

BOARD OF OPTOMETRY
INITIAL STATEMENT OF REASONS

Hearing Date: July 11, 2011

Subject Matter of Proposed Regulations: Registered Name, Renting Space and Fingerprints

Sections Affected: Sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose of each Adoption, Amendment, or Repeal:

Amend Section 1513. Registered Name Only

To further clarify the use of an optometrist's name in advertising.

Amend Section 1514. Renting Space From and Practicing on Premises of Commercial (Mercantile) Concern

To further clarify that signage is required at commercial/mercantile locations.

Amend Section 1525.1. Fingerprint Requirements

To further clarify which licensees are required to submit fingerprints during the license renewal process.

Factual Basis/Necessity:

The amendments to Title 16, CCR sections 1513, 1514 and 1525.1 are necessary for the following reasons:

Section 1513. Registered Name Only

According to BPC section 651, it is unlawful for an optometrist to disseminate any information that is false or misleading in connection with their professional practice or business. Any person that violates this restriction is guilty of a misdemeanor which could result in the loss of their license to practice optometry.

The existing regulation requires that all signs, cards, stationery or other advertising clearly and prominently identify an optometrist. Upon the Board's review of various optometry websites, signage and other advertising, it was found that it has become a common practice for optometrists to alter their names by either shortening their Fictitious Name Permit, or their first name (such as Stephen to Steve). This is a violation of BPC section 651.

Although the title of this regulation explicitly states "Registered Name Only," it is still unclear to many licensees how they must use their name in their advertising. The proposed amendments to the regulation adds language specifying further that advertising must identify optometrists "as listed on their registration or certification." The changes are non-substantive in nature and for clarification purpose only.

Section 1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern

According to BPC section 651, it is unlawful for an optometrist to disseminate any information that is false or misleading in connection with their professional practice or business. Any person that violates this restriction is guilty of a misdemeanor which could result in the loss of their license to practice optometry.

The existing regulation requires that an optometrist who is practicing in a rented space at a commercial location display all advertising in such a way that it will be clear that the optometrist is separate and distinct from the other occupants. Upon the Board's investigation of office locations or other mercantile locations, it was noted that some locations do not have proper signage indicating who owns the business or who is providing services at the location. This is a violation of BPC section 651.

The proposed amendments to the regulation would further clarify that signage is required at commercial/mercantile locations to indicate that it is owned by an optometrist and the practice is separate and distinct from other occupants. The changes are non-substantive and grammatical in nature in order to clarify what is intended and what is required of the Board's licensees.

Section 1525.1. Fingerprint Requirements

The existing regulation requires optometrists initially licensed prior to January 1, 1998, or for whom an electronic record of the submission of fingerprints no longer exists, to submit fingerprints to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) as a condition of license renewal. The cut-off date of January 1, 1998 does not capture all the licensees that need to meet the fingerprint submission requirement. Further, the additional wording regarding the "existence of records" is not necessary.

After a random review of approximately 100 licensee files, the Board of Optometry (hereafter "Board") found that most of them dated prior to 2007 did not have fingerprints sent to the FBI, only to the DOJ. Thus, in order to fully comply with the fingerprint submission requirement, the proposed amendments to the regulation would change the January 1, 1998 date to April 1, 2007. Changing the date will cover a larger range of licensees who may not be aware that they need to submit fingerprints to the FBI. This proposed amendment to the regulation is necessary to ensure that all Board licensees submit fingerprints to both law enforcement agencies for the purpose of a state and federal criminal records check in order for the Board to implement Business and Professions Code (BPC) section 3110 (k) to protect the public from unethical and possibly incompetent practitioners.

The proposed amendments to the regulation would also remove the language in subsection (a) stating:

..."for whom an electronic record of the submission of fingerprints no longer exists..."

Removing this language would be beneficial for clarity purposes because; 1) if a licensee has never submitted fingerprints as a condition of licensure, there would be no electronic record of the submission of fingerprints in the DOJ's criminal offender record identification database in the first place; and 2) if a licensee only partially completed the fingerprint submission requirement, again there would be no complete electronic record of the submission of fingerprints to both agencies in the DOJ's criminal offender record identification database.

This language confuses licensees and leads them to incorrectly believe that they have fully met the submission of fingerprints requirement when they have not. Because the current regulation is unclear, many licensees are using their incorrect interpretation as an argument to bypass the

fingerprint submission requirement. It has become necessary to make a regulatory change in order for the Board to enforce this statutorily mandated requirement (BPC section 144) and carry out its charge of protecting the public.

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.