

TITLE 16. 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, September 22, 2014
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, September 22, 2014, 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 sections 3023, 3023.1, 3025, 3090, and 3110 of the Business and Professions Code, and to implement, interpret or make specific sections 475, 480, 481, 482, 3010.1, 3010.5, 3024, 3025, and 3056 of said Code, and section 11522 of the Government Code, the Board is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST:

The Board's highest priority is protection of the public, as mandated by Business and Professions Code (BPC) section 3010.1. To meet this mandate, the Board issues licenses to eligible applicants to practice optometry. The Board also investigates complaints against licenses, disciplines licensees for violation of state law, and monitors licensees placed on probation. BPC section 3025 authorizes the Board to adopt rules and regulations as necessary to administer and enforce the provisions of the chapters of the BPC for which it is responsible. In order to enhance its disciplinary function and strengthen its enforcement program to better achieve its public protection mandate, the Board is proposing the following changes:

Amend Section 1516. Application Review and Criteria for Rehabilitation

Existing law authorizes the Board to compel a licensee to submit to a physical or mental health examination if the licensee's ability to practice in a competent manner may be impaired due to physical or mental illness. Existing law also authorizes the Board to deny a license for any act that would warrant discipline if done by a licensee.

This regulatory proposal would give the Board authority to require an applicant to be examined by one or more physicians and surgeons, or psychologists designated by the Board if it appears that the applicant is unable to practice optometry safely due to a mental or physical illness.

Policy Statement Overview/Anticipated Benefits of Proposal: Adoption of this proposed amendment will allow the Board to prevent these individuals from obtaining a license, resulting in enhanced consumer protection. Specifically, the Board would be permitted to take proactive measures and avoid the current process in place which requires the Board to issue the license first to obtain jurisdiction over the individual, and then order an examination. The licensee is allowed to practice as they wait for their results, putting consumers in potential harm. This proposal would prevent that from happening.

Adopt section 1582. Unprofessional Conduct

Existing law authorizes the Board to take disciplinary action against a licensee or to deny an application for licensure for unprofessional conduct. Existing regulations do not define unprofessional conduct to prohibit a licensee of the Board from the following activities:

- 1) Failing to cooperate and participate in a Board investigation, as long as such action does not infringe upon the licensee's constitutional or statutory rights or privilege;
- 2) Failing to report to the Board within 30 days the bringing of an indictment or information charging a felony against the licensee;
- 3) Failing to report to the Board within 30 days the conviction of the licensee of any felony or misdemeanor;
- 4) Failing to report to the Board within 30 days any disciplinary action related to the practice of optometry taken by another licensing entity state-wide or the federal government, or the United State military; and
- 5) Failing to comply with a court order, issued in the enforcement of a subpoena, to release records.

This regulatory proposal would define the activities listed above as unprofessional conduct.

Policy Statement Overview/Anticipated Benefits of Proposal: Adoption of these proposed amendments further defining unprofessional conduct is expected to enhance consumer protection and allow the Board to complete investigation more quickly. Consumers will be better protected because the Board will be able to take action against licensees who refuse to cooperate in Board investigations or who actively subvert Board investigations.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS:

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal, and it is not inconsistent or incompatible with existing state regulations. Existing regulations currently outline several unprofessional conduct provisions, and set forth disciplinary guidelines. The proposed regulations expand upon these existing provisions and do not contradict or obstruct them in any way.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

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:

The proposed regulatory changes would only affect licensees or applicants who are the subject of Board disciplinary action, if certain violations are committed or a mental or physical evaluation is deemed necessary. A business owned by a licensee that is deemed to be in violation of state law may be affected if the license is revoked, surrendered, or suspended.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with any disciplinary order imposed by the Board and legal fees, if the individual is represented by legal counsel. The disciplinary order impacts vary and could include loss of the licensee's employment income or business if their license is revoked, surrendered, or suspended.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulations may affect small businesses owned by licensees of the Board deemed to be in violation of state law and the license is revoked, surrendered or suspended. However, the Board only has authority to take administrative and disciplinary action against a licensee and not a business. The Board estimates that approximately 1-3 of the Board's licensees will be affected by this proposal.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

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

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees. Health and welfare is increased because this proposal will improve the efficiency of the enforcement process, and address weakness in current law. Also, the Board would be allowed to more quickly prevent individuals who may be in violation of the law from practicing optometry and causing more patient harm. This proposal will have no effect on worker safety or the State's environment.

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:	Robert Stephanopoulos, Policy Analyst
Address:	2450 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	916-575-7182
Fax No.:	916-575-7292
E-Mail Address:	robert.stephanopoulos@dca.ca.gov

The backup contact person is:

Name:	Mona Maggio, Executive Officer
Address:	2450 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	916-575-7170
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E-Mail Address:	mona.maggio@dca.ca.gov

WEBSITE ACCESS:

Materials regarding this proposal can be found at <http://www.optometry.ca.gov/lawsregs/propregs.shtml>.