

Final Statement of Reasons

UPDATED OF INITIAL STATEMENT OF REASONS – Addendum to the initial statement of reasons was added to the rulemaking file after the publication of the 45 day notice was made available pursuant to GC 11347.1

The Board has made changes to the initial statement of reasons to clarify and provide the reasons the regulations are necessary.

The applicant is responsible to demonstrating that he or she is responsible for proving that they are competent to practice medicine. Subsequently, this means it is necessary for the applicant to pay for an examination conducted by a physician and surgeon or psychologist when it reasonably appears that the applicant has a mental or physical illness that may affect the competent practice of optometry.

Also, the Board amended the proposed text to include reasonably in the subdivision (a) of 16 CCR Section 1516. The addition of reasonably is necessary in that the discretion to deny a license may not be exercised indiscriminately. The addendum to the initial statement of reasons clarified that it is necessary to include reasonably, ensuring the regulation is applied justly.

The Board has added an addendum to the initial statement of reasons to clarify that the denial of a license would not be automatic. The last sentence in Section 1516, subdivision (a) states, “If after receiving the report of the evaluation the Board determines that the applicant is unable to safely practice, the Board may deny the application.” (Cal. Code Regs., tit. 16, subd. (a).) However, the Initial Statement of Reasons stated, “If the examination determined that their fitness to practice was compromised [sic], then the individual would be denied a license.” (ISR, pg. 2.) The Board will exercise its discretion when denying application – the denial is not automatic. Each situation is differently and the Board needs to be able to determine on a case by case basis if a person is fit to practice.

The Board corrected the authority citation from Business and Professions Code Sections 3023.1 which was repealed by Statutes of 2004, chapter 426 (Assembly Bill 2464), section 19, and replaced by Business and Professions Code sections 3025.1. Additionally, the Board has moved B&P sections 3090 and 3110 from the authority sections for CCR 1582, to reference sections and made section 3025 the sole authority code.

Lastly, the Board also corrected an administrative error which left out part of the authority and reference for this rule making package. Section 3056 and 3057 of the Business and Professions Code was added into authority and Section 3057 of Business and Professions Code was added in to reference.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF NOTICE

The Board did not receive any written or oral comments regarding the proposed regulatory action for the 45 day notice period. Also, the Board did not receive any written or oral comments regarding the changes to the proposed regulatory action during the first 15 day comment period that ran from August 31, 2015 to September 15, 2015.

COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC

There were no comments received during either 15 day comment period.

ECONOMIC IMPACT ON SMALL BUSINESS

Since optometrists can only be self-employed or employed by another optometrist, most if not all are small businesses. This regulation could stop an applicant from obtaining a license, however, if they are denied a license they should not be practicing so there would be minimal to no impact on small business.

No alternative were proposed to the Board that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The Board determined that no reasonable alternative considered or that has otherwise been identified and brought to the Board's 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 proposed actions or would be more cost effective to affected private persons and equally effective implementing the statutory policy or other provision of law.

The amendments adopted by the Board are the only regulatory provisions identified by the Board that accomplish the goal of protecting consumers of optometric services by ensuring that applicants who are unable to practice optometry safely due to a physical or mental illness will not be licensed.