

**DEPARTMENT OF CONSUMER AFFAIRS  
CALIFORNIA STATE BOARD OF OPTOMETRY**

**INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing has been scheduled for the proposed action.

**Subject Matter of Proposed Regulations:** Continuing Optometric Education: Purpose and Requirements

**Sections Affected:** Section 1536 of Division 15 of Title 16 of the California Code of Regulations (CCR)

**Specific purpose of each adoption, amendment, or repeal:**

**Background and Statement of the Problem:**

The California State Board of Optometry (Board) currently regulates approximately 9,200 optometrists and 4,200 dispensing opticians. Business and Professions Code (BPC) section 3010.1 provides protection of the public is the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. BPC section 3025 authorizes the Board to make rules and regulations governing the procedure of the Board, the admission of applicants for examination for an optometry license, and the practice of optometry. BPC section 3059 authorizes the Board to adopt regulations that require, as a condition to the renewal thereof, all holders of licenses submit proof satisfactory to the Board they have informed themselves of the developments in the practice of optometry since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the Board or by other equivalent means. Section 3059 requires optometrists certified to use therapeutic pharmaceutical agents to complete 50 hours of continuing education (CE) every two years to renew their certificate. (Bus. & Prof. Code, § 3059, subd. (e).) Thirty-five of the required 50 hours of CE must be on the diagnosis, treatment and management of ocular disease. (*Ibid.*)

Existing law at section 1536 of Title 16 of the CCR establishes CE requirements for optometrists. The purpose of this proposal is to revise and update section 1536, which sets forth CE purposes and requirements for optometry licensees, as required by BPC section 3059. The Board has not updated this section since 2016, and many CE providers have since changed their approach to offering CE, including using the internet to offer courses. This mode of CE has been shown to save money for CE providers and licensees and increases licensees' access to CE. Additionally, with the COVID-19 pandemic, almost all courses that were previously taught in person have moved entirely online. This proposal seeks to clarify existing renewal requirements for licensees,

improve processes for CE providers, further define the parameters of internet/self-study courses, set forth a process for registration of online courses with the Board, and revise a form incorporated by reference used by CE providers to register their classes for approval by the Board.

At the January 31, 2020 Practice and Education Committee (PEC) public meeting, the PEC reviewed proposed changes to section 1536 and recommended approval by the full Board. The full Board, at the May 15, 2020 public meeting, reviewed the proposed text and Form CE-01 and referred the package back to the PEC, which made additional changes to the proposal at the July 31, 2020 public meeting. At the August 13-14, 2020 public meeting the Board reviewed and approved the final proposal. In a series of motions, the Board approved the proposed language and form and delegated authority to the Executive Officer to make any technical, non-substantive changes if necessary. Additional minor changes were approved to the proposal at the August 27, 2021 public meeting.

The Board approved further changes to the text and the form at its November 19, 2021 public meeting. The Board approved further minor changes to the proposal at its August 26, 2022 public meeting.

### **Factual Basis/Rationale**

#### **Amend Section 1536, Continuing Optometric Education; Purpose and Requirements.**

#### **Subdivisions (b) and (i)(2)**

The Board proposes to replace “his or her” with “their” in subdivisions (b) and (i)(2).

#### **Purpose:**

The purpose of the amendments is to make the subdivision gender neutral, as recommended by ACR 260.

#### **Rationale:**

This amendment is necessary to use gender-inclusive language in the Board’s regulations.

#### **Subdivision (c)**

The Board proposes to replace “20” with “25” in subdivision (c).

### Purpose:

The purpose of this amendment is to increase the amount of hours an optometrist may obtain in the categories of CE set forth in subdivisions (c)(1) through (c)(7).

### Rationale:

Existing subdivision (c) allows licensed optometrists to take up to 20 hours of “self-study” CE units per biennial renewal. This proposal increases the maximum to 25 hours per license renewal. Licensees, especially in rural areas, have raised concerns about access to CE and the lack of in-person CE courses in their areas. During the COVID-19 pandemic, CE offerings moved almost entirely online.

This proposal increases the maximum for all categories enumerated in these subdivisions to give licensees additional flexibility to choose and utilize this mode of CE. Additionally, during public comment at Board meetings, most CE providers have indicated the change to online CE only is a permanent one, based on lower costs of delivery for the CE provider and increased access for the licensee. Accordingly, this proposal aligns the regulation with the trend toward the use of online CE.

### Anticipated Benefits:

This proposed amendments provide licensees with additional flexibility in completing their required CE by increasing the minimum permissible online CE and other categories in subdivision (c). The amendment will also benefit CE providers who will have increased flexibility in how they offer CE. This may encourage a broader array of CE offerings, which will enable optometrists to benefit in their education from more diverse course offerings.

### **Subdivision (c)(1)**

The Board proposes to amend subdivision (c)(1) by adding:

- “that is completed by successfully passing a test of the subject matter. The test may include: (1) an interactive test where the licensee submits answers electronically to the educational provider and receives instant feedback on whether the answer chosen by the licensee is correct and why, and whether they have passed the test; or (2) through self-assessment testing (open-book tests that are completed by the licensee, submitted to the provider, graded, and returned to the licensee with correct answers”;

- “For the purposes of this section, “self-study” means a form of learning that does not offer participatory interaction between the licensee and the instructor during the instructional period. This may be accomplished via the following methods:”

### Purpose:

The purpose of the first amendment is to add a test component to authorized self study CE courses to ensure optometrists have completed and achieved proficiency in the self-studied subject matter.

The purpose of the second amendment is to add a definition of “self study,” and therefore, what will constitute qualifying CE under subdivision (c)(1).

### Rationale:

Regarding the test component, some licensees and board members have raised concerns that licensees, using the self-study method for CE credit, may not be fully paying attention to, or participating in the information presented during the course. As an example, some courses offered via the internet might only be played by the user as a video. In the end, when the video finishes, a certificate may be issued for CE credit without the licensee absorbing or paying attention to the information. The proposed amendment to subdivision (c)(1) will add a test component requirement, which may be completed by either of the means specified to measure and ensure the licensee’s understanding of the subject matter presented.

The proposal would define the two methods by which the required test component may be conducted. The first method would allow an interactive test which allows answers to be sent electronically to the CE provider and allows for instant feedback by the CE provider once the course is completed. The second method would allow licensees to test using self-assessment and would require the CE provider to grade and return the test with correct answers. Using the first method, since the CE provider will already be online with the licensee during the live presentation, administering an exam will be simple and ensure understanding. Additionally, after a course, licensees are generally less able to assess their understanding of information presented than a CE provider may be. Through these requirements, a CE provider can ensure the licensee’s mastery of the information presented.

Regarding the self-study definition, the term “self-study” is not currently defined in the regulation, nor are the methods by which self-study may be accomplished. This proposal defines self-study as a form of learning that does not offer participatory

interaction between the licensee and the instructor during the instructional period. The Board has found that licensees occasionally submit courses during a CE audit that are not applicable toward their renewal, such as a review of unrelated material or unapproved YouTube videos. These “courses” are often poorly constituted and may not contain information relevant to the profession. Additionally, the delivery method of self-study is also not defined, and this proposal sets forth methods in which the self-study can be delivered, such as pre-recorded webinars or lectures via the internet and other similar methods.

#### Anticipated Benefits:

The requirement of a test component for CE will help ensure a licensee’s understanding of the CE subject matter. This will enhance public protection by ensuring licensees better understand and retain education received for their practices.

The definition of “self-study” will enhance clarity for optometrists regarding what self-study CE will be accepted by the Board. Board staff and legal counsel involved in enforcement actions and audits will also have more clarity and specificity in reviewing courses that meet the renewal criteria and which courses do not apply to renewal, which enhances public protection.

#### Subdivision (c)(1)(A) – (E)

The Board proposes to add the following categories of authorized self-study to subdivision (c)(1):

- (A) Audio or video pre-recorded teleconferences, webinars, seminars, podcasts, broadcasts, or lectures via the internet.
- (B) CD-ROMs played on a computer.
- (C) Digital video discs.
- (D) Books or materials as part of an independent or home study program.
- (E) Programs or applications on a data-enabled device, such as a computer, tablet, or cellular phone specifically designed for this purpose.

#### Purpose:

The purpose of the amendment is to describe the methods of self-study the Board will accept as permissible CE.

#### Rationale:

- Audio or video pre-recorded teleconferences, webinars, seminars,

podcasts, broadcasts, or lectures via the internet.

This amendment is necessary to provide what formats of CE meet the Board's requirements. The Board chose audio or video pre-recorded teleconferences, webinars, seminars, podcasts, broadcasts, or lectures via the internet because these formats allow the licensee to hear or view CE and these formats can be posted on the internet for easy access.

- CD-ROMs played on a computer.

This amendment is necessary to provide what format of CE meet the Board's requirements. The Board chose CD-ROMS played on a computer because this format allows the licensee to hear or view CE and this format can be easily accessed.

- Digital video discs.

This amendment is necessary to provide what formats of CE meet the Board's requirements. The Board chose digital video discs because this format allows the licensee to hear or view CE and this format can be easily accessed.

- Books or materials as part of an independent or home study program.

This amendment is necessary to provide what format of CE meets the Board's requirements. The Board chose books or materials as part of an independent or home study program because this format allows the licensee to hear CE and this format can be easily accessed.

- Programs or applications on a data-enabled device, such as a computer, tablet, or cellular phone specifically designed for this purpose.

This amendment is necessary to provide what format of CE meets the Board's requirements. The Board chose programs or applications on a data-enabled device, such as a computer, tablet, or cellular phone specifically designed for this purpose because this format allows the licensee to hear or view CE and can be easily accessed.

The allowable delivery methods of self-study are not currently specified in regulation. The Board has found that licensees occasionally submit courses during a CE audit that are not applicable toward their renewal, such as a review of unrelated material or unapproved YouTube videos. Additionally, the Board has found that course providers are unsure what the law authorizes when delivering course content, such as pre-recorded webinars or lectures via the internet and other similar methods. Specifying the allowable methods of self-study provides clarity to licensees and course providers

around the delivery mechanisms of their content.

Anticipated Benefits:

The provision of specific categories and methods of self-study will assist course providers in designing their content and reduce inquiries with the Board regarding what is allowable. Specifying specific methods of self-study will benefit licensees in complying with their renewal requirements. Public protection will be enhanced by licensees taking and completing viable CE content.

**Subdivision (c)(4)**

The Board proposes to replace “in person” with “live” in specifying the means of permitted attendance of Board meetings as an authorized form of CE.

Purpose:

The purpose of the amendment is to expand the permissible means by which an optometrist may attend the Board’s meetings for situations in which “in person” attendance is not possible.

Rationale:

Under existing subdivision (c)(4), licensees may claim up to one hour of self-study credit for every two hours of in-person attendance at a public board meeting. With the advent of the COVID-19 pandemic, public board meetings were held online and could not be attended in person. The Board amends the language to require only that the attendance be live (at the same time as the meeting) by the optometrist.

Anticipated Benefits:

This amendment will allow optometrists to continue to receive CE credit for attending Board meetings. Attending Board meetings benefits licensees by helping keep them abreast of current developments in the practice of optometry. Allowing the live participation to count when it occurs virtually benefits the licensee by encouraging participation in their regulatory body without incurring the cost of a plane ticket or other means of travel. Licensees who attend Board meetings are also able to hear from members of the public.

**Subdivision (c)(7)**

The Board proposes to replace “eight” with “twelve” credits in specifying how many CE

credits licensees will receive for participation as a subject matter expert in the creation of the Board's California Laws and Regulation Examination.

Purpose:

The purpose of the amendment is to increase the amount of credits optometrists can receive for participation as a subject matter expert in the creation of the Board's California Laws and Regulation Examination.

Rationale:

The Board proposes to increase the allowable CE credits to twelve credits because several of the Board's workshops often span two days and sixteen hours. Through the experience of administering these workshops in the last few years, the Board has found that many of the licensees who participate are often missing regular office hours and so are not being paid for their services on a two-day workshop. This proposal will better compensate participants in the workshops.

Anticipated Benefits:

Increasing the number of allowable CE credit from "eight" to "twelve" licensees will receive for participation as a subject matter expert may encourage more participation in workshops. Increased participation in workshops by licensees may lead to the development of test questions that better capture professional competency and proficiency. Public protection will be enhanced by more proficient licensees.

**Subdivision (d)(1)**

The Board proposes to divide subdivision (d) and number them subdivisions (d)(1) and (d)(2).

**Subdivision (d)(2)(A) and (B)**

The Board proposes to establish a new subdivision (d)(2) to provide "[a]ll remaining hours of continuing optometric education shall be obtained through live and interactive course study. For purposes of this section, live and interactive course study is defined as."

The Board defines "live and interactive study" in new subdivisions (d)(2)(A) and (d)(2)(B) as:

(A) In-person lectures, in-person workshops, in-person demonstrations, or



in-person classroom studies which allow participatory interaction between the licensee and the instructor during the instructional period; or

(B) Lectures, webinars, workshops or audio or video conferences delivered via the internet or computer networks in real time, which means online meetings with participatory interaction between the licensee and the instructor presenting the content during the instructional period at the same time.

### Purpose:

The purpose of these amendments is to provide how the hours remaining in the CE requirement of 40 total hours (as provided in subdivision (a)) must be obtained, through live and interactive study, as defined. The Board proposes two kinds of study in new subdivisions (d)(2)(A) and (d)(2)(B) as the types of study that constitute “live and interactive study.”

### Rationale:

BPC section 3059 sets forth requirements that all licensees must continue their education after receiving their licenses, and the TPA-certified licensees must complete 50 hours of CE. Further, proposed subdivision (c) will allow up to 25 hours of required course work to be completed via self-study but does not define how the remaining hours shall be completed.

Setting the standards for what constitutes “live and interactive study” ensures licensees are learning the necessary skills to practice competently and with safety to the patient. It is also necessary to define “live and interactive study” in a manner that preserves the licensees ability to complete their CE entirely online if circumstances, e.g. a pandemic, require it.

### Anticipated Benefits:

Licensees will benefit from better clarity within the law regarding the characteristics of CE that meets the requirements of subdivision (c)(1). Board staff and legal counsel involved in enforcement actions and audits will also benefit from having a more detailed description of the types of CE that will satisfy Board requirements.

Live study that requires participation protects the public because licensees are required to demonstrate competency with the material in order to earn their certificate. Licensees benefit from participating in a CE course that is live and interactive because they are able to engage the instructor and other attendees, ask questions, and contribute to both

their individual learning and that of the group taking the course.

### **Subdivision (e)(1)**

The Board proposes to amend subdivision (e)(1) to define “accredited” to mean recognition from an accrediting agency recognized by the Secretary of the United States Department of Education (USDE).

#### **Purpose:**

The purpose of this amendment is to clarify which CE programs will meet the Board’s standards.

#### **Rationale:**

Board staff has raised concerns about the clarity of the regulation because CE audits have revealed unaccredited optometric schools teaching courses for CE credit. This proposal would provide the schools must be recognized by an accrediting agency recognized by USDE. These accrediting agencies endorse elementary and secondary schools, not-for-profit, non-degree-granting adult schools, and supplementary education programs. This ensures accredited institutions are evaluated extensively and conform to expectations of performance and quality.

#### **Anticipated Benefits:**

Licensees will benefit from better clarity within the law regarding the definition of “accredited.” Licensees will be able to better discern which courses are more suitable for their continued optometric education. In addition, consumers will enjoy enhanced protection since the improved definitions will more clearly specify the kinds of courses the Board considers acceptable for renewal. This will reduce the number of courses that do not contribute to the licensee’s knowledge and continued understanding of optometric care. Accreditation is a robust process that confers upon accredited institutions formal recognition by peers that the institution has met minimum standards of academic quality. Courses offered by accredited institutions have been vetted and designed to meet standards of academic integrity and excellence and are taught by credentialed teachers. Ensuring that licensees receive CE from courses offered by accredited institutions is necessary for public protection to ensure licensees receive CE that contributes to professional competency.

### **Subdivision (e)(3)**

The Board proposes to amend subdivision (e)(3) to clarify that both courses and

activities approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education) are programs meeting the standards of the Board.

Purpose:

The purpose of this amendment is to better capture the various methods of CE offered by COPE for CE.

Rationale:

COPE offerings include lectures, demonstrations, events, and tutorials which may fall within the traditionally understood definition of “courses.” Accordingly, the Board adds the term “activities” to better encompass these means of CE.

Anticipated Benefits:

Providing clarity around the methods of CE offered by COPE will reduce confusion by licensees and workload for staff. Including “activities” will broaden opportunities and availability of relevant CE content for licensees.

**Subdivision (f)**

The Board proposes the following amendments to subdivision (f):

- Addition of “shall be” between “courses” and “approved”;
- Deletion of “as” and insertion of “upon” before “meeting”;
- Addition of “and” between “below,” and “after”;
- Addition of “fee in section 1524, a completed” between “the” and “Continuing”;
- Replacement of the 5/16 revision date of Form CE-01 to 8/22;
- Replacement of the comma with a period;
- Addition of “Form CE-01 shall be submitted” before “to”;
- Deletion of “date” and addition of “commencement” before “of”;
- Addition of “Course approvals shall be valid for two years from the date as approved by the Board. Each individual course shall be assigned a course approval number by the Board.”

Purpose:

The purpose of these amendments is to establish the process for approval of CE courses by: (1) clarifying that courses will be approved upon meeting the criteria in subdivision (g) of the regulation and payment of the required fee; (2) specifying the

revision date of the updated form; and (3) providing how long course approvals are effective and each course will be assigned an approval number.

Rationale:

The Board proposes these amendments to clarify the requirements for obtaining approval for CE courses. The Board clarifies both the fee provided in section 1524 and a completed, revised Form CE-01 (form) must be submitted before the commencement of the program. In addition, the Board provides how long its approval will be valid and it will assign a course approval number to the provider. The Board accepts COPE courses which are valid for two years. Therefore, it mirrors this period for validity of other courses the Board approves for consistency.

Anticipated Benefits:

These amendments will enhance public protection by making requirements for CE providers clearer and requiring them to submit an updated form to obtain approval. Licensees and CE providers will benefit from greater clarity in the law and will be able to offer a more constant course schedule since the course approval lengths will now be two years.

**Amendments to Form CE-01 (Rev 8/22), incorporated by reference in section 1536(f):**

Purpose:

The Board proposes to amend the form to complement amendments proposed to subdivision (f). CE providers are required to use this form to apply for CE approval through the Board's Practice and Education Committee.

Rationale:

The Board proposes to amend the form in the following respects:

- Add the Board's toll-free phone number and delete its fax number;

This amendment is necessary to reflect the current contact information of the Board and inform licensees how to contact the Board.

- Addition of "section" before 1536;

This amendment is necessary to clarify the regulatory section cited.

- Deletion of “applicable” and addition of “\$50 USD” before fee;

This amendment is necessary to reflect the fee is \$50.

- A note that course approvals are valid for two years and a copy of the text of 1536 is attached;

This amendment is necessary so applicants know the length of course approval and are aware of legal requirements.

- Deletion of “detailed” before “topical”;

This amendment is necessary because the Board does not need detailed course outlines to determine whether the course meets the legal requirements.

- Deletion of “and” and insertion of “or”;

This amendment is necessary to specify the applicant can provide either the topical outline or the presentation materials.

- Insertion of “and course learning objectives”;

This amendment is necessary to reflect that continuing education serves to enhance the professional practice of licensees. Course learning objectives are necessary for the Board to determine if the proposed course meets the statutory requirement contained in BPC section 3059 that licensees “have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses.”

- Deletion of “prior to” and addition of “before”;

This amendment is proposed for word economy.

- Addition of “s” after “Date,” deletion of “Presentation,” and deletion of blank date in the chart;

This amendment is necessary to reflect that course dates may not be known to the provider and can be provided more than once.

- Addition of “Course Hours” column;

This amendment is necessary to indicate the proposed length of each course so the

Board is able to track licensee compliance with the CE requirements in section 1535(a) and (b).

- Addition of “Course Category (Select One)” and addition of eight course categories to match categories in subdivision (g)(1) of the regulation;

This amendment is necessary to specify and match the course categories that appear in regulation. Previously, if an applicant did not specify a category of the proposed CE course, the PEC would need to make that determination. This amendment will facilitate the PEC’s review of the course content.

- Addition of “applicant” before “Course Provider Contact Information”;

This amendment is necessary to specify that applicants for course approval must provide contact information, and that individual could be different than the course provider.

- Addition of “Provider Company / Medical Group Name” for the company name, if applicable;

This amendment is necessary to accurately collect information on the types of organizations that provide CE. Medical groups, such as any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program are providers of CE but are not provider companies.

- Deletion of “5/16” and addition of “8/22”;

This amendment is necessary to reflect the date amendments were made to the form.

- Deletion of “Name” and addition of “Point of Contact”;

This amendment is necessary to specify the person the Board should contact regarding the application for CE course approval. Under the current form, applicants often put down the name of the individual who filled out the application which can be a different person than who is responsible for the course content.

- Deletion of “First,” “Last,” and “Middle”;

This amendment is necessary given the deletion of “name” and addition of “Point of Contact.” This amendment allows for a point of contact to be an email address supplied by the applicant.

- Deletion of “Mailing Address” and addition of “Contact Information”;

This amendment is necessary to avoid any confusion if and when the Board needs to contact the applicant or provider. Mailing address is deleted because a mailing address is not always the same thing as a physical address.

- Addition of “dates, and places of the course, course completion certificates”;

This amendment is necessary to ensure the Board is able to carry out its consumer protection mandate and determine compliance with CE requirements contained in BPC section 3059 which requires that licensees “have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses” and for audit purposes pursuant to section 1536(k) which provides that the Board may conduct an audit of any licensee's attendance of a continuing optometric education course as a means of verifying compliance.

- Deletion of “three” and addition of “four”;

This amendment is necessary to strengthen the Board’s ability to perform CE audits by providing additional time in which to conduct an audit and ensure licensees are complying with BPC section 3059 which requires that licensees “have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses.”

- Addition of “Based on the definition in section 1536(c)(1), will the course be self-study?” and yes or no boxes;

This amendment is necessary to help the Board determine whether a proposed course complies with section 1536(c).

- Addition of “If self-study, will a test component as defined in section 1536(c)(1) be required to determine the licensee’s understand and knowledge of the course?” and yes or no boxes;

This amendment is necessary to help the Board determine whether a proposed course complies with section 1536(c)(1).

- Addition of “Based on the definition in section 1536(d)(2), is this a live and interactive course?” and yes or no boxes;

This amendment is necessary to help the Board determine whether a proposed course complies with section 1536(d)(2).

- Addition of “Does the provider agree to not use the Board’s letterhead, seal or logo on any course certificates, advertising or solicitation?” and yes or no boxes;

This amendment is necessary to prevent unauthorized advertising of Board approval on any CE courses. The unauthorized use of the Board’s letterhead, seal, or logo on any course certificates, advertising or solicitation is harmful to the public because it falsely conveys the item in the advertisement has been sanctioned or authorized by the Board.

- Addition of “If live and interactive, which measures of participatory interaction apply to your course?” and choices of participant attendance reports, in-Content quizzes, participant polls, participant video required, record of participant log for in and out times;

This amendment is necessary to help the Board determine whether a proposed course complies with section 1536(g)(6).

- Addition of “How many credit hours are desired for approval? Pursuant to section 1536(d), a credit hour is defined as one classroom hour, not less than 50 minutes” and line for amount of hours;

This amendment is necessary to determine compliance with section 1536(d).

- Addition of “each” and “attachment,” and deletion of “sheet of paper”;

This amendment is necessary to determine if there are more than one instructor teaching the course. “Attachment” is added and “sheet of paper “ deleted for word economy and clarity.

- Addition of “Check this box if the instructor does not have a license”; and

This amendment is necessary to determine if the instructor is licensed by the Board.

- Addition of Notice of Collection of Personal Information.

This amendment is necessary to provide notice of the collection of personal information as required by the Information Practices Act, including Civil Code section 1798.40

#### Anticipated Benefits:

The Board makes amendments to the form to clarify requirements for CE providers and to create an orderly and streamlined process for course approval. This will enhance



Board efficiency in reviewing applications and will enhance public protection by ensuring CE complies with the law.

### **Subdivision (g)(1)(A)-(H)**

The Board proposes to delete the period at the end of subdivision (g)(1), add “, including the following subject matter areas,” and add the following categories of CE subject matter:

- (A) Patient care management,
- (B) Ocular and systemic signs or symptoms of related disease,
- (C) Child abuse detection,
- (D) Clinical optometry
- (E) Ethics in the practice of optometry,
- (F) Elder abuse detection,
- (G) Pharmacology/Schedule II Drug Prescribing and Abuse Prevention,
- (H) Any categories in the diagnosis, treatment, and management of ocular disease as set forth in Section 3059(e) of the Business and Professions Code.

### **Purpose:**

Subdivision (g) sets forth the Board’s criteria for judging and approving CE courses for CE credit. Currently, the regulation does not provide any subject matter areas, making it difficult for applicants to evaluate whether their course might be approvable for CE. The purpose of these amendments are to specify the CE subject matter areas the Board will consider approving.

### **Rationale:**

The Board adds (g)(1)(A)-(H) to specify subject matter areas to assist it in determining whether proposed CE courses are applicable to the practice of optometry. BPC section 3059 requires some optometrists to take CE in specific topics, but the statute also requires the Board to encourage the taking of CE in other areas, such as in pharmacology, or child abuse detection. An optometrist certified to use therapeutic pharmaceutical agents must take thirty-five of the required 50 hours on the diagnosis, treatment, and management of ocular disease. BPC section 3059(e)(1) requires the area of glaucoma, which the proposed regulation covers in section 1536(g)(1)(A) and (H). BPC section 3059(e)(2) and (3) require the area of ocular infection and ocular inflammation, which the proposed regulation covers in section 1536(g)(1)(B) and (H). BPC section 3059(e)(4)-(6) require the areas of topical steroids, systemic medication, and pain medication including the risks of addiction associated with the use of Schedule

II drugs and BPC section 3059(f) encourages every optometrist to take a course or courses in pharmacology and pharmaceuticals, which the proposed regulations cover in section 1536(g)(1)(G). BPC section 3059(g) and (h) both require the Board consider requiring courses in child and elder abuse detection, which the proposed regulation covers in section 1536(g)(1)(C) and (F). Section 1536(g)(1)(D), Clinical Optometry, and section 1536(g)(1)(E), Ethics in the Practice of Optometry, are specific content areas of CE that the Board has determined are necessary for licensees to demonstrate that they have kept abreast of current and recent developments in the practice of optometry, pursuant to BPC section 3059(a), which states in relevant part that the “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 that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board.”

#### Anticipated Benefits:

These amendments enhance public protection by establishing subject matter areas for courses. Providing a list of subject matter areas assists applicants in applying for course approval and assists the Board in carrying out its consumer protection mandate.

#### **Subdivision (g)(4)**

The Board proposes to delete the period and add “, dates and places of the course, course completion certificates as specified in subdivision (h),” and replace “three” with “four” in subdivision (g)(4).

#### Purpose:

Subdivision (g) sets forth the Board’s criteria for judging and approving CE courses for CE credit. The Board amends subdivision (g)(4) to expand the categories of information a provider of mandatory CE agrees to maintain, to include dates and places of the course and course completion certificates, as a criterion the Board considers for judging and approving CE courses. The amendment also increases the retention period for such information to four years.

#### Rationale:

The Board amends subdivision (g)(4) to facilitate the audit of a licensee’s attendance at CE courses. Proposed amendments to subdivision (k) will require licensees to maintain course completion certificates for four years from renewal. This proposal would codify the existing business process of most CE providers, and make whether such information is maintained a factor in whether the Board will approve the course for CE

credit. When the Board audits a licensee, it generally requires a licensee to furnish basic information such as when the licensee completed the course and requests completion certificates from a licensee. Because many optometrists lose their certificates of completion, asking the provider to maintain this information helps avoid holds on license renewals and unnecessary enforcement actions.

#### Anticipated Benefits:

These changes would enhance public protection by requiring additional record-keeping of a CE provider and higher standards of instruction for CE courses, which in turn will allow the Board to ensure optometrists maintain professional competency. Public protection is also enhanced by stronger CE provider record-keeping requirements for certificates, as licensees may be required to submit CE certificates if randomly audited and may need to request that information from a CE provider if they do not retain it themselves. Finally, this proposal benefits both CE providers and licensees by setting forth clearer requirements for course categories and online course approvals.

#### **Subdivision (g)(5)**

The Board proposes to add a new subdivision (g)(5) stating “The provider does not use the Board’s letterhead, seal, or logo on any course certificates, advertising, or solicitation.”

#### Purpose:

Subdivision (g) sets forth the Board’s criteria for judging and approving CE courses for CE credit. The Board adds subdivision (g)(5) to include consideration of whether the provider does not use the Board’s letterhead, seal, or logo on any course certificates, advertising, or solicitation, as a criterion the Board considers for judging and approving CE courses.

#### Rationale:

Over the years, the Board has received reports from licensees of unapproved CE providers using the Board’s letterhead or seal to advertise a course as being approved by the Board. The Board would discover the lack of approval during audits of licensees. This would subject the licensees to possible enforcement action for failure to take courses approved by the Board. The Board makes this amendment to encourage providers to be truthful with licensees regarding whether they are approved by the Board.

### Anticipated Benefits:

This proposed amendment will help to reduce fraud and prevent abuse of the Board's name and likeness in optometric CE courses. It will ensure that licensees take only CE courses that the Board has reviewed for meeting Board requirements and will avoid unnecessary enforcement actions.

### Subdivision (g)(6)

The Board proposes to add a new subdivision (g)(6) as a criterion the Board considers for judging and approving CE courses, stating "If the proposed course is live and interactive as defined in subsection (d), whether the proposed course has measures for participatory interaction, including participant attendance reports, in-content quizzes, participant polls, real time participant video requirements, and records of participant log in and log out times."

### Purpose:

Subdivision (g) sets forth the Board's criteria for judging and approving CE courses for CE credit. The Board adds subdivision (g)(6) to add as factors for Board consideration in CE course approval whether the course is live and interactive as defined in subdivision (d), whether the proposed course has measures for participatory interaction, including participant attendance reports, in-content quizzes, participant polls, real time participant video requirements, and records of participant log in and log out times

### Rationale:

The Board adds this subdivision to include attendance reports, quizzes, polls, real time video requirements and participant log in and log out times as indicators of whether a course is properly considered as live and interactive. A consideration of whether a proposed course has these attributes will ensure the course meets the definitions set forth in subdivision (d)(2)(A) or (B). The Board will be able to determine, through the application and information provided, if a course fulfills those requirements.

### Anticipated Benefits:

This is necessary for public protection, as setting the standards for what constitutes "live and interactive study" ensures licensees are learning the necessary skills to practice competently and with safety to the patient. It is also necessary to define "live and interactive study" in a way that preserves the licensees ability to complete their CE entirely online, but while still requiring that a majority of CE hours are obtained via real-

time participation in a “live and interactive study” between a licensee and instructor.

Live study that requires participation protects the public because licensees are required to demonstrate competency with the material in order to earn their certificate. Licensees benefit from participating in a CE course that is live and interactive because they are able to engage the instructor and other attendees, ask questions, and contribute to both their individual learning and that of the group taking the course.

### **Subdivision (h)(9)**

The Board proposes to add a new subdivision (h)(9) providing that “Course approval number as assigned by the Board, if applicable,” is an item of information licensees must submit to the Board to provide proof of CE attendance.

#### **Purpose:**

Subdivision (h) provides proof of CE course attendance shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists and certification of CE course attendance must contain the information set forth in subdivisions (h)(1) through (h)(10). The purpose of the amendment is to add the course approval number assigned by the Board as required information.

#### **Rationale:**

Subdivision (h) sets forth information a licensee must submit to the Board upon request. This includes information such as the CE sponsoring organization, licensee information, information on the course and other evidence the Board may deem necessary. Board staff, to track courses, has begun issuing a course approval number, since the number of CE courses approved by the Board has grown since 2015. Thus, listing the Board’s course approval number is consistent with the Board’s current process, and will enable the licensee to determine on their renewal they are taking the correct and approved course.

#### **Anticipated Benefits:**

This amendment will enable Board staff to better track whether courses taken by licensees have been approved by the Board, especially for audit purposes.

### **Subdivision (h)(10)**

The Board proposes to add a new subdivision (h)(10) stating “Whether the course was pre-recorded or live.”

Additionally, the Board proposes to:

- Delete “Use of a” and add an “A” to the beginning of the sentence below subdivision (h)(10);
- Add “generated by the provider” and delete “provided by the Board”;
- Delete “recommended” and add “required to be issued to any licensee who completes”; and
- Delete “Such forms will be furnished by the Board upon request.”

Purpose:

The purpose of the amendment is to add whether the course was pre-recorded or live as required information.

Subdivision (h) provides proof of CE course attendance shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists and certification of CE course attendance must contain the information set forth in subdivisions (h)(1) through (h)(10).

Rationale:

The Board adds a requirement that the proof of course completion indicate whether the course was pre-recorded or live because this will assist the Board in determining compliance with section 1536(c), which allows up to 25 hours of CE to be completed via alternative methods, such as self-study.

These amendments require a certificate of completion to be generated by the provider instead of the Board because the provider offers the CE approved by the Board. The Board will now require instead of recommend a certificate of course completion because requiring CE providers to supply certificates of course completion will assist the Board in determining compliance with section 1536.

The Board deletes the provision that the Board will furnish the forms upon request because it is now requiring the certificates of completion to be generated by the provider.

Anticipated Benefits:

These amendments will enhance public protection by requiring CE providers to issue certificates of completion. This assists audits of CE courses and assist the Board in ensuring licensees have taken CE courses.

### **Subdivision (k)**

The Board proposes to add “A licensee shall maintain all course completion certificates on file which are used for renewal purposes for a period of four (4) years from the license renewal date and shall provide these records to the Board upon request or in the event of an audit, if requested, within ten (10) days of the date of the Board’s written request for such records” to subdivision (k).

#### **Purpose:**

This proposal would add a requirement that all licensees keep their course completion certificates used for renewal purposes on file for four years and shall provide the records to the Board upon request or in the event of an audit or enforcement action within ten (10) days.

#### **Rationale:**

Currently, BPC section 3059 requires all licensees to complete CE courses every two years as a condition of renewal and requires licensees to submit proof satisfactory to the Board of completion. To ensure compliance with the law, the Board performs random audits on licensees as authorized by subdivision (k). During the audit, the licensee must submit all course completion certificates for a two-year renewal period. If course certificates are not kept, licensees may have to circle back to CE providers for their certificates, some of which may no longer be available. Board staff has found that many licensees already keep certificates on file, but some optometrists lose their certificates of completion, making it difficult to obtain proof of attendance, consequently causing the hold of license renewals and potentially unneeded enforcement action. For many years, the Board “recommended” licensees keep certificates on file for four years, similar to other boards. This proposal would codify the Board’s “recommendation” as a requirement and make it actionable if a licensee fails to do so or does not respond to the Board request within ten days during an audit.

#### **Anticipated Benefits:**

The addition of this subdivision will increase public protection by requiring licensees to provide to the Board, upon request, proof that they have completed their CE courses in the last four years. This will allow the Board to accurately complete an audit of the licensee or have all needed information for any kind of enforcement action. Additionally, licensees will benefit from clarity in the regulation which requires certificates to be on file for four years.

### **Subdivision (m)**

The Board proposes to add a new subdivision (m) stating “A licensee may not repeat for credit the same course more than once within the two-year renewal timeframe.”

#### **Purpose:**

This new proposed section would prohibit a licensee from repeating for credit the same course more than once within a two-year timeframe.

#### **Rationale:**

To ensure compliance with the law, the Board performs random audits on licensees, in which the licensee must submit all course completion certificates for a two-year renewal period. During audits in 2018-19, it was discovered multiple licensees were claiming repeat credit during their two-year renewal period. This change is a logical step to prevent such occurrences and may help to reduce enforcement actions against licensees.

#### **Anticipated Benefits:**

The addition of this subdivision will enhance public protection by making it the basis for discipline for enforcement purposes if a licensee was discovered during an audit or via complaint repeating a course. Licensees will benefit from increased clarity in the law prohibiting them from taking the same courses.

#### **Underlying Data:**

- January 31, 2020 Practice and Education Committee Agenda, Relevant Meeting Materials and Approved Meeting Minutes
- May 15, 2020 Board Meeting Agenda, Relevant Meeting Materials and Approved Meeting Minutes
- July 31, 2020 Practice and Education Committee Agenda, Relevant Meeting Materials and Approved Meeting Minutes
- August 13-14, 2020 Board Meeting Agenda, Relevant Meeting Materials and Approved Meeting Minutes
- August 27, 2021 Board Meeting Agenda, Relevant Meeting Materials and Approved Meeting Minutes
- November 19, 2021 Board Meeting Agenda, Relevant Meeting Materials and Draft Meeting Minutes
- August 26, 2022 Board Meeting Agenda, Relevant Meeting Materials and Draft Meeting Minutes.



### **Business Impact:**

The Board has determined that the proposed amendments to section 1536 will not have a statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the current industry practice of CE, which has trended towards completion of courses via the internet, which has shown to save money for both the CE provider and licensee and helps to increase access to a range of CE courses.

Additionally, public comments have been entirely supportive with no discussion of increased costs, only increased access for licensees. The current section has not been updated or revised since 2015, and almost all CE providers have changed their approach toward offering CE since then. Additionally, with the COVID-19 pandemic, almost all courses which were previously taught in person have moved entirely online.

Also, this proposal seeks to strengthen existing renewal requirements for licensees, improve processes for CE providers, further define what internet/self-study courses are, set forth which courses cannot be taken online and must be completed in person. All these proposed changes are administrative and are already performed by businesses as part of their normal work. Thus, this proposal would not result in an adverse impact on a business.

### **Economic Impact Assessment:**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed regulation is aimed at improving access to CE for licensees and better defining existing law and processes.
- It will not create new business or eliminate existing businesses within the State of California because the proposed regulation is aimed at improving access to CE for licensees and better defining existing law and processes.
- It will not affect the expansion of businesses currently doing business within the State of California, including those business that offer online CE, because online CE is presently authorized and the proposed regulation is only aimed at improving access to CE for licensees and better defining existing law and processes.
- It benefits the health and welfare of California residents because it will broaden

opportunities for optometry licensees to obtain their needed CE to keep their licenses current, which promotes consumer protection and prevents the spread of the COVID-19 virus by allowing courses to be taken online.

- It does not affect worker safety because the proposed regulation is not related to worker safety.
- It does not affect the state's environment because the proposed regulation is not related to the state's environment.

### **Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- Do not promulgate these regulations. This alternative was rejected. The Board's current CE regulations date back to 2015 and have not been updated to reflect current industry practices of offering CE online and social distancing due to the COVID-19 pandemic.