ___ Naturopathic Medicine Committee | ___ Veterinary Medical Board  |
| ___ Board of Occupational Therapy   | ___ Board of Vocational Nursing &<br>Psychiatric Technicians                  |
| ___ Board of Optometry              | ___ Other   |
| ___ Osteopathic Medical Board       |   |
| ___ Board of Pharmacy               |   |
| ___ Physician Assistant Committee   |   |

**Note:**

- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application (Form OPT901-B 01/2012) to the Board.
- The organization and the applicant will be notified in writing by the Board whether authorization for an individual out-of-state practitioner has been granted.

This form, and any attachments, and all related questions shall be submitted to:

California Board of Optometry  
Attn: Sponsored Free Health Care Events  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834

Phone: 916-575-7170  
E-mail: [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov)

- I understand the organization must maintain copies of the following records at the event, and for a period of five years following the provision of health care services, which shall be provided to the Board upon request:
  - a list of all practitioners providing health care services at the sponsored event;
  - an attestation in writing by each practitioner, signed by that practitioner prior to providing services at the sponsored event, that his or her license to practice optometry has not been suspended or revoked pursuant to disciplinary proceedings in any jurisdiction; and
  - copies of all authorizations for participation by out-of-state practitioners issued by the Board to the sponsoring entity.
- I understand that our organization must file a report with the Board within fifteen (15) calendar days following the provision of health care services that includes:
  - the date(s) of the sponsored event;
  - the location(s) of the sponsored event;
  - the type(s) and general description of all health care services provided at the sponsored event; and
  - a list of all practitioners, licensed by the Board or granted authorization

I certify under penalty of perjury under the laws of the State of California that the information provided on this form and any attachment is true and current and that I am authorized to sign this form on behalf of the organization:

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



STATE BOARD OF OPTOMETRY  
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834  
P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov



## REQUEST FOR AUTHORIZATION TO PRACTICE WITHOUT A CALIFORNIA LICENSE AT A SPONSORED FREE HEALTH CARE EVENT

In accordance with California Business and Professions Code Section 901 any optometrist licensed and in good standing in another state, district, or territory in the United States may request authorization from the California Board of Optometry (Board) to participate in a free health care event offered by a local government entity or a sponsoring entity, registered with the Board pursuant to Section 901, for a period not to exceed ten (10) days.

### PART 1 - APPLICATION INSTRUCTIONS

Applicants must complete all parts of this form and enclose the following:

- A processing fee of \$50, made payable to the California Board of Optometry.  
**Note:** If submitting fingerprint cards instead of using Live Scan, please submit an additional \$51 fee, payable to the California Board of Optometry, to process your fingerprint cards for a total fee of \$101. The applicant must pay any costs for furnishing the fingerprints and conducting the criminal history record check. See additional information below.
- A copy of all valid and active licenses and/or certificates authorizing the applicant to practice optometry issued by any state, district, or territory of the United States.
- A letter of verification of license status from each state's Board of Optometry where the applicant is currently practicing.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- A copy of a valid transcript to prove you graduated from an accredited school or college of optometry that is approved or recognized by the Board.
- A full set of fingerprints or a Live Scan inquiry. This will be used to establish your identity and to conduct a criminal history record check. However, this requirement shall apply only to the first application for authorization that you submit.

**Live Scan** is only available in California for residents or visitors. A listing of California Live Scan sites can be found at <http://aq.ca.gov/fingerprints/publications/contact.htm>. Only Live Scan fingerprints completed in California can be accepted. You must fill out a *Request for Live Scan Service* form, which can be obtained from the Board's website at [www.optometry.ca.gov](http://www.optometry.ca.gov).

**Procedure:** You must take the completed form to the service location, pay a fee and your fingerprints will be taken on a glass without ink. The fingerprints will then be transmitted electronically to the DOJ, who then forwards a report to the Board. There is a low rate of rejection with this method and it will take two days to complete.

**Ink on Fingerprint Cards (hard cards).** If you are unable to get your fingerprints completed in California via Live Scan, you may contact the Board in writing to obtain an "8X8" fingerprint card (FD-258). Other States' resident hard cards will not be accepted. **Be sure to type or print legibly in black ink in all the areas on the card asking for personal information, that the card is dated and signed by the official taking the fingerprints, and that your signature is on the card.**

**Procedure:** You must take the hard card to a qualified fingerprint office, e.g., law enforcement, where they will roll your prints, and pay a fee. From the Board's website,



**PART 3 – LICENSURE INFORMATION**

1. Do you hold a valid current active license, in good standing issued by a state, district, or territory of the United States authorizing the unrestricted practice of optometry in your jurisdiction(s)? The term “good standing” means you:

- Are not currently the subject of any investigation by any governmental entity or have not been charged with an offense for any act substantially related to the practice of for which you are licensed by any public agency;
- Have not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon your professional conduct or practice, including any voluntary surrender of license; and
- Have not been the subject of an adverse judgment resulting from the practice for which you are licensed that the Board determines constitutes evidence of a pattern of negligence or incompetence.

No  If no, you are not eligible to participate as an out-of-state practitioner in the sponsored event.

Yes  If yes, list all current licenses, certificates, and registrations authorizing the practice of optometry in the following table. If there are not enough boxes to include all the relevant information please attach an addendum to this form. **Please also attach a copy of each of your current licenses, certificates, and registrations.**

State/ Jurisdiction	Issuing Agency/Authority	License Number	Expiration Date

2. Have you ever had a license or certification to practice optometry revoked or suspended?  
 \_\_\_ Yes \_\_\_ No

3. Have you ever been subject to any disciplinary action or proceeding by an applicable licensing body?  
 \_\_\_ Yes \_\_\_ No

4. Have you ever allowed any license or certification to practice optometry expire without renewal?  
 \_\_\_ Yes \_\_\_ No

5. Have you ever committed any act or been convicted of a crime constituting ground for denial of licensure?  
 \_\_\_ Yes \_\_\_ No

6. If you answered "Yes" to any of questions 2-5, please explain (*attach additional page(s) if necessary*): \_\_\_\_\_

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**PART 4 – SPONSORED EVENT**

1. Name and address of local government entity, non-profit, or community-based organization hosting the free healthcare event (the "sponsoring entity"): \_\_\_\_\_

2. Name of event: \_\_\_\_\_

3. Date(s) & Location(s) of the event: \_\_\_\_\_

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4. Date(s) & Location(s) Applicant will be performing healthcare services (if different):

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5. Please specify the healthcare services you intend to provide: \_\_\_\_\_

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6. Name and phone number of contact person with sponsoring entity or local government entity:

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**PART 5 – ACKNOWLEDGMENT/CERTIFICATION**

I, the undersigned, certify and acknowledge that:

- I have not committed any act or been convicted of a crime constituting grounds for denial of licensure by the Board.
- I am in good standing with the licensing authority or authorities of all jurisdictions in which I hold licensure and/or certification to practice optometry.
- I am responsible for knowing and complying with all applicable practice requirements and standards required of licensed optometrists by the California Business and Professions Code and all regulations of the Board while participating in a sponsored event located in California.
- In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed optometrists.

- I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.
- I will provide the services authorized by this request and Business and Professions Code Section 901 only in association with the sponsoring entity or local government entity listed herein and only on the dates and at the locations listed herein for a period not to exceed 10 calendar days.
- Practice of a regulated profession in California without proper licensure and/or authorization will subject the practitioner to potential administrative, civil and/or criminal penalties.
- The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.
- All information provided by me in this application is true and complete to the best of my knowledge and the Board may, at its discretion, audit and/or verify any information provided by me. By submitting this application and signing below, I am granting permission to the Board to perform such verification and background investigation pertaining to the information I have provided as the Board deems necessary.

**My signature on this application, or copy thereof, authorizes the National Practitioner Data Bank and the Federal Drug Enforcement Agency to release any and all information required by the California State Board of Optometry.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name Printed: \_\_\_\_\_

**Note:** Authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

**NOTICE OF COLLECTION OF PERSONAL INFORMATION**

Disclosure of your personal information is mandatory. The information on this application is required pursuant to Title 16, California Code of Regulations Section 1508.3 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete or denied. The information provided will be used to determine compliance with Article 2.5 of Division 15 of Title 16 of the California Code of Regulations (beginning at Section 1508). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Board at the address and telephone number listed above.

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**To:** Board Members **Date:** January 5, 2012

**From:** Andrea Leiva **Telephone:** (916) 575-7182  
Policy Analyst

**Subject:** **Agenda Item 3: Consideration of Comments Submitted During the 15-Day Comment Period of the Proposed Rulemaking for CCR § 1513. Registered Name Only, §1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern, and §1525.1 Fingerprint Requirements**

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**Action Requested:** First, staff requests that the Board review and fully consider the comments received pertaining to this rulemaking package. A proper response will show adequate consideration of the comments and will thoroughly describe why the comments are being accepted or rejected pursuant to Government Code Section 11346.9, subdivision (a)(5). Staff has provided proposed responses for review and approval.

Second, if the Board's views differ from staff's recommended responses to the comments, staff requests that the Board make any edits necessary to the proposed language in order to create Modified Text. The Board must then approve the Modified Text to initiate a 15-day comment period that will allow the public to address the Modified Text.

Third, if the Board decides to create Modified Text, staff recommends that the Board make a motion to delegate to the Executive Officer the authority to adopt the Modified Text at the expiration of the 15-day comment period, provided the Board does not receive any adverse comments directed at the Modified text.

**Background:** The Board approved proposed regulatory language at its April 11, 2011 meeting. The proposed regulatory language was noticed on the Board's website and mailed to interested parties on May 27, 2011 initiating the 45-day public comment period. The comment period began on May 27, 2011 and ended on July 11, 2011. A regulatory hearing was held on July 11, 2011. One comment of opposition was received pertaining to CCR §1513 and §1514.

At its December 2, 2011 meeting, the Board considered the comment received during the 45-day comment period and approved Modified Text in order to address the comment. The required 15-day comment period for the Modified Text began on December 8, 2011 and ended on December 23, 2011. Three comments in opposition and one comment in support were received pertaining to CCR §1513. The deadline to submit the final rulemaking to the Office of Administrative Law (OAL) is May 27, 2012 .

**Issue/Discussion:**

**Comments Received During the 15-day Comment Period and Proposed Responses from Staff:**

## SUPPORT

**Comment 1:** Adolphus Lages, O.D., comments that as an individual who has worked as Medical Director of Vision Plan of America, and someone who has audited hundreds of optometrists, he agrees with the Board's proposed CCR §1513 as written. He agrees that all items that contain an optometrist's name should contain the full name, including business/appointment cards, receipts, etc.

He also comments that many Fictitious Name Permits that he has seen are almost always altered, and this should be restricted as well.

**Staff Recommended Response:** Accept. The Board acknowledges Dr. Lages' comment of support pertaining to CCR §1513. The Board will consider his comment regarding Fictitious Name Permits at a future meeting, as it is not related to the modified text, or this regulatory package.

## OPPOSITION

Comments were received from Donald Wes Wheadon, O.D., Alexander Lyle Baker, O.D. and Scott Phillip Feldman, O.D. These optometrists oppose CCR §1513 as written for the following reasons:

**Comment 2:** All commentors believe the regulation would present a great personal and professional problem because optometrists would have to change all their professional identification to long, registered names. For example, Dr. Wheadon has been using the alternate name of D. Wes Wheadon for his entire life for all purposes, including optometric advertising.

**Staff Recommended Response:** Reject. This comment only describes the inconvenience that this regulation will present to one optometrist personally, and the Board's main concern is the protection of thousands of California consumers. From 1936 to 1982, CCR §1513 read that an optometrist could not use, in connection with his practice any name other than the one for which he is licensed to practice. It also required that signs, cards, stationary or other advertising had to clearly identify the individual optometrist or optometrists, and had to be free of any ambiguity or possibility of misrepresentation. In 1983, CCR §1513 was amended to read as it does today, but still had the explicit title of "Registered Name Only" and continued to require that optometrists prominently identify themselves.

Since the proposed regulation offers the option for an optometrist to use either their name as registered with the Board (which has been required since 1936) or their license number, it will be much easier to ensure that consumers will be able to identify their optometrist, and will allow optometrists the opportunity to deviate a little from their registered name, just as long as the license number is included.

These regulations are intended to provide information to consumers and increase ease of advertising for optometrists not just now, but in the future. The Board cannot deviate from its mission to hold consumer protection above all other matters because one optometrist will be inconvenienced by a regulation that improves access of information to thousands of patients.

**Comment 3:** All commenters believe the regulation as written would be a huge expense and an unbelievable burden, especially in a down economy.

**Staff Recommended Response:** Reject. If a licensee would have been in compliance with CCR §1513 in the first place, then they would not have to endure a huge expense to recreate signs and stationary. All licensees are expected, as professional health practitioners and business owners, to be in compliance with all laws before even considering investing in any sort of advertising. In regards to the proposal of this regulatory change in a down economy, the Board must continue protecting consumers regardless of the state of the economy because that is the priority of the Board pursuant to Business and Professions Code (BPC) §3010.1.

**Comment 4:** All opposed commenters believe that the purpose of this regulation is to standardize the Board's business procedures so that it is easier to manage. They also believe that this regulation is unnecessary, does not make sense, would force optometrists to jump through more hoops, and would make more work for the Board.

**Staff Recommended Response:** Reject. The amendments to this regulation are not for the purposes of standardizing the Board's business procedures. Further, these regulations are necessary, would not require optometrists to jump through hoops, and would not make more work for the Board. The purpose of this regulation is to increase consumer protection and allow patients to easily access information about who is treating them. Education is the first line of defense against fraud and deception and helps consumers make well-informed decisions before they choose an optometrist to continue examining their eyes.

This regulation would allow the Board and licensees to work in a more efficient manner. As a state licensing agency, whose primary objective is to protect the public, it is only logical that it be possible to easily identify optometrists if a disciplinary action is warranted. Also, as a consumer right, people should be able to use an optometrist's name, license number or address to learn more about who's treating them. The current regulation does not allow this. Clarifying what is required will make this regulation easier to enforce on the Board's end, and add some flexibility and understanding to licensees.

**Comment 5:** Dr. Wheadon and Dr. Baker propose a solution, so that those under the Board's jurisdiction will be allowed to keep their listings as they are. Their solution would require that upon renewal of a license, the Board can ask optometrists to list the alternate names they use so the Board can include them in a database. Once on file, they assume the Board will be able to easily find the alternate name and match it to the optometrist.

**Staff Recommended Response:** Reject. This suggestion is not reasonable and is beyond the Board's capabilities. Allowing licensees to have multiple names on file, whether electronically or on paper, would increase confusion instead of remedy the problem. The License Look-up tool on the Board website already has multiple ways for a consumer to search for an optometrist (first name, last name, address, license number, county, city, or business name). It would not benefit the consumer if a laundry list of alternative names appeared every time they tried to find an optometrist. In addition to confusing the public (which is restricted pursuant to BPC §651), making this recommendation available would be more work for the optometrist because they would constantly have to update their information. If the information was not up to date, this may lead to a new form of violation in law. This in turn would create more work for the Board's staff and may lead to errors when it comes to printing a renewed license, or verifying a license for the optometrist with other professional associations.

Furthermore, the Board's licensing and enforcement computer-based database does not have the capability to support multiple names for one licensee. This regulation's option for an optometrist to use either their name as registered with the Board, or their license number (if they choose to deviate from their registered name slightly) will decrease all confusion and increase efficiency for consumers, the licensee and Board staff.

If an optometrist truly does not want to use their registered name with the Board or include their license number in advertising, they always have the option to obtain a Fictitious Name Permit. Optometrists also have the option of officially changing their name with the Board, but legal documentation will be required.

**Comment 6:** Dr. Baker and Dr. Feldman ask how many cases of mistaken identity have occurred during past complaints over a five year period? They cannot believe there are that many confusing issues. Dr. Baker inquires how many of these mistaken complaints could not be sorted out relatively easily? Presumably, if someone is filing a complaint they have been to the doctor's office and can easily provide an address or phone number. Even if they have not been to the doctor's office and are basing a complaint solely on an advertisement, it would be very poor advertising to not include contact information

for the doctor's office, which again would provide an easy means of accurate identification. Dr. Baker cannot image many instances where a valid complaint would not be supported by an other identification besides the name or nickname of a doctor.

**Staff Recommended Response:** Reject. The statistical information being requested is not subject to disclosure to the public, and the Board cannot comment on enforcement cases open for investigation (See Government Code §6254 (f)). However, it is common for the Board to receive complaints regarding mistaken identity, which could be considered unlicensed practice initially. As simple as it may seem to an individual who is not familiar with the Board's enforcement process that these confusions are easy to solve, it still requires the Board's time, and is costly not only for the Board but all California licensed optometrists, as their licensing fees fund the Board.

Furthermore, many consumers, unfortunately, are not as savvy as Dr. Baker and Dr. Feldman assume, and it is the Board's responsibility to protect these individuals. The reality is that many consumers do not even know they are being treated by an optometrist, and oftentimes Board staff has to direct them to the Medical Board because they were dealing with an ophthalmologist or optician and vice versa.

As unbelievable as it may seem to the commentators that there would be a mistaken identity issue if a consumer solely based a complaint on an advertisement, it does happen, and that is a much bigger issue that is separate from this regulation's jurisdiction and this rulemaking package.

The practice of optometry is changing. Many optometrists are now contracting with multiple health organizations to provide their services, and may not have a principal place of practice where consumers can follow-up if they have questions, a complaint, or need to obtain a prescription or patient records. Or, an optometrist will fill in for a fellow optometrist, and then a patient will have a complaint regarding the fill-in optometrist and they won't remember his or her name. To further emphasize this point, many consumers with complaints will be elderly and again, they will not remember the address of where they went or the name of the optometrist. The same applies to licensees who get married, change their name, and then do not notify the Board about the change.

Also, illustrative of the need for this regulatory change, the Board is finding that there are many optometrists of the same ethnic descent who have the exact same name (e.g., Nguyen). The Board spoke with one of the schools of optometry in California regarding this issue at its public legislation and regulation committee meeting on November 18, 2011, and they shared that they too had issues identifying students who had the same name. As the practice of optometry evolves, and the types of populations that become optometrists changes, it is the Board's duty to adapt and ensure that consumers have an easy way to identify their optometrists. Also, the proposed regulation gives optometrist the option to use their license number if they feel that their name is not considered "attractive" when it comes advertising one's practice. Increasing options is a benefit for all in the long run, not a detriment as the commentators short sightedly suggest.

**Comment 8:** A vague definition of advertising can result in new penalties where none should exist, e.g., if Dr. Baker were to write a letter to an editor extolling his participation in a recent vision screening and the paper did not print his full name or license number, would he be penalized for improper advertising?

**Staff Recommended Response:** Reject. The definition of advertising is not addressed in this regulation, or the Modified Text so this comment is irrelevant for the purposes of this rulemaking. Further, since advertising is not defined in the regulation, and the Board is not attempting to create a definition, the Board would review each particular circumstance to see if something is considered "advertising."

Thus, if this regulation were to become law, Dr. Baker's example regarding a printed article that does not have his full registered name or a license number if needed would have to be reviewed as described above. But, the question arises as to why Dr. Baker would not ensure that the newspaper would print his information in compliance with the law? Again, all licensees are expected, as professional health practitioners and business owners, to be in compliance with all laws before even considering investing in any sort of advertising or free media. This proposal is only clarifying the requirement that optometrists

must use their full name as registered with Board, or their license number to ensure the public can easily find their optometrist.

**Attachments:**

- 1) Comments Received During the 45-day comment period
- 2) Modified Text

Leiva, Andrea@DCA

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**From:** Wheado@aol.com  
**Sent:** Thursday, December 08, 2011 5:08 PM  
**To:** Leiva, Andrea@DCA  
**Subject:** Comment on proposed law regarding Registered Name Change regulations  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Dear State Board Members.

I have been licensed since 1972 and am still practicing in a private practice in West Hollywood Ca. I am now 66 years old and I don't know how many more years I will choose to continue in practice.

My state license and my diplomas list me as my full formal name: **Donald Westbrook Wheadon**. However my professional stationary, sign title, professional societies, insurance, corporate title and so many other names attached to my business life, including the name that people call me and the name I have been known by since childhood, along with my phone listings which is listed as **D. Wes Wheadon, OD**. This is how people look me up to do business with me.

At this point in time it would be a great personal and professional problem and a huge expense as well as an unbelievable burden to change all my professional identification to that long registered name in order to comply with your proposed regulation change.

I realize you probably don't care about my difficulties, and I imagine you need some type of standardization to keep all of the board's business easier to manage, but I figured I would at least make a suggestion that could work for your needs, and allow those in your jurisdiction to keep their listings as they are.

**Suggestion: Perhaps on re licensure you could request the applicant to list the names they use so you could include them in a data base in your files so you could easily find the alternate name and match it to a license holder.**

I am sure all who need to go through elaborate name and sign changes for their business would be willing to pay a fee to you so the name they use could be added to their license name as a DBA.

After all in such simple cases where a person licensed as John uses Jack, his titles and all signs and headings would need changing, and be a great burden for even such a simple change. That is just a crazy waste of money in a down economy!

I realize you are not speaking about fictitious names or DBAs or corporations in this proposed change, but I implore you to consider not imposing this proposed change for doctors who have spent a lifetime using a name than now needs to be changed.

Respectfully

D. Wes Wheadon, OD  
Lic # 5481T

12/9/2011

**Leiva, Andrea@DCA****From:** Adolphus Lages [optlages@yahoo.com]**Sent:** Tuesday, December 13, 2011 8:00 AM**To:** Leiva, Andrea@DCA**Subject:** Fullname**Follow Up Flag:** Follow up**Flag Status:** Red

For the past 5 years I have worked as the Medical Director of Vision Plan of America. In this capacity I have audited hundreds of optometrist offices.

1. I totally agree that all items that contain the optometrist name contain their full name. This would include business/appointment cards, receipts, etc.

Also it should be added, Fictitious Name usage. I continually see on signs, business/appointment cards the following. FNP states "Garden City Eyecare Optometry" as an example. But when I go to the office I see "Garden City Eyecare", with the Optometry missing and other changes.

On receipts I see the FNP also modified, no OD name nor license number.

Adolphus W Lages, O.D.

12/13/2011

**Leiva, Andrea@DCA**

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**From:** alexlylebaker@gmail.com on behalf of Alex Baker OD [drbaker@helmusoptometry.com]

**Sent:** Thursday, December 15, 2011 8:05 PM

**To:** Leiva, Andrea@DCA

**Subject:** Proposed Regulation to Require ODs to Use Full Name or License Number in Advertising  
Hi Andrea,

Hope you're doing well. I'm writing in regard to the proposal to require the full name or license number of an optometrist in all advertising so as to prevent mistaken identity if a complaint is filed. I am in opposition to this regulation on the grounds that it appears unnecessary and costly. First, how many cases of mistaken identity have occurred during past complaints over a 5 year period? How many of these mistaken complaints could not be sorted out relatively easily? Presumably, if someone is filing a complaint they have been to that doctor's office and can easily provide an address or phone number. Even if they have not been to the doctor's office and are basing a complaint solely on an advertisement, it would be very poor advertising to not include contact information for that doctor's office, which again would provide an easy means of accurate identification. I cannot imagine many instances where a valid complaint would not be supported by any other identification besides the name or nickname of a doctor.

The cost and time to reprint all business cards, signage, flyers, and other miscellaneous materials is not insignificant, and I do not believe it is necessitated. Another concern is that a vague definition of advertising can result in new penalties where none should exist. For example, if I were to write a letter to the editor extolling my participation in a recent vision screening and the paper did not print my full name or license number, could I be penalized for improper advertising?

Please express my concern to the board that this is an unnecessary and costly regulation, and I am opposed to it. However, so as not to leave you with any other options, I am in full support of requiring optometrists to register alternate names with the board if they will not be using their full name at all times. This is commonplace when applying for insurance panel participation, and you could alter the license renewal form to include a space to write in any alternate names used in advertising.

Many Thanks,

Alex Baker

(a.k.a. Dr. Alexander Lyle Baker, OD; CA License # 13792 TLG) See how long that is! Yuck!

12/16/2011

**Leiva, Andrea@DCA**

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**From:** scott feldman [scottfeldman@hotmail.com]

**Sent:** Monday, December 19, 2011 11:35 AM

**To:** Leiva, Andrea@DCA

**Cc:** Keith Chow

**Subject:** Full name advertising

COA Board Members,

Really? Another thing for the Board to have to enforce? I do not understand why this is a necessary rule. Granted that a name might be modified slightly from its formal name on a license. There can't be that many confusing issues! Each complaint is going to come from someone in a city or town and all advertising will have associated with it an address or a phone number. I can't believe there is any question who is advertising if someone wants to know that information. This new rule would force some people to change possibly expensive campaigns (I don't have one) and would just be one more hoop we have to jump through and the Board would have to try to enforce. You now have too much for you to keep up with, why add another headache to your lives?

My name is Scott Feldman, I practice in San Jose, Ca and despite the fact that I didn't give you my middle name as it appears on my license I'll bet you can figure out who I am. Please, rules that make sense only. Peace

12/21/2011

# BOARD OF OPTOMETRY

## MODIFIED TEXT

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Amend sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

### **§1513. REGISTERED NAME ONLY AND USE OF LICENSE NUMBER IN ADVERTISEMENTS**

Any All signs, cards, stationary, or other advertising advertisement must clearly and prominently identify the full name of the individual optometrist or optometrists, as listed on their registration or certification, registered with the Board, unless the license or registration number is included in the sign, card, stationary, or advertisement.

Note: Authority cited: Sections 137, 651 and 3025, Business and Professions Code.  
Reference: Sections 651 and ~~3125~~-3078, Business and Professions Code.

### **§1514. RENTING SPACE FROM AND PRACTICING ON PREMISES OF COMMERCIAL (MERCANTILE) CONCERN**

Where an optometrist rents or leases space from and practices optometry on the premises of a commercial (mercantile) concern, all of the following conditions shall be met:

(a) The practice shall be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry. The optometrist shall make every effort to provide for emergency referrals.

(b) The rented space shall be definite and apart from space occupied by other occupants of the premises and shall have a sign designating that the rented space is occupied by an optometrist or optometrists.

(c) ~~The practice shall contain~~ All Any signs, ~~and advertisement advertising, or, and that~~ display shall likewise be ~~shall likewise be the practice as~~ separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

(d) There shall be no legends as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any advertising.

(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he/she is leasing space.

Note: Authority cited: Sections 3025 and 3025.5, Business and Professions Code.  
Reference: Sections 651 and 3025, Business and Professions Code.

## § 1525.1, FINGERPRINT REQUIREMENTS

(a) As a condition of renewal for a licensee who was initially licensed prior to ~~January 1, 1998~~ April 1, 2007, ~~or for whom an electronic record of the submission of fingerprints no longer exists,~~ such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints to the Department of Justice and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(3) This requirement is waived if the license is renewed in an inactive status, or if the licensee is actively serving in the military outside the country. The board shall not return a license to active status until the licensee has complied with subsection (a).

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state and, the United States, and its territories, military court, or other country, omitting traffic infractions under \$300 not involving alcohol, dangerous drugs, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

Note: Authority cited: Sections 144, 3010.1, 3010.5, 3024 and 3025, Business and Professions Code.

Reference: Section 3110, Business and Professions Code; and Section 11105, Penal Code.

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**To:** Board Members

**Date:** January 5, 2012

**From:** Andrea Leiva  
Policy Analyst

**Telephone:** (916) 575-7182

**Subject:** **Agenda Item 4: Consideration of Comments Submitted During the 45-Day Comment Period of the Proposed Rulemaking for California Code of Regulations (CCR) §1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

**Action Requested:** First, staff requests that the Board review and fully consider the comments received pertaining to this rulemaking package. A proper response will show adequate consideration of the comments and will thoroughly describe why the comments are being accepted or rejected pursuant to Government Code §11346.9, subdivision (a)(5). Staff has provided proposed responses for review.

Second, staff requests that the Board review, make any edits necessary and approve the proposed revisions to the language in order to distribute the Modified Text, and initiate a 15-day comment period in order to allow the public to address the Modified Text.

Lastly, staff requests that the Board make a motion to delegate to the Executive Officer the authority to adopt the Modified Text at the expiration of the 15-day comment period, provided the Board does not receive any adverse comments directed at the Modified Text.

**Background:** This rulemaking package updates the Board's disciplinary guidelines to reflect the current enforcement and probationary environment, and adds the mandatory Uniform Standards Related to Substance Abuse pursuant to Senate Bill 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008). These two documents are incorporated by reference in CCR §1575. The Board approved proposed regulatory language at its September 16, 2011 meeting. The proposed regulatory language was noticed on the Board's website and mailed to interested parties on October 21, 2011, initiating the 45-day public comment period. The comment period began on October 21, 2011 and ended on December 6, 2011. The Board received two comments at the regulatory hearing held on December 6, 2011 for this rulemaking package.

#### **Issue/Discussion:**

#### **Comments Received During the 45-day Comment Period and Proposed Responses from Staff:**

#### **Department of Consumer Affairs (DCA) and Center for Public Interest Law (CPIL)**

**Comment:** The regulations as proposed allow the Board to diverge from the Uniform Standards if the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.

Pursuant to Senate Bill 1441, the uniform standards **shall** be used by all healing arts boards dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. Thus, the unambiguous language and intent of the statute are clear: the uniform standards are mandatory. Once a licensee is determined to be a substance-abusing licensee, the uniform standards must be applied. The first paragraph in CCR §1575 states that the Board must “comply” with the standards, which is correct. However, subsection (b) of CCR §1575 conflicts with that paragraph and renders the uniform standards discretionary, when they clearly are not.

DCA and CPIL both recommend that the Board strike all the language in subsection (b) after the word “apply” in the fourth line of the subsection.

**Staff Recommended Response:** The Board accepts this comment. The Board agrees with DCA and CPIL that the uniform standards are mandatory and will amend the language as suggested to comply with Senate Bill 1441.

**Attachments:**

- 1) Proposed Modified Text for CCR §1575
- 2) Comment from Department of Consumer Affairs
- 3) Comment from Center for Public Interest Law

## BOARD OF OPTOMETRY

### MODIFIED TEXT

Changes to the originally proposed language are shown by the double underline for new text and underline with strikeout for deleted text.

Amend section 1575 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

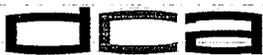
#### **§1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall ~~consider the disciplinary guidelines entitled “Disciplinary Guidelines and Model Disciplinary Orders”~~ comply with the “Uniform Standards Related to Substance Abuse and consider the Disciplinary Guidelines (DG-3 4, 5-99 9-2011) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

(a) Notwithstanding subsection (b), ~~D~~ deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

~~(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensees shall apply, unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.~~

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and ~~11420.21~~, Government Code. Reference: Sections 315, 315.2, 315.4, 480, and 3090, 3091 and 3110, Business and Professions Code; and Sections ~~11400.20, 11400.21~~ and 11425.50(e), Government Code.



## Executive Office

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December 5, 2011

Lee Goldstein, OD  
President  
California State Board of Optometry  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834

**RE: Title 16, CCR section 1575 Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

Dear Dr. Goldstein:

The Department of Consumer Affairs (Department) has concerns regarding the California State Board of Optometry's (Board) proposed regulations, which incorporate the Uniform Standards Regarding Substance-Abusing Licensees (Uniform Standards) into the Board's disciplinary guidelines. I urge the Board to make the following changes to clarify, enhance, and strengthen these regulations:

The regulations as proposed allow the Board to diverge from the Uniform Standards if the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation. While a Board has the ability to identify which standards are applicable to its program, the implementation of these standards, once deemed applicable, are not discretionary and cannot be deviated from, as they are considered minimum standards. Thus unless the licensee can rebut the presumption that they are a substance-abusing licensee the applicable standard, must be applied. The Department recommends the Board amend the proposed regulation to clarify that the Board does not have the discretion to deviate from the Uniform Standards. Please see attachment for recommended amendments.

Thank you for the opportunity to comment on your proposed rulemaking. If you have any questions, please contact Luis Portillo, Manager, Division of Legislative and Policy Review at (916) 574-7800.

Sincerely,

A handwritten signature in cursive script that reads 'Brian J. Stiger'.

BRIAN J. STIGER, Acting Director  
Department of Consumer Affairs

BJS:kd

cc: Luis Portillo, Manager, Division of Legislative and Policy Review  
Mona Maggio, Executive Officer, California State Board of Optometry

**Optometry Board**  
**Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

**Amendment Recommendations**

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**§1575. UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES**

**1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall ~~consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" comply with the "Uniform Standards Related to Substance Abuse" and consider the Disciplinary Guidelines"~~(DG-3-4, 5-99-9-2011) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; Uniform Standards apply to a substance abusing licensee.

- (a) Notwithstanding subsection (b), ~~D~~deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion, determines that the facts of the particular case warrant such a deviation for example: the presence of mitigating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for substance abusing licensees shall apply. unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.

Note: Authority cited: Sections 3025 and 3090, Business and Professions Code; and Sections 11400.20 and ~~11420.21~~, Government Code. Reference: Sections 315, 315.2, 315.4, 480, ~~and 3090, 3091 and 3110~~, Business and Professions Code; and Sections 11400.20, ~~11400.21~~ and 11425.50(e), Government Code.

*\*\*The Department Of Consumer Affairs' proposed deletions are highlighted yellow and in double strikethrough.*



December 6, 2011

Lee Goldstein, OD, President, and Members  
Board of Optometry  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834

re: Proposed Amendments to Section 1575, Title 16 of the CCR:  
Incorporation of SB 1441 Standards Governing Substance-Abusing Licensees  
into the Board's Disciplinary Guidelines: **Support If Amended**

Dear Dr. Goldstein and Members of the Board:

The Center for Public Interest Law (CPIL) respectfully comments on the Board's attempt to amend section 1575, Title 16 of the CCR, which would incorporate by reference into the Board's disciplinary guidelines the "uniform and specific standards ... that each healing arts board **shall use** in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program." (Business and Professions Code section 315(c), emphasis added.)

CPIL is an academic center of research, teaching, learning, and advocacy in regulatory and public interest law based at the University of San Diego School of Law. Since 1980, the Center has studied the state's regulation of business, professions, and trades, and monitors the activities of most state occupational licensing agencies — including the Board of Optometry and the other regulatory boards within the Department of Consumer Affairs (DCA). CPIL has special expertise in the enforcement programs of these agencies, having worked on "enforcement monitor" projects at the State Bar of California, the Contractors' State License Board, and the Medical Board of California. As Medical Board Enforcement Monitor between 2003–05, I was required to audit the Medical Board's "diversion program" for substance-abusing physicians; that program failed my audit (and my audit followed three failed audits conducted by the former Office of the Auditor General in the 1980s).<sup>1</sup> Two and one-half years after my audit, the Medical Board's diversion program failed a fifth audit conducted by the Bureau of State Audits.<sup>2</sup> These two audits prompted the Medical Board to vote unanimously to abolish its diversion program effective June 30, 2008.

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<sup>1</sup> Julianne D'Angelo Fellmeth and Thomas A. Papageorge, *Initial Report of the Medical Board Enforcement Monitor* (Nov. 1, 2004) at Chapter XV.

<sup>2</sup> Bureau of State Audits, *Medical Board of California's Physician Diversion Program: While Making Recent Improvements, Inconsistent Monitoring of Participants and Inadequate Oversight of its Service Providers Continue to Hamper Its Ability to Protect the Public* (Audit No. 2006-116R) (June 7, 2007).

**Center for Public Interest Law ■ Children's Advocacy Institute ■ Energy Policy Initiatives Center**  
5998 Alcalá Park, San Diego, CA 92110-2492 ■ Phone: (619) 260-4806 ■ Fax: (619) 260-4753  
717 K Street, Suite 509, Sacramento, CA 95814-3408 ■ Phone: (916) 444-3875 ■ Fax: (916) 444-6611  
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Reply to:  San Diego  Sacramento

As such, I am quite familiar with “diversion programs” for substance-abusing licensees and with SB 1441 (Ridley-Thomas) (Chapter 548, Statutes of 2008) and its addition of section 315 to the Business and Professions Code. That section required the Department of Consumer Affairs to convene the “Substance Abuse Coordination Committee” (SACC) and charged that Committee with developing (as noted above) “uniform and specific standards [in 16 specific areas] that each healing arts board **shall use** in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.” As I’m sure you know, the SACC convened in 2009 and spent almost two years debating and deliberating the language of all 16 standards; CPIL was active before the Committee during its deliberations, which ended in April 2011 when the Committee finalized the standards. In CPIL’s view, what remains to be done now is the adoption of the standards by each healing arts board via the Administrative Procedure Act’s rulemaking process — which this Board is faithfully attempting through this proceeding.

CPIL has observed various DCA healing arts boards attempt to implement the SB 1441 standards developed by the SACC. Astonishingly, several boards contend that the standards are “discretionary” — that each healing arts board shall “consider” the standards but are not bound by them. CPIL disagrees with this interpretation, as does the Director and General Counsel of the Department of Consumer Affairs; the staff of the Senate Committee on Business, Professions and Economic Development; and the Legislative Counsel in its October 27, 2011 opinion. There is nothing “discretionary” in the language of Business and Professions Code section 315(c); that section explicitly requires each DCA healing arts board to use the standards when dealing with a substance-abusing licensee. The whole point of SB 1441 was to standardize the healing arts boards’ treatment of substance-abusing licensees, “whether or not a board chooses to have a formal diversion program.” [Note also that the legislative intent language in Section 1 of SB 1441 indicates that “[p]atients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.”] The question is how to implement them and apply them properly.

The Board of Optometry has made a valiant attempt toward properly implementing the SB 1441 standards. In its proposed amendments to section 1575, Title 16 of the CCR, the Board has properly distinguished its own “disciplinary guidelines” (from which it has the discretion to deviate in appropriate cases) from the “Uniform Standards Related to Substance Abuse” (which with, as proposed, the Board must “comply”). CPIL has no problem with the first paragraph and subsection (a) of the proposed changes to section 1575.

CPIL also commends the Board for attempting to define the term “substance-abusing licensee” in subsection (b). However, the Board’s proposed language goes on to allow a substance-abusing licensee to “establish that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standards as a term of probation.” CPIL respectfully disagrees with that provision, and suggests that the language of subsection (b) end after the word “apply” in the fourth line.

Either the SB 1441 standards are mandatory or they are not. The unambiguous language and intent of the statute are clear: They are mandatory. Once a licensee is determined to be a substance-abusing licensee, the standards must be applied. Note that some of the standards are internally discretionary and/or need not be used at all in the discretion of the Board — *e.g.*, Standard #4, concerning frequency of drug testing, allows the Board to impose 52-104 drug tests on a substance-abusing licensee during the first year of probation for a substance-abuse-related violation. Standard #5 sets criteria for the use of “group meeting facilitators” if a board chooses to require group meetings, but it does not require any board to mandate group meetings. Standard #7 sets criteria for the use of “worksite monitors” if a board chooses to require worksite monitors, but it does not required any board to mandate worksite monitors. As such, the Standards themselves afford the Board some discretion as to their application.

However, the proposed language of section 1575 is internally inconsistent, and is inconsistent with and unauthorized by Business and Professions Code section 315. The first paragraph of proposed section 1575 states that the Board must “comply” with the Uniform Standards when confronted with a substance-abusing licensee. However, subsection (b) of proposed section 1575 conflicts with the first paragraph by allowing a licensee to “establish” that something less than full application of the Uniform Standards will protect the public. Upon such “establishment,” it would appear that the Board could order something less than required by the Uniform Standards. As such, the first paragraph and subsection (b) are internally inconsistent and render the Uniform Standards discretionary — which they clearly are not, according to the unambiguous language of the statute.

CPIL appreciates the complexity of this issue, and salutes the efforts and good will of this Board in attempting to properly implement the Uniform Standards. However, Business and Professions Code section 315 requires this Board to use the Standards as they have been developed. Nothing in the statute or the Standards allows the Board to vary from the standards upon a showing by a substance-abusing licensee that something less than what is required by the Standards would protect the public. CPIL urges the Board to strike all the language in subsection (b) after the word “apply” in the fourth line of the subsection (see attached).

Thank you for your consideration of these comments.

Sincerely,

  
Julianne D'Angelo Fellmeth  
Administrative Director  
Center for Public Interest Law

cc: Brian Stiger, Director, Department of Consumer Affairs  
Doreathe Johnson, General Counsel, Department of Consumer Affairs  
Michael Santiago, Legal Counsel, Department of Consumer Affairs  
Bill Gage, Chief Consultant, Senate Committee on Business, Professions and Economic Development

**BOARD OF OPTOMETRY**

**PROPOSED LANGUAGE**

Amend section 1575 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

**§ 1575. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Board of Optometry shall ~~consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders"~~ comply with the "Uniform Standards Related to Substance Abuse and consider the Disciplinary Guidelines (DG-3 4, 5-99 9-2011) which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

- (a) Notwithstanding subsection (b), ~~D~~deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.
  
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**To:** Board Members

**Date:** January 5, 2012

**From:** Dr. Lee Goldstein, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** **Agenda Item 5– Public Comment for Items Not on the Agenda**

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The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government code Sections 11125, 11125.7(a)]

Comments from the public:

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[www.optometry.ca.gov](http://www.optometry.ca.gov)

**To:** Board Members

**Date:** January 5, 2012

**From:** Dr. Lee Goldstein, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject: Agenda Item 6– Suggestions for Future Agenda Items**

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Members of the Board and the public may suggest items for staff research and discussion at future meetings.

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**To:** Board Members

**Date:** January 5, 2012

**From:** Dr. Lee Goldstein, O.D.  
Board President

**Telephone:** (916) 575-7170

**Subject:** Agenda Item 7 - Adjournment

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