

BOARD OF OPTOMETRY
INITIAL STATEMENT OF REASONS

Hearing Date: August 2, 2010

Subject Matter of Proposed Regulations: Fictitious Name Permit, Licensing and Examination Requirements

Section Affected: Sections 1518, 1523, 1531, 1532, 1533 and 1561 in Division 15 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose of each Adoption, Amendment, or Repeal:

Amend Section 1518. Fictitious or Group Names - To update subsection (a) of the regulation by correcting the permit fee required to obtain a fictitious name permit from \$10 to \$50. Also to clarify that a permit is to be renewed annually on January 31 and that failure to renew in a timely manner will result in a \$25 delinquency fee.

Amend Section 1523. Licensure and Examination Requirements – To edit all sections of the regulation for grammatical and style purposes. Also updates and clarifies information regarding licensure and examination requirements such as outdated forms incorporated by reference and name changes to exam titles.

Amend Section 1531. Licensure Examination – To edit all sections of the regulation for grammatical and style purposes. Also updates and clarifies information regarding the Board’s licensure examinations.

Amend Section 1532. Re-Examination - To update and clarify information regarding additional re-examination of sections of the national examination and the Board’s laws and regulations examination.

Amend Section 1533. Re-Scoring of Examination Papers - To edit the title of the regulation to “Re-Scoring of California Laws and Regulations Examination Papers” in order to specify the re-scoring of the Board’s California Laws and Regulations Examination since the national exam is handled by the National Board of Examiners in Optometry.

Amend Section 1561. Topical Pharmaceutical Agents Usage – Purpose and Requirements – To reflect the current requirements for the usage of topical pharmaceutical agents. This regulation has not been updated since 1989 and the optometric scope of practice and education provided today far surpasses what this regulation currently requires.

Factual Basis/Necessity:

The amendments to Title 16, CCR sections 1518, 1523, 1531, 1532 and 1561 are necessary for the following reasons:

Section 1518. Fictitious or Group Names

The existing regulation has the incorrect permit fee for Fictitious or Group Names and does not specify a due date for the renewal of Fictitious Name Permits (FNPs).

Effective April 28, 2009, Title 16, CCR 1524 increased all of the Board’s fees, including FNPs, which went from \$10 to \$50. Title 16, CCR section 1524 specifies that FNPs are to be renewed annually. This proposal would reflect the correct amount of the permit fee for FNPs as specified

in Title 16, CCR 1524 and clarify the amount to be paid if the renewal of an FNP is delinquent. This proposal would also establish a specific annual renewal date.

Board staff has found that for processing purposes, a due date of January 31 of each year should be established for the annual renewal of FNPs in order to streamline the process and reduce confusion among licensees. The January 31 date is the best option because the Board's Consumer Affairs System (CAS) is already sending renewal notices to FNP holders approximately 90 days prior to the January 31 date. Furthermore, this proposal would allow the Board to enforce that FNPs be renewed in a timely manner. With a specific due date established, staff will be able to better track when FNPs are delinquent and take disciplinary action when necessary.

Section 1523. Licensure and Examination Requirements

The existing regulation's information is outdated and does not conform to the current technologies used today for the licensure process.

Sub-section (a)(1) is corrected with the date of the updated form used by the Board and is included in this rulemaking file.

Sub-section (b)(2) was updated to include that the schools and colleges of optometry must be accredited. This is a style preference of the Board for clarification purposes.

Sub-section (c) is deleted because applications no longer need to be filed 30 days prior to the date of examination because the Board no longer creates or administers its own licensing examination. The National Board of Examiners and Optometry (NBEO) were approved by the Board to take that responsibility in 1999 pursuant to BPC section 3053. Students take different portions of the NBEO throughout their school career and don't need to get permission from the Board to do so. Previously, the 30 days were needed by Board staff in order to enroll applicants in the Board's original licensing examination. Today, applicants typically submit applications to the Board in their fourth year of optometry school if they are new graduates. If they are out of state optometrists seeking to become licensed in California, applications are submitted whenever all requirements for licensure are in the process of being met. The NBEO then provides the Board with examination results electronically, which the Board inputs into the applicant's file.

Sub-section (d) was added in order to further clarify to applicants that prior to obtaining a license to practice in California, all Board required examinations must be completed with passing grades.

Sub-section (e) is updated to clarify that applicants must get permission from the Board to take the CLRE, not the Patient Management Examination which used to be administered by the Board. The NBEO, not the Board, determines when applicants may take the portion of their examination that deals with patient management, which is typically in an applicant's third year of optometry school.

Also, the Board now contracts with Psychological Services Inc. (PSI) in order to administer the CLRE. Up to August 2009, the NBEO administered the CLRE on the same day that applicants took the final portion of the NBEO examination. Effective January 2010, the NBEO changed their administration format for law examinations to an online version which would not be proctored. The Board decided that for security purposes, it was best to move the administration of the CLRE to a vendor that would provide a proctored environment and various locations for testing. This transition was effective April 1, 2010. The current regulation does not have a procedure in which applicants can be approved to take the CLRE. The proposed language

establishes that applicants must submit an application for licensure in order to take the CLRE. The reason behind this is for application processing purposes. Once an application is received, Board staff can process it into its computer system in order to send an electronic record to PSI, who will then mail an invitation to register and study guide to CLRE candidates.

Sub-section (f) is updated to reflect the correct name of the Clinical Skills portion of the NBEO examination and to clarify that the CLRE must be completed with a passing score in order to obtain a license.

Sub-section (g) is updated for clarity with grammatical edits.

Section 1531. Licensure Examination

Section (a) has been updated with the correct names of the NBEO's licensure examination.

Sub-section (b) has been added in order to clarify that if an applicant took the NBEO examination prior to the versions being amended here, the Board may still accept their score results on a case by cases basis in the evaluation of an application for licensure.

This part of the proposal is necessary in order to inform licensees that earlier forms of the NBEO examinations will be accepted. The NBEO periodically updates and re-organizes their examination in order to better test optometric candidates with the most up to date education. Board staff prefers that the most up to date information be included in their regulations as the practice of optometry evolves.

Section 1532. Re-Examination

Sub-section (a) was removed from this regulation and moved over to Title 16, CCR 1523 above for clarity purposes.

Sub-section (b) of the existing regulation requires that applicants who fail to pass the Patient Management portion of the examination after five consecutive years from the date of the first examination must retake it along with the CLRE. This information is out of date.

This proposal would require that an applicant who fails to pass section II, which is described in the proposed version of Title 16, CCR 1531 included in this rule-making, and the CLRE after a period of five consecutive years from the date of the examination, must re-take sections II and III. The proposal adds section III of the NBEO examination, which is the Clinical Skills portion. This additional section was added because after five years of being unable to pass the NBEO examination and not obtain a license, it is possible that an applicant may not have been able to practice during this time period. The Board wants to make sure that an applicant is still able to perform the skills learned in school or out-of-state adequately during the time they are re-examining. Pursuant to BPC section 3010.1, protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions.

Section 1533. Re-Scoring of Examination Papers

The existing regulation allows applicants to request a re-scoring of their examinations papers for all of the Board's licensing examinations. This information is outdated.

This proposal changes the title of this section to specify that only the CLRE can be re-scored by the Board. The NBEO administers the Board's licensing examination. Applicants who fail any portion of the NBEO examination must contact the NBEO in order to schedule a re-examination. Once the applicant has successfully passed the whole examination, the Board will issue a license. Results are transferred from the NBEO to the Board electronically once a passing

score is achieved. This proposal is necessary to inform licensees and provide them with the correct information regarding licensing examinations.

Section 1561. Topical Pharmaceutical Agents Usage – Purpose and Requirements

The existing regulation was last updated in 1983 and outlines what is required in order to issue a license to an optometrist to use topical pharmaceutical agents. The certification name for an optometrist that may use topical pharmaceutical agents is Diagnostic Pharmaceutical Agents (DPA).

The existing, outdated regulation must be updated to avoid any potential confusion among applicants. Currently, the DPA certification is the lowest level of certification that can be achieved by an optometrist. Applicants can now receive certifications that surpass the DPA option, including:

- 1) Therapeutic Pharmaceutical Agents (TPA) – includes DPA;
- 2) TPA with Lacrimal Irrigation and Dilation (TPL);
- 3) TPA with Primary Open Angle Glaucoma (TPG); and
- 4) TPA with Lacrimal and Glaucoma (TLG).

This proposal adds the name Diagnostic Pharmaceutical Agents to sub-section c of the regulation for clarity purposes. This proposal also updates the names of the required examinations needed in order to obtain DPA certification and deletes the following sections:

Sub-section (b)(2) is deleted because the NBEO “Ocular Pharmacology” examination is now included within the Applied Basic Science portion of the examination, which is described in the updated sub-section (b)(1)(i) of this regulation;

Sub-section (b)(5) is deleted because the Board no longer administers it’s own examination. The NBEO began administering the Board’s licensing examinations in 1999.

Underlying Data:

None

Business Impact

The Board has made an initial determination that the proposed regulatory actions will not have any significant adverse economic impact on businesses.

Specific Technologies or Equipment

The adoption of these regulations does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.