

Final Statement of Reasons

UPDATED OF INITIAL STATEMENT OF REASONS

The Board has made changes to the proposed language to adjust other aspects of CCR §1536. Clarifying language was added in regards to continuing education credit for attending a board meeting. Continuing education credit for participating in a Board sponsored workshop was also added. The Board also included two forms, Continuing Education Approval Application and Continuing Education Exemption Request, to be incorporated by reference, to the proposed regulation. The forms will allow the Board to speed up the approval process while making the process fairer for licensees. Lastly, the Board included language that a licensee could have their continuing education requirement waived or the deadline extended at the board's discretion.

Section 1536 subdivision (c)(4) BPC Section 3059 specifies the Legislature's intent for continuing education, stating, in part, that "[t]he public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their license. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board ..."

The Board requires physical attendance as satisfactory "proof" of continuing education. When this section was initially written, webcast capabilities were not available and physical presence at a Board meeting was assumed. Now that the Board meetings are webcast, the Board specified that attendance at a Board meeting must be attended in person in order to verify CE attendance and grant CE credit.

In order to receive CE credit, an optometrist signs in at the meeting and Board staff monitors attendance during the meeting. CE credit is granted only after Board staff verifies the sign in sheet and that the optometrist attended the entire meeting.

If the Board allowed credit through webcast, there would be no means to verify attendance; the Board could not verify if an optometrist watched the entire webcast, and there is no test at the end (like other online CE options) to verify attendance.

Since CE is a condition of renewal – to ensure the optometrist is current with his/her education and industry standards- verifying attendance serves as the "proof" required by statute.

The Board has changed the requirement from two credit hours for a full day board meeting to a credit hour for every two hours. Board meetings vary in length depending on the amount and types of items included in the agenda which could lead to an ambiguity when referring to a "full day." It would be unequal to award the same amount of continuing education credit for board

meetings that could vary in length by several hours. The Board increased the maximum credit hours from two to four to accurately reflect the content and complexity of the Board meetings.

Attending a Board meeting and only receiving a maximum of two hours did not reflect the education the attendee was receiving. Additionally, the Board meetings typically run for the entire day, restricting the CE credit for only 2 hours of credit do not mirror a full day Board meeting. Four credit hours, will give the licensee full credit for attending a Board meeting. The inclusion of the requirement for the open session is to ensure the continuing education credit they are receiving is for part of the board meeting that they can be involved in. The board often goes into lengthy closed sessions where the licensee is not allowed and should not get credit for that time.

The Board corrected an administrative oversight by including “credit” hours when referring to the maximum hours a licensee could earn when attending a Board meeting. This clarifies that the maximum hours are for CE and not the maximum Board meeting hours attended.

Section 1536 subdivision (c)(6) The Board felt that it was necessary to change continuing education in the original proposed language to continuing education to provide clarity. Additionally, as previously stated in the Initial Statement of Reasons, the different systems in the body cannot be compartmentalized; what happens in one part of the human body can have an effect on another. Courses that include parts of the body other than the eye, have relevancy to the function and pathology of the eye making those courses relevant optometrists. The licensees are experts in their field and have the skill and knowledge base to be able to determine what constitutes as contributing to the advancement of their professional skill and knowledge in the practice of optometry. These courses also fall under the same auditing as all the other continuing education courses to maintain an appropriate level of consumer protection.

Section 1536 subdivision (c)(7) The Legislature’s specified intent of continuing education, as stated in BPC section 3059, is that all optometrists “[...] continue their education after receiving their licenses [...]” and that all optometrists “have informed themselves of the developments in the practice of optometry occurring since the original issuance of their license [...].”

The California Laws and Regulations Examination (CLRE), a requirement for licensure, is developed through the Office of Professional Examination Services with the use of Subject Matter Experts (SMEs). SMEs are licensed optometrists who help write, review and assess the CLRE questions to ensure they align with current law and industry standards. Statutes, regulations, and industry standards constantly evolve, and the CLRE must evolve with them in order to ensure consumer protection. Throughout each workshop, SMEs are apprised of law changes and discuss the most current industry standards.

By participating in CLRE development workshops, the SMEs, by default, are informing “themselves of the developments in the practice of optometry occurring since the original issuance of their license.” Therefore, it is appropriate that the SMEs receive equivalent continuing education credit hours to the time spent in each workshop.

The Board set a maximum of eight credit hours from participating in the workshops to ensure licensees have a wide variety of educational credits. Participation in the workshop are beneficial, however, a licensee should not get more than a day’s worth of credit because it would impact the variety of courses they licensee takes.

Section 1536 subdivision (f) The information in the Continuing Education Course Approval Application is necessary to create an efficient administrative and professional review process to allow the Board to process the courses for possible continuing education credit. The detailed course outline and presentation materials are necessary for the members of the Board to determine if the course should be approved for continuing education credit.

The reasons for the specific requirements on the form are below.

- \$50 Mandatory Fee: In current regulation, CCR §1524 (j).
- Additional Information Requested:
 - o Course Schedule: Needed to verify the hours each course is crediting, stated in CCR §1536 (f).
 - o Detailed Course Outline: Needed to determine if the course would meet the requirements for CE courses set out in CCR §1536 and stated in CCR §1536 (f). The form includes detailed to ensure the Board receives enough information from the applicant to evaluate the course.
 - o Presentation materials: Needed to verify CCR §1536 (g)(1), whether the program is likely to contribute to the advancement of professional skills and knowledge in practice of optometry.
 - o Submitted 45 day prior: Need to process the application prior to the course presentation date, also, currently in regulation, CCR §1536 (f).
 - o Course Title and Presentation Date: Needed to be able to identify the course and identify presentation date to follow CCR §1536 (f).
 - o Course Provider Contact Information: Needed to be able to contact provider
- Course Open to All Providers: CCR §1536 (g)(3) requirement.
- Maintain and Furnish Records: CCR §1536 (g)(4) requirement.
- Instructor Name, Contact Information: Necessary to identify and contact the instructor
- Curriculum Vitae and License Number/Type: Needed to satisfy CCR §1536 (g)(2), by allowing the Board to see the instructor’s work history and any citations against their license to help determine if they are in good standing.

- Signature under penalty of perjury: removes the burden on the Board to prove the licensee's situation.

Section 1536 subdivision (i)(2)(3) The sections regarding renewing and active license for the first time, and the Boards ability to grant an extension for good cause are reversed to provide more clarity for the license population.

Section 1536 subdivision (j)(1)(2) The exemption from continuing education requirements, as determined by the board, is needed to allow for licensees who experience unforeseen events which makes it difficult to complete the continuing education requirements within the timeframe. There are situations where the Board believes that a licensee can be exempt from the continuing education requirement or given more time and it not affects consumer protection. The form, Continuing Education Exemption Requests, standardizes the request for continuing education exemption making the process fairer and increases the promptness of the process. The Board requires the form and supporting information 30 days prior to the expiration of the license because it give the board enough time to process and make a determination while not putting an undue burden on the licensee.

It is necessary for the Board to have discretion when determining exemptions from CE requirements because no two situations are alike. Treating exemption requests as a once size fits all would disadvantage some licensees and advantage others.

The reasons for the specific requirements on the form are below.

- Exemption or Extension: The Board needs to have the discursion to determine if the applicant needs to have the CE requirement exemption or an extension. The illness, incapacity or unavoidable circumstance is different for all licensees and waiving or delay needs to be in proportion with that.
 - o The maximum of one year extension is in place to allow the licensee adequate time to take the missing CE while ensuring the licensee is maintaining educational standards with their license, which is on a two year renewal cycle. If the licensee needs more than a year extension then the exemption option is available to the Board.
- License Contact Information: Needed to identify and contact license
- License Expiration Date: The Board requires the form and supporting information 30 days prior to the expiration of the license because it give the board enough time to process and make a determination while not putting an undue burden on the licensee.
- Reason for Request: Directs applicant to the correct section and helps the Board determine the exemption or extension needs of the licensee.
- Part A

- Illness or incapacity: Help the Board determine if the reason is justifiable to CE exemption.
- Completed by physician or health care provider: brings a unbiased third party to make the medical determination.
- Approximate Date Illness Began: Needed to determine how long the illness has impacted their ability to complete CE or if the applicant neglected completing their CE in a reasonable time frame.
 - Permanent vs Temporary: Helps the Board determine if exemption or extension is appropriate for the specific application.
- Name and Contact Information for Health Care Practitioner: Needed to determine if the health care provider is in good standing to make determination.
 - Signature under penalty of perjury: removes the burden on the Board to verify that the health care professional and has the ability to make the medical decision.
- Part B: The Board needs to know what lead up to the circumstance that stopped the applicant from completing the CE requirement to renew their license. There could be situations, which are not illness or incapacity of the licensee that could impact their ability to complete CE. CE is an important consumer protection and should not be waived arbitrarily.
 - Signature under penalty of perjury: removes the burden on the Board to prove the licensee's situation.
- Submission of renewal application and fee: The CE exemption is not to be used to delay paying fees only to address possible exemptions for CE requirements.

Section 1536 subdivision (I) As stated in the Initial Statement of Reasons, the glaucoma continuing educations requirement has been moved to this section for clarity.

THRID 15-DAY NOTICE OF MODIFIED TEXT

The language in the 1st 15-day notice was originally noticed and published on August 8, 2015 which had required written comments be submitted by September 19, 2015. However, due to an administrative oversight, some interested parties may not have the 15 days to respond, so out of an abundance of caution, an additional 15-day comment period on the first and second modifications was provided. The notice did not include any new modified text, as the reposting and the additional 15 day notice is to ensure the public and all interested parties have had the adequate time to alert the Board to any concerns they may have.

LOCAL MANDATE DETERMINATION

The proposed regulations do no impose any mandate on local agencies or school districts.

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

COA: “Ambiguity in transferability of CME courses. There is ambiguity in the transferability of American Medical Association (AMA) CME and American Osteopathic Association (AOA) CME. AMA category 1 courses are not necessarily equivalent to AOA category 1A courses. If these categories of courses do not automatically transfer for physicians, this creates the question whether they should be easily transferable for optometric continuing education (CE) credit.”

CSBO Response: The Board understands that the courses are not interchangeable for physicians; however, believes that the proposed language is clearly outlines the standards for the acceptable CE courses. The proposed language states: “Any CE course approved for category 1 of the American Medical Association or category 1A of the American Osteopathic Association Continued Medical Education...”. COA’s comment about transferability does not pertain to optometrists as they are able to earn either of the CE courses toward the 20 hours of required biennial course work.

COA: “Existing State Board of Optometry (Board) process already approves CME. The Board already has a mechanism in place to allow doctors of optometry to petition to have CME courses applied to their bi-annual CE requirement. Perhaps the process could be further strengthened or clarified to attract more doctors of optometry to utilize this avenue to gain optometric CE credit for CME courses.”

CSBO Response: The petition as described above is stated in CCR §1536 (f). This process is time consuming for the Board and costly to the licensee. Regulations require the applicant shall pay \$50 for having the Board approve a continuing education class (BPC §3152 (j)), 45 days prior to the class (CCR §1536 (f)). The proposed language is to allow another option for licensees to take CE credit while maintaining ample consumer protection.

COA: “Guidelines needed. The proposed regulation would accept any course that contributes to the practice of optometry, as long as it is approved to be in a specific AMA and AOA CME category. It is the responsibility of the individual doctor of optometry to determine if the CME course is related to the practice of optometry. Guidelines are needed to help make the determination if a CME course enhances one’s knowledge of the practice of optometry; this is a broad criterion that could be interpreted differently by each individual.”

CSBO Response: The Board disagrees that guidelines are needed to outline what contributes to the practice of optometry. The continuing medical education, which this language permits, falls under the same guidelines as other continuing education courses. The guidelines allows for a balance between accessibility of courses for the licensees and proper consumer protection. Also, just like the existing CE courses, the CME courses would be subject to an audit. An audit is

in regulation to protect consumers from licensees who choose inappropriate continuing education courses. A licensee is a professional who has an understanding of what is deemed appropriate for the enhancement of the practice of optometry. This language follows the same criteria as all the 50 hours of required continuing education for renewal.

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, ENVIRONMENT, AND WORKER SAFETY

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

There would be no environmental impact with this regulatory proposal.

There would be no impact on worker safety with this regulatory proposal.

The anticipated benefits for this regulatory proposal would be more Board-approved continuing education credit options for the licensees to take. More options for continuing education credits allows for a well-rounded licensee and benefits and protects consumers.

ALTERNATIVES DETERMINATION

The Board, with supporting information, had determined that no reasonable alternative considered or that was otherwise identified and brought to its attention would be 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 action, or would be more cost-effective to affected private persons and equally effective in 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 registered optometrists remain competent in the practice of optometry and follow appropriate ethical and legal standards. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Board's attention.

INCORPORATION BY REFERENCE

Continuing Education Approval Application: This form is a full page form that would be impractical to publish in the California Code of Regulations. Printing the form in the California

Code of Regulations would complicate the regulations rather than inform the licensee. The document is available on the Board's website for the public and is also available by request from the Board.

Continuing Education Exemption Request: This form is a full page form that would be impractical to publish in the California Code of Regulations. Printing the form in the California Code of Regulations would complicate the regulations rather than inform the licensee. The document is available on the Board's website for the public and is also available by request from the Board.

*Both forms that are incorporated by reference were always available upon request to the Board.