

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry (hereafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail must be received by the Board of Optometry not later than 5:00 p.m. on August 11, 2009 and sent to the address listed under Contact Person in this Notice.

A hearing in this matter has been scheduled for August 11, 2009 at 10:00 a.m., in the Yosemite Room, at 2420 Del Paso Road, Sacramento, California. All interested parties will be heard at that time.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text with the exception of technical or grammatical changes. The full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 3010.1, 3010.5, 3024, and 3025 of the Business and Professions Code, and to implement, interpret or make specific Sections 144, 3110, 3055, 3056, and 3059 of said Code and Section 11105 of the Penal Code, the Board is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Adopt sections 1525, 1525.1 and 1525.2.

B&P code section 3025 allows the board to make and promulgate rules and regulations governing procedure of the board, the admission of applicants for examination for certificates of registration as optometrists, and the practice of optometry.

1525

B&P Code section 3146 provides for the renewal of a license certificate that has not expired, stating that "licenseholder shall apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter."

The proposed regulation would clarify the requirements for the renewal of a license to practice Optometry. Specifically, the regulation would clarify the requirement to disclose the completion of the required continuing education courses, and the requirement to disclose the disciplinary action taken against any license or any conviction that occurred in the prior renewal cycle. The proposed regulation also gives the Board the ability to enforce the disclosure requirements by declaring any incomplete application ineligible for renewal.

1525.1 & 1525.2

Business and Professions Code (BPC) Section 144 requires an applicant to furnish to specified agencies, including the Board of Optometry (Board), a full set of fingerprints for the purpose of conducting criminal history record checks. Additionally, this section allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI).

Currently, the Board has no specific authority to take action against a licensee who fails to respond to a request for information regarding criminal history.

The proposed regulation would provide the Board with the authority to take disciplinary action against a licensee who fails to provide requested information relating to a criminal conviction history during the course of a Board investigation.

FISCAL IMPACT ESTIMATES:

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

Non-discretionary Cost/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

The Board of Optometry has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:
None

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business:

The cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board to

be minor to significant based on their current licensing status and the application, renewal and delinquent fees scheduled to be paid by licensees and non-licensees. Delinquencies are to be paid by licensees.

The current processing fees associated with LiveScan fingerprinting are \$32.00 for DOJ and \$24.00 for FBI, with some Live Scan agencies charging additional fees for “rolling” fingerprints and/or administrative processing. Applicants are responsible to pay all fees associated with the fingerprint process. The average total cost per individual to meet requirements set forth in the regulation will be \$56.00.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS:

The proposed regulations would have an affect on licensees who are registered with the Board and have not been fingerprinted prior to 1998 when it comes time for them to renew and new licensees who are applying for the first time.

CONSIDERATION OF ALTERNATIVES:

The Board of Optometry must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 proposal described in this notice.

Any interested person may present written statements relevant to the above determinations to the Board of Optometry at the address referred to below.

INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California 95834, or from the Board of Optometry web-site at www.optometry.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web-site listed below.

CONTACT PERSON:

Any inquiries or comments concerning the proposed rulemaking action may be Addressed to:

Name: Andrea Leiva
Address: 2420 Del Paso Road, Suite 255
Sacramento, CA 95834
Telephone Number: (916) 575-7172
Fax Number: (916) 575-7292
E-mail Address: andrea_leiva@dca.ca.gov

The backup contact person is:

Name: Mona Maggio
Executive Officer
Address: 2420 Del Paso Road, Suite 255
Sacramento, CA 95834
Telephone Number: (916) 575-7176
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E-mail Address: mona_maggio@dca.ca.gov

Optometry Board web-site access: Information regarding this proposal can be found at www.optometry.ca.gov, click on "Laws and Regulations", then "Proposed Regulations".