

TITLE 16. CALIFORNIA STATE BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the California State Board of Optometry (hereafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
2420 Del Paso Road, Yosemite Room
Sacramento, California 95834
Monday, August 13, 2012
10:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on Monday, August 13, 2012 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 3025 of the Business and Professions Code, and to implement, interpret or make specific Sections 144, 480 and 901 of said Code, the Board is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

Informative Digest:

The Board currently regulates about 8,000 licensees. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants, investigating complaints against licensees and disciplining licensees for violating the Optometry Practice Act; and monitoring licensees whose licenses have been placed on probation.

Business and Professions Code (BPC) Section 3025 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Optometry Practice Act.

This proposal requires the Board to implement legislation, AB 2699 (Bass, Chapter 270, Statutes of 2010), enacting BPC Section 901. BPC Section 901 provides an exemption, except for what the Board may require, for a health-care practitioner, licensed or certified in another state, from all the licensing and regulatory requirements of the applicable California healing arts board. To be exempted from California licensure requirements, an out-of-state health-care practitioner must be providing services at a sponsored health-care event to uninsured or

underinsured people on a short-term, voluntary basis. BPC Section 901 requires the out-of-state health-care provider to meet certain requirements, and seek authorization from the applicable healing arts board in California. BPC Section 901 provides the regulatory framework for the approval of an out-of-state health-care practitioner and a sponsoring entity to seek approval from the applicable healing arts boards. However, each individual healing arts board is responsible for promulgating regulations to prescribe the specific requirements for the approval of an out-of-state practitioner and a sponsoring entity.

The primary purpose of these proposed regulations is to implement, interpret, and make specific the provisions of BPC Section 901, as it pertains to licensed optometrists, including the application and registration requirements, disciplinary actions, recordkeeping requirements, and provisions for termination for the exemption of an out-of-state licensed optometrist who wishes to participate in a sponsored free health-care event. 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. The Board's 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.

Policy Statement Overview/Anticipated Benefits of Proposal:

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.

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 to practice in California for a limited time.

Consistency and Compatibility with Existing State Regulations:

This Board has evaluated this regulatory proposal, and it is not inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

- Registration of Sponsoring Entity Under Business and Professions Code Section 901 Form 901-A (DCA/2011)
- Request for Authorization to Practice Without a California License At a Sponsored Free

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: It is unknown how many sponsors of free health-care events and how many volunteer out-of-state optometrists may apply to the Board as a result of these regulations. However, the Board estimates that it will receive at least 50 applications per year from out-of-state optometrists seeking authorization to provide services at sponsored free health-care events. In order for the Board to absorb the workload associated with processing the requests for authorization from the out-of-state optometrists, the Board will need to charge a \$40.00 non-refundable processing fee (\$89.00 for individuals who have to submit fingerprints on hard cards and not via Live Scan). This fee will offset the costs associated with staff's processing of the application.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

These proposed regulations will provide the Board with the means to implement, interpret, and make specific BPC Section 901, as it pertains to licensed optometrists, including application and registration requirements, disciplinary actions, recordkeeping requirements, and provisions for termination of authorization for an out-of-state licensed optometrist who wishes to participate in a sponsored free health-care event.

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 fiscal 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 fiscal 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 15 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 fiscal 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. These costs 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 timeframes set in the statute.

This regulation will have a positive impact on the health of uninsured or under-insured Californians that are currently unable to receive vision-care due to lack of funding and resources.

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.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Sponsors of free health-care events and out-of-state practitioners will incur minimal costs to apply and register with the Board in compliance with the statute and these regulations. 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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not have a significant economic impact on small businesses. Instead, the impact of this rulemaking is to offer free health-care to uninsured or under-insured Californians by volunteer health-care practitioners coming from out of state to provide optometric services. These services may benefit small businesses that do not provide vision-care to their employees.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

The proposed regulations impact those out-of-state health-care practitioners applying to the Board to participate in community-based organizations that provide sponsored free health-care events in California. The proposed regulations may provide an opportunity for out-of-state licensed volunteers to participate in community sponsored free health-care events.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and the state's environment:

- 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. Poor health in vision can impact the total health of an individual, such as a diagnosis of glaucoma, which could lead to blindness if left undetected. 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

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Andrea Leiva, Policy Analyst
Address:	2450 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	916-575-7182
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E-Mail Address:	andrea.leiva@dca.ca.gov

The backup contact person is:

Name:	Mona Maggio, Executive Officer
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Website Access: Materials regarding this proposal can be found at <http://www.optometry.ca.gov/lawsregs/propregs.shtml>.