

BOARD OF OPTOMETRY

INITIAL STATEMENT OF REASONS

Hearing Date: August 13, 2012

Subject Matter of Proposed Regulations: Sponsored Free Health-Care Events

Section(s) Affected: Add Article 2.5 and Adopt Sections 1508, 1508.1, 1508.2 and 1508.3 to Division 15 of Title 16 of the California Code of Regulations (CCR).

Introduction:

On September 23, 2010, Governor Arnold Schwarzenegger signed AB 2699 (Bass, Chapter 270, Statutes of 2010), enacting Business and Professions Code (BPC) Section 901, which took effect January 1, 2011. This statute provides a regulatory framework for certain health-care events at which free care is offered to uninsured or under-insured individuals by volunteer health-care practitioners where those practitioners may include individuals who may be licensed in one or more states but are not licensed in California. Prior to this enactment, licensing laws precluded the participation of volunteers licensed outside of California. BPC Section 901 defines "sponsoring entities," "sponsored events," and "health-care practitioners," and sets forth requirements for registration of sponsoring entities and authorization for participation by practitioners licensed in other states by the various boards responsible for licensure and regulation of healing arts.

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

These proposed regulations would implement, interpret, and make specific the provisions of BPC Section 901 by specifying procedures and forms to be used by sponsoring entities and out-of-state practitioners who desire to participate in sponsored events. The California State Board of Optometry's (hereafter "Board") highest priority is the protection of the public, and these proposed regulations are intended to implement BPC Section 901 in a manner that will provide the greatest protection for the people of California.

According to the author of AB 2699, "Thousands of low-income children, families, and individuals in California are uninsured or underinsured and do not receive basic health, vision, and dental care and screenings. Lack of basic services and preventive care may lead to more serious and costly health, dental, and vision problems. In August 2009, the Remote Area Medical (RAM) Volunteer Corps conducted an eight-day health event in Los Angeles County. Volunteer medical, dental and other health-care practitioners provided \$2.9 million in free services to over 14,000 individuals during the event.

While the event was extremely successful, RAM experienced a shortage of volunteer medical, dental, and vision providers because of restrictions in state laws which prohibit volunteer out-of-state licensed medical personnel from providing short-term services. As a result, thousands of residents needing services were turned away."

To prevent future volunteer shortages at sponsored free health-care events such as RAM, AB 2699 was introduced to permit health-care providers licensed in other states who are willing to help the ability to practice in California for a limited time.

2. Anticipated benefits from this regulatory action:

The implementation of AB 2699 by these proposed regulations will ensure that sponsored free health-care events will not be hampered by shortages of health-care practitioners, and will allow more of these individuals to volunteer.

Factual Basis/Rationale:

Adopt Article 2.5 of Division 15 of Title 16 of the California Code of Regulations (Sponsored Free Health-Care Events – Requirements for Exemption) – The new article, Article 2.5 of Division 15 of Title 16 of the California Code of Regulations specific to “Sponsored Free Health-Care Events – Requirements for Exemption” is being added in order to implement AB 2699.

Adopt Section 1508 (Definitions) – This section is being added to clarify the language of the statute.

Section 1508(a) – Defines “community-based organization” because there is no statutory definition at this time.

Factual Basis/Rationale:

“Community-based organization” is listed in the statute as one type of sponsoring entity. There is no definition of such an entity in state statute. The proposed definition of this term therefore is derived from a federal law (Title 20 USCA section 7801 related to education law) that does contain a definition of “community-based organization.” This definition provides much needed clarity to the term and guidance to applicants regarding qualifications for registration.

Section 1508(b) – Defines “out-of-state practitioner” for the purposes of these regulations to provide clarification as to which practitioners the proposed regulations are intended to affect.

Factual Basis/Rationale:

The statute defines “health-care practitioner” as any person who engages in acts subject to licensure under Division 2 of the BPC. The proposed regulations, along with the operative provisions of BPC Section 901, however, concern specific health-care practitioners licensed to practice optometry in other states and territories. Therefore, in order to provide clarity for the purposes of the text of the regulations, the definition of “out-of-state practitioner” is proposed. The definition is based upon the criteria set forth in BPC Section 901(b).

Section 1508(c) – Defines “in good standing”, which is listed as a requirement in BPC Section 901(b).

Factual Basis/ Rationale:

BPC Section 901 requires that a practitioner be licensed or certified “in good standing” in another state or territory to qualify for an exemption from the licensing requirements, but does not provide a definition or specifics as to what is meant by this term. This section provides specificity regarding eligibility criteria for authorizations granted by the Board per BPC Section 901 for both applicants and staff affected by the proposed regulations.

Section 1508(c)(1) - Specifies that “in good standing” means that a practitioner is not currently the subject of any investigation by a governmental entity or has not been

charged with an offense for any act substantially related to the practice of optometry by any public agency.

Factual Basis/ Rationale:

This proposed section provides that specificity, which is lacking as well as public protection from practitioners who may be under investigation but not yet charged with an offense. This provision is also consistent with the Board's current authority in BPC Section 480 to deny an applicant for licensure who has committed any act substantially related to the qualifications or functions of an optometrist.

Section 1508(c)(2) - Specifies that a practitioner may not have 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 in order to be considered "in good standing".

Factual Basis/ Rationale:

This text provides specificity for applicants, sponsors of events governed by BPC Section 901, and staff regarding eligibility criteria for authorizations granted by the Board per BPC Section 901.

An applicant may hold a current and active license that contains restrictions or conditions that might place patients at risk or limit the care that they may receive. This text provides public protection by stating that those conditions or restrictions would preclude the applicant from volunteering to practice upon patients at sponsored events.

Section 1508(c)(3) – Specifies that to be considered "in good standing", an applicant may not have been the subject of an adverse judgment resulting from the practice of optometry that constitutes evidence of a pattern of incompetence or negligence, as determined by the Board.

Factual Basis/ Rationale:

This proposed text provides public protection against practitioners who may have numerous incidents resulting in an adverse judgment that do not result in disciplinary action against the optometrist license.

It is possible for a practitioner to hold a license "in good standing", but be the subject of an adverse judgment or judgments that reflect a pattern of practice that the Board determines to be incompetent or negligent. The Board intends to protect the public from these practitioners by including this prohibition in the regulatory proposal.

Adopt Section 1508.1 (Sponsoring Entity Registration and Recordkeeping Requirements) – This section is being added to specify the registration and recordkeeping requirements of sponsoring entities.

Section 1508.1(a) – Registration - Establishes a timeframe for submission of a sponsoring entity's registration form and prescribes the registration form to be used and incorporates the form by reference.

Factual Basis/Rationale:

Sponsoring entities are required under BPC Section 901(d) to register with the Board if they will have out-of-state practitioners participating in their sponsored event. The proposed regulation implements the statute by providing a form that a sponsoring entity

can use to meet this requirement, Form 901-A (DCA/2011). The form includes space for all of the required information to be submitted under the statute. Form 901-A would include the following:

- Provide filing requirements and disclosures regarding qualifications for registration as well as deadlines for filing a completed application 90 days in advance of the event.
- Part 1 – Requires the applicant to disclose organization name, organization contact information, type of organization, the organization's tax identification number and if the organization is community-based, disclose its mission, goals and activities.
- Part 2 – Requires the applicant to provide a list of responsible organization officials that includes the name, address, title, phone number, and email address of each responsible official.
- Part 3 – Requires the applicant to disclose event details including: name of the event, date(s) of the event, location(s) of the event, a description of the intended event, a list of all out-of-state health-care practitioners the organization currently intends to apply for the event (name, profession and state of licensure required), and disclose each licensing authority that will have jurisdiction over an out-of-state licensed health-care practitioner.
- Provide notice regarding requirements for each out-of-state practitioner practicing at the event, including submission of the required Form OPT-901-B in advance of the event.
- Provide a notice regarding how the organization will be notified if an individual out-of-state practitioner has been granted authorization to practice.
- Provide notice of the requirements for the maintenance of records for five (5) years in California and for filing a report with the Board within 15 calendar days of the completion of the event.
- Require the applicant to certify their statements under penalty of perjury and attest that the individual is authorized to sign on behalf of the organization.

The foregoing form is necessary to create a process for the Board for review of sponsoring entities, to implement the requirements of BPC Section 901, and to assist with providing detailed information to sponsoring entity applicants regarding the requirements for seeking and maintaining registration. The certification and disclosure requirements also assist in ensuring accurate, timely and complete information is being provided to the Board prior to making a decision to grant or deny registration.

The proposed text also requires that sponsoring entities submit the registration form no later than 90 days prior to the date of the sponsored event. This will allow for sufficient time for staff review of the registration information and to have the registration in place prior to receipt of participation authorization requests from out-of-state practitioners.

Section 1508.1(b) – Determination of Completeness of Form - Allows the Board to, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process a sponsoring entity form, Form 901-A (DCA/2011), on behalf of the Board. This proposed text also specifies that the Board shall inform the sponsoring entity within 15 days of receipt that the form is either complete and the 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 proposed section allows the Board or its delegatee to reject the form if all of the identified deficiencies have not been corrected at least 30 days prior to the event.

Factual Basis/Rationale:

Because sponsoring entities may be required to register with multiple boards under BPC Section 901(d), the proposed regulation allows the Board to delegate the authority to receive and process the registration form to the Department of Consumer Affairs, the umbrella agency of all healing arts boards. Since some applicable boards will be making this delegation and incorporating the same Form 901-A (DCA/2011) by reference, the sponsoring entity need only file one registration form and the Department will notify the boards that the sponsoring entity submitted a complete form. This will streamline the process for approval of such health fairs under the Department of Consumer Affairs, the umbrella agency over all healing arts boards.

The proposed regulation also sets out specific timelines for written notification to the sponsoring entity that their application was received and whether the application is deemed complete and the entity becomes registered, or of the specific deficiencies and means of correction. This provides the sponsoring entity with clear timelines and requires the Department or the Board to give adequate notice to the entity and specific information as to how to correct any deficiencies in a timely manner. The proposed regulation specifies 30 days prior to the event as the date of rejection if all identified deficiencies have not been corrected, so the event sponsor is informed of the final date that deficiencies must be corrected before rejection of the application. The regulation allows for staff time to process completed applications, while giving event sponsors written notification of deficiencies and a deadline.

Section 1508.1(c) – Record Keeping Requirements – Implements and makes specific the recordkeeping requirements of sponsoring entities set forth in BPC Section 901(g).

Factual Basis/Rationale:

BPC Section 901(g) specifies certain records that sponsoring entities must maintain and requires entities to furnish these records upon request to the Board. In order to implement these requirements, the proposed regulation specifies that these records must be kept both at the physical premises of the sponsoring event and at a location in California for the statutorily required five (5)-year period. Having these records available at the event and thereafter, at a location in California, is necessary in order to provide the Board with the ability to inspect and have easier access to the records. The proposed regulation specifies that the records may be kept in either paper or electronic form and that the sponsoring entity shall notify the Board at the time of registration as to the form in which it will maintain its records. This provision makes it clear that the Board will accept either paper or electronic records.

Section 1508.1(d) – Notice Requirement – Specifies that the sponsoring entity shall place a notice visible to patients at every station where patients are being seen by the optometrist and designates what the notice will state and the font size to be used on the notice.

Factual Basis/Rationale:

Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed optometrists in good standing. A member of the public would assume, unless this notice is provided, that optometrists providing optometric services in California would be duly licensed and regulated by the California

State Board of Optometry. The requirement of written notification provides transparency to the public that individuals practicing optometry at the sponsored event are licensed in good standing either in California or by another state, district or territory. This proposed regulation further specifies a statement of disclosure that the California State Board of Optometry has only authorized the practitioner to provide services at the sponsored event and provides the Board's contact information if a concern or complaint needs to be filed.

Section 1508.1(e) – Requirement for Prior Board Approval of Out-of-State Practitioner - Clarifies that the Board's authorization must be provided before a sponsoring entity may allow an out-of-state practitioner to participate in a sponsored event.

Factual Basis/Rationale:

BPC Section 901 provides for authorization requirements for out-of-state practitioners and for registration requirements of sponsoring entities. This proposed regulation connects the two (2) requirements by clarifying that a sponsoring entity may not permit an out-of-state practitioner to participate in its event unless and until it receives authorization from the Board.

Section 1508.1(f) – Report - Specifies the information to be provided in the report required under BPC Section 901(f).

Factual Basis/Rationale:

BPC Section 901(f) requires a report to be filed with the Board by a sponsoring entity within 15 days after a sponsored event and sets forth the minimum information to be included. The statute provides no information as to the form of the report. The proposed regulation makes clear that the report may be in a form of the entity's choosing, and must contain certain specific information to ensure compliance with registration requirements. This information would include: 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 each out-of-state practitioner granted authorization who participated in the sponsored event. The proposed regulation would also include a requirement that the license number for each participating out-of-state practitioner be included in the report. This information is necessary for the Board to identify the participants involved and verify compliance with the minimum standards adopted by the Board.

Adopt Section 1508.2 (Out-of-State Practitioner Authorization to Participate in Sponsored Event)

– This section is being added to specify the requirements for an out-of-state practitioner to participate in sponsored events.

Adopt Section 1508.2(a)(1)-(2) – Request for Authorization to Participate – Provides the mechanism by which an out-of-state practitioner may request authorization to participate in a sponsored event, which would include submission of fingerprint clearances, a completed application and \$40.00 processing fee to the Board.

Factual Basis/Rationale:

BPC Section 901(b) requires an out-of-state practitioner to request authorization from the Board in order to participate in a sponsored event. The statute specifically requires the Board to prescribe a form and set a processing fee for this purpose. The proposed regulations implements BPC Section 901(b) by incorporating proposed Form 901-B (OPT/2011) to be submitted by the out-of-state practitioner to the Board to request

authorization to participate in a sponsored event. The form provides space for the applicant to include all of the information required by the statute. Form 901-B (OPT/2011) would include the following:

- Part 1 – Requires the applicant to provide: a completed application, a \$40.00 processing fee to the Board (or \$89.00 fee if using fingerprint cards (FD-258) provided by the Board), a copy of valid and active license and/or certificates authorizing the applicant to engage in the practice of optometry in another jurisdiction, 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 issued from another jurisdiction, a copy of a valid transcript to prove graduation from an accredited school or college of optometry, any documents or statements requested on the application, and fingerprints.
- Part 2 – Requires the applicant to disclose: name, social security number, contact information, employer, employer's contact information, and name and location of school/college of optometry from which the applicant graduated.
- Part 3 – Requires the applicant to respond regarding: current licensure in another state, district or territory of the United States; revocation or suspension of an optometric license; disciplinary actions taken by applicable licensing bodies; expiration of an optometric license; and additional room to provide an explanation if the applicant responded "yes" to any of the questions above.
- Part 4 – Requires the applicant to provide: name of non-profit or community-based organization hosting the event, name of event, date(s) and location(s) of the event, date(s) and location(s) applicant will be performing health-care services, the health-care services the applicant intends to provide, and the name and phone number of the contact person with the sponsoring entity.
- Part 5 – Requires the applicant to acknowledge and certify the following: (1) certify that the applicant has not committed or been convicted of a crime; (2) certify that the applicant is in good standing with the licensing authorities of all jurisdictions in which they hold a license to practice optometry; (3) agree to know and comply with applicable practice requirements and regulations of the Board; (4) agree to practice only within the scope of his/her licensure; (5) agree to provide services only to uninsured or underinsured persons at no cost; (6) agree to provide services only in association with the sponsoring entity and the event(s); (7) acknowledge that practice without proper licensure may subject the applicant to administrative, civil and/or criminal penalties; (8) agree to permit the Board to notify the licensing authority of the applicant's home jurisdiction of any potential grounds for discipline associated with the event; and, (9) certify that the applicant has read the questions in the application and that all information is true and complete to the best of the applicant's knowledge.
- Notification that completion and submission of the application grants permission to the Board to verify and investigate any information provided.
- Notification regarding collection and use of personal information given on the application.
- Notification that the applicant's signature on the application authorizes the National Practitioner Data Bank (NPDB) and the Drug Enforcement Administration (DEA) to release any and all information required by the Board.

- Notification that authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

The Board has determined that the processing fee of \$40.00 is sufficient to cover the cost of developing the authorization process and processing the request of the health-care practitioner (*See STD. 399, Table A*). Additionally, the regulation's form requires the applicant to submit additional material not specifically listed in the statute. First, the applicant must submit personal identifying information including contact information, the individual's social security number, employer's contact information and either a full set of fingerprints or a Live Scan Inquiry. These requirements are reasonably necessary in order for the Board to verify that an applicant is "in good standing" as required by BPC Section 901, including the requirement of BPC Section 901(b)(1)(B)(i) that the applicant has "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under BPC Section 480." BPC Section 480 authorizes a Board to deny licensure based on an applicant's conviction of a substantially-related crime or the commission of an act substantially-related to the qualifications, functions or duties of a licensed optometrist. A criminal background check cannot be effectuated if the Board does not have the appropriate personal identifying information. Further, the Board is authorized to require applicants to furnish fingerprints for criminal background checks under BPC Section 144 and to require disclosure of Social Security Numbers for all other applicants under Section 30 of the BPC. Further, BPC Section 901(b)(1)(B)(iii) requires a health-care practitioner to agree to comply with all applicable practice requirements set forth in BPC Section 901 and the Board's applicable regulations. This form, with its accompanying attestation provisions, would provide the mechanism to effectuate such an agreement.

BPC Section 901(b) also provides that applicants seeking authorization to participate must meet the educational and experience requirements determined by the Board. The Board has determined that the applicant must have a current valid license to engage in the practice of optometry issued by a state, district or territory of the United States and submit a valid transcript to prove graduation from an accredited school or college of optometry recognized by the Board. It is the opinion of the Board that these are the minimum requirements necessary to protect the public from inexperienced or unqualified practitioners who have not met the Board's full requirements for licensure.

Section 1508.2(b) – Response to Request for Authorization to Participate - Sets forth the standard timeframe in which the Board shall grant or deny the authorization request.

Factual Basis/Rationale:

BPC Section 901(b)(1)(A) provides that the Board shall notify the sponsoring entity within 20 days of receiving a request for authorization to participate whether that request is approved or denied. The proposed regulation sets forth this statutory requirement and clarifies that such a response is due only after a "completed" request is received and requires the Board to notify both the applicant and the sponsoring entity. These additional requirements are necessary to ensure a seamless processing of the application and to provide proper notice to all affected parties.

Section 1508.2(c)(1)-(2) – Denial of Request for Authorization to Participate - Sets forth the criteria under which the Board must or may deny a request for authorization to participate in a sponsored free health-care event.

Factual Basis/Rationale:

BPC Section 901 provides that the Board must authorize the participation of out-of-state practitioners in sponsored events, but does not list specific criteria for denial of authorization other than if a practitioner “fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.” Therefore it is necessary to provide some specific detail of the criteria the Board will use beyond the general authorization to deny an application.

The Board has determined that the failure of an applicant to respond to a request for additional information within seven (7) days will result in an automatic denial of a request. Because the Board has only 20 days in which to grant or deny a request, timing is critical and the Board’s opinion is that failure of an applicant to respond within seven (7) calendar days will sufficiently jeopardize the Board’s ability to effectively review a completed application within the allotted time.

Further, a failure to meet any of the specified requirements determined by the Board and discussed under Section 1508.2(a) of these proposed regulations will constitute an automatic denial of the application. The Board has determined that these criteria are necessary to protect the public from inexperienced or unqualified practitioners who have not met the Board’s full requirements for licensure.

The proposed regulation also sets forth discretionary reasons for denying a request. The first of these is that the application is not received within 20 days prior to the event. BPC Section 901(b)(1)(A) provides that the Board shall use reasonable efforts to notify the sponsoring entity within this time. The proposed regulation provides needed clarity to the statute that if the statutorily required reasonable efforts are not sufficient to review the application in advance of the event, the Board may deny the request. It would be contrary to the Board’s mission of consumer protection to require it to grant authorization to an individual whose request is submitted in such a short time-frame prior to the scheduled event that it cannot adequately be reviewed.

The other discretionary reasons for denial are based upon the past actions of the Board with respect to that particular individual. The Board believes that if an applicant has previously had a request denied or an authorization terminated, this alone may be cause for a subsequent denial. Because the time for review of the authorization is only 20 days, the Board may not have time to revisit the case of an individual who has already been determined by the Board as unfit to participate. The Board feels that it is reasonable to consider this a discretionary decision that may be used on a case-by-case basis to re-evaluate a particular individual’s circumstances as appropriate, if sufficient time exists to do so without compromising public protection. The Board has also determined that it would be against the public interest to permit an applicant to practice, even temporarily for a limited purpose, in this State without a license for more than three (3) sponsored events per year (maximum of 30 calendar days per year). As a result, the Board has specified that grounds for denial of authorization to practice to an out-of-state practitioner would include that an applicant had participated in three (3) sponsored events during the 12-month period immediately preceding the current application.

Section 1508.2(d) – Appeal of Denial - Provides an appeal procedure for an applicant who has had a request for authorization to participate denied by the Board.

Factual Basis/Rationale:

BPC Section 901 allows for the denial of a request for authorization to participate, but does not provide any appeal procedure for the denied individual. In order to provide adequate due process, the Board feels that applicants should have access to the same

appeal procedure available for an out-of-state practitioner who has had his or her authorization terminated. The proposed regulation references the appeal procedure in Section 1508.3 of these proposed regulations, discussed below. This provides consistency in the two appeal processes.

Section 1508.2(e) – Notice Requirement – Specifies that each out-of-state practitioner authorized to participate in a sponsored event must place a written notification at every station at which that person will be seeing patients regarding the practitioner’s license status, the scope of authorization to practice in California, and font size to be used in the notification.

Factual Basis/Rationale:

Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed optometrists in good standing. A member of the public would assume, unless this notice is provided, that optometrists providing optometric services in California would be duly licensed and regulated by the California State Board of Optometry. The requirement of written notification provides transparency to the public that individuals practicing optometry at the sponsored event are licensed and in good standing by another state, district or territory.

This proposed regulation further specifies a statement of disclosure that the California State Board of Optometry has only authorized the practitioner to provide services at the sponsored event and provides the Board’s contact information if a concern or complaint needs to be filed.

Adopt Section 1508.3 - Termination of Authorization and Appeal

This section is being added to specify the procedures for termination.

Section 1508.3(a) – Grounds for Termination - Provides the grounds upon which the Board may terminate the authorization to participate in a sponsored free health-care event previously granted to an out-of-state practitioner.

Factual Basis/Rationale:

The first two grounds for termination in the proposed regulation are consistent with Section 901(j)(1), but are also necessary to provide guidance to the regulated practitioner that failure to comply with the Board’s requirements or commission of an act that would constitute grounds for discipline against a California licensee would similarly be grounds for disciplining the out-of-state practitioner. As an additional ground for termination, this proposed regulation adds the receipt of a credible complaint indicating that the practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner’s services. This provision is necessary in order for the Board to act consistently with its mandate that protection of the public is its highest priority. Because of the permissive and temporary nature of the licensure exemption granted under BPC Section 901 and the limited time in which the Board has to review and verify the qualifications of the out-of-state practitioner, the Board feels that it is essential to act immediately to terminate the authorization to participate when a credible complaint of endangerment is received.

Section 1508.3(b) – Notice of Termination - Specifies that written notice of termination, including the basis for the termination, shall be given to both the sponsoring entity and the out-of- state practitioner. If the written notice is provided during the sponsoring event, then this proposal would permit the Board to provide notice to any representative of the sponsored event on the premises of the event.

Factual Basis/Rationale:

The statute provides that written notice of termination shall be given both to the sponsoring entity as well as to the individual practitioner. This proposed regulation is necessary to clarify that in the event that a termination is issued during the course of a sponsored event, the Board may provide the written termination notice to any representative of the sponsoring entity on the premises of the event. This provision is necessary because the most effective way to notify the entity in a manner that protects the public is at the event itself so that the practitioner will be instructed to cease practice immediately. Further, satisfaction of the Board's notice obligations through service upon any representative at an event would more easily ensure rapid notification to the sponsoring entity of the termination and prevent possible avoidance of service of this notice by the sponsoring entity if service on a specific contact person were required.

Section 1508.3(c) – Consequences of Termination - Sets forth the consequences of a termination of authorization to participate and how the Board will report the fact of such termination to the national practitioner data banks and the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

Factual Basis/Rationale:

BPC Section 901(j)(3) provides that out-of-state practitioners shall not provide services under this statute following a termination of authorization. The proposed regulation specifies that the practitioner shall "immediately" cease participation in the event. The Board believes that this clarification is necessary in the event that a termination is issued during the course of an event. This section prevents any confusion as to when the termination becomes effective and removes any doubt that the practitioner must immediately cease his or her participation as soon as the termination is received.

The proposed regulation also provides that the Board will consider a termination a disciplinary measure that is reportable to the national practitioner data banks and the individual's out-of-state licensing authorities. The Board views these provisions as necessary and logical for public protection. The grounds for termination are those that the Board would consider as disciplinary measures for its own licensees – BPC Sections 475, 480 and violations of the Act. Because the Board does not have licensing authority over the out-of-state practitioner, its only disciplinary remedy is to report the conduct to the individual's home jurisdiction and applicable national practitioner data banks. If the conduct is such that it would lead to action against the practitioner's out-of-state license, then the Board would have that information available to it in the event that the individual applied for either a subsequent authorization to participate in a future sponsored event or a license to practice in California.

Section 1508.3(d) – Appeal of Termination - Provides the procedure for appealing denials of authorizations to participate in sponsored events and terminations of authorizations to participate in sponsored events.

Factual Basis/Rationale:

The statute allows for an out-of-state practitioner who has had his or her authorization to participate terminated by the Board to file a written appeal to the Board within 30 days of receipt of the termination notice. The proposed regulation specifies that this request for appeal shall be considered a request for an informal hearing under the Administrative Procedure Act (APA) (Government Code Sections 11445.10 et seq.). This informal appeals process is a potentially less costly system than the formal APA hearing procedure and is warranted for removal or denial of this type of authorization.

Formal APA appeals can take an average of one (1) year or more, based upon the complexity of the case, to prosecute from the time an appeal is requested. The Board does not anticipate that the issues for a potential appeal of these denials or terminations would be complex (whether requirements of the application had been met or compliance maintained), and there would be a greater need to have such appeals resolved in a fairly short time-frame given the needs of the sponsoring entity. As a result, the Board believes that affording appellants with this informal process provides a simpler and more expeditious alternative to address their appeals while satisfying due process concerns.

Section 1508.3(e) – Informal Conference Option - Provides an alternative to a hearing under the APA for appeals submitted by out-of-state practitioners.

Factual Basis/Rationale:

BPC Section 901(j) allows for the filing of an appeal by an out-of-state practitioner. In addition to the APA procedure set forth in proposed Section 1508.3(d) above, this proposed regulation also offers the appealing out-of-state practitioner the option of an informal conference with the Board's Executive Officer to try and resolve the appeal. This proposed regulation is consistent with the Board's practice for its own licensees who have been issued a citation (BPC Sections 125.9, 148, and California Code of Regulations Title 16, Section 1581) and provides an inexpensive option to ensure the efficient resolution of appeals when possible.

The Registration of Sponsoring Entity Form 901-A (DCA/2011) and the Request for Authorization to Practice without a California License Form 901-B (OPT/2011) are incorporated by reference in these proposed regulations. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. These forms are available on the Board's website and from the Board upon request.

Underlying Data:

1. Assembly Bill 2699 (Chapter 270, Statutes of 2010)
2. Title 20 USC Section 7801
3. Form 901-A (DCA/2011)
4. Form 901-B (OPT/2011)
5. May 18, 2012 Board of Optometry Meeting Minutes

Business Impact:

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following:

Sponsoring entities may incur nominal expenses associated with submitting the registration form to the Board, and complying with recordkeeping requirements, and reporting requirements. Sponsoring entities shall be responsible for submitting the registration Form 901-A (DCA/2011) to the Board. Expenses associated with submitting the registration form include printing and mailing; these expenses are minimal and should not have a significant impact on sponsoring entities. Additionally, sponsoring entities shall be responsible for maintaining copies of all records required by BPC Section 901, as well as the copy of the authorization for participation issued by the Board to an out-of-state practitioner at a physical location in California. The records must be maintained for a period of at least five (5) years after the date the sponsored event ended; the records may be kept in electronic or paper form. The sponsoring entity shall

also be responsible for maintaining copies of all records required by BPC Section 901(g) at the physical location of the sponsored event. Expenses associated with these recordkeeping requirements are nominal and include storage and transportation of the required records; these expenses are minimal and should not have a significant impact on sponsoring entities. Finally, the sponsoring entity shall be responsible for providing a report to the Board summarizing the details of the sponsored event within fifteen days after the conclusion of such event. The report may be provided to the Board on a form of the sponsoring entity's choosing. Expenses associated with these reporting requirements are nominal and include printing and postage; these expenses are minimal and should not have a significant impact on sponsoring entities.

Out-of-state optometrists seeking authorization from the Board to participate in a sponsored event will incur a \$40.00 fee for application processing. Additionally, applicants will incur costs associated with furnishing fingerprints for the purpose of the Board conducting a criminal history check. The cost for a person to get fingerprinted is \$49.00. Of this fee, \$32.00 goes to the Department of Justice for conducting the background check and providing criminal record reports to the Board. The vendor's fee ranges from \$5.00 to \$45.00. For those who are not able to submit fingerprints electronically via Live Scan, the fee for the Board to process "hard cards" fingerprints is \$49.00. These fees will have to be factored into the cost of the individual's volunteered services. The fees may be covered by sponsoring entities.

All the costs described above are necessary for the protection of the public and to provide staff time and resources for registration of sponsored events and volunteer out-of-state practitioners in the short time-frames set in the statute.

These proposed regulations may affect a federally funded State agency or program if that State agency or program is a nonprofit who conducts health fairs in California. It would impose the reporting, recording keeping, and other compliance requirements specified in these proposed regulations and BPC section 901.

The only possible alternative which would lessen any significant adverse impact on business (which includes small business) is to use electronic communication as much as logically possible throughout the authorization process for sponsoring entities and out-of-state optometrists.

Economic Impact Assessment:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because out-of-state practitioners who volunteer at sponsored free health-care events are only authorized to practice in California for a limit of 10 business days per event, three (3) or more times a year. The services these out-of-state practitioners will be restricted to are free, volunteer services for the uninsured or underserved at Board-authorized sponsored free health-care events.
- It will not create new business or eliminate existing businesses within the State of California because businesses operated by California licensees do not normally provide services at no cost. Businesses owned by small business owners may benefit from these regulations if their employees attend sponsored events and are thus provided vision-care at no cost.
- It may affect the expansion of businesses currently doing business within the State of

California if they are a sponsoring entity since these proposed regulations provide for the recruitment of out-of-state practitioners as volunteers, it may encourage other sponsoring entities to coordinate health fairs of their own.

- This regulatory proposal benefits the health and welfare of California residents, specifically, uninsured or under-insured Californians that are currently unable to receive optometric care due to lack of funding and resources. These proposed regulations will permit sponsoring entities to have access to out-of-state optometrists as an additional resource for volunteer recruitment purposes. This will prevent a shortage of optometrists at sponsored free health-care events, in turn increasing access to care.

There may also be benefits to private businesses that are not able to provide vision-care to their employees. Many small businesses are legally required to provide health-care, but are not required to provide vision-care. Their employees could attend these free health-care events to meet their vision needs. This helps the businesses maintain employees with healthy vision so they can continue to work. Poor health in vision can impact the total health of an individual. These regulations will benefit the health of Californians who attend sponsored events, in addition to providing public protection through registration of out-of-state volunteer optometrists.

- This regulatory proposal benefits worker safety because as Californians, they will be able to attend sponsored events to obtain health-care, improving their overall health. Studies have shown that healthy vision improves productivity, thus keeping employees safe to continue to work.
- This regulatory proposal does not affect the state's environment because the focus is increasing access to appropriate vision-care to uninsured or under-insured Californians, not the environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Board is directed by statute to develop these regulations and there is no other method of developing the forms and procedure for registration of sponsoring entities and granting authorization requests by out-of-state practitioners to participate in sponsored events.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- Delay or not promulgate these regulations. This is not reasonable because the statute provides a registration and fee process to be developed by the Board to implement the statute. Failure to create a procedure would defeat the purpose of the statute, which intends to provide an opportunity for out-of-state licensed practitioners to participate in certain free health-care events. A delay is unreasonable due to the statute's sunset date

of January 1, 2014. Because this statute is effective for only three (3) years, the Board must act to implement the required process as soon as possible.