

CALIFORNIA STATE BOARD OF OPTOMETRY

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Mobile Optometric Office Program

Section(s) Affected: Amend Title 16, California Code of Regulations (CCR) Sections 1505 and 1524, and Adopt CCR Sections 1583 - 1587

Request for Effective on Filing with Secretary of State: The California State Board of Optometry (Board or CSBO) requests that this regulatory proposal become effective on filing with Secretary of State to implement the proposed amendments to CCR 1505 and 1524, and adopt CCR sections 1583 – 1587, related to MOO. The request is made to implement the program effective on filing with Secretary of State because the statute requiring the Board to implement this program directed it to be implemented by January 1, 2023. This proposal seeks to expand access to optometric care by authorizing mobile optometric offices to register with the Board. Children and other medically underserved populations and areas will benefit from increased access to optometric care because the care will come to them. The mobile optometric care provided under MOO is no cost to the patient and includes a vision screening that may result in prescription glasses or a referral for follow-up care. Increasing access to eyecare will improve the visual health care and overall public health of Californians.

Updated Information: The Initial Statement of Reasons is included in the rulemaking file and incorporated as though set forth herein.

No public hearing was originally set for this proposal, and none was requested. Board staff noticed the proposed rulemaking on February 23, 2024, with a 45-day comment period ending on April 9, 2024. The Board received three (3) comments which are summarized below.

The Board reviewed the comments at its May 31, 2024, Full Board meeting, approved the responses to the comments and directed staff to take all steps necessary to complete the rulemaking process.

On June 7, 2024, the modified text was posted for public comments. The comment period closed on June 24, 2024, and no additional comments were received.

The modified text included the following amendments:

- A. Amended application fee from \$2,632 to \$360 in subdivision (r) of section 1524 and amended biennial renewal fee from \$2,632 to \$360 in subdivision (s) of section 1524.**

The Board performed an updated workload cost analysis and reduced the application

fee from \$2,632 to \$360 and the biennial renewal fee from \$2,632 to \$360 to reflect the cost of administering the licensing and reporting requirements.

B. Added “submitting application on behalf of a nonprofit or charitable organization seeking to own and operate a mobile optometric office” after “person” in subdivision (b)(2)(D) of section 1583.

The Board added “submitting application on behalf of a nonprofit or charitable organization seeking to own and operate a mobile optometric office” to provide clarity that the person submitting the application should also be the authorized contact person.

C. Amended the requirement at subdivision (b)(2)(F) of section 1583 that requires a list of all officers or officials responsible for the operations of the organization, including addresses, social security numbers, phone numbers, and email addresses to include “responsible” before “officers or officials”, “in positions of authority either elected or designated as determined by” after “officers or officials” and before “the organization (non-profit or charitable organization) and personally identifying information including:”

The Board clarified the requirement that a list of all officers or officials responsible for operations of the organization be provided to the Board by specifying this requirement pertains to those “responsible” officers or officials “in positions of authority either elected or designated, as determined by” the organization (non-profit or charitable organization)

The Board made the change because the language could be interpreted too broadly and did not provide sufficient direction to applicants about which of their officers and officials must be disclosed to the Board.

D. Amended the requirement at subdivision (b)(3)(B) of section 1583 that required full and complete fingerprints of the applicant’s responsible officers or officials by specifying the requirement pertains to those “elected or designated” responsible officers or officials.

Organizations applying to own and operate a mobile optometric office are nonprofits and charitable organizations which elect or designate officers and officials of their organization. Consistent with Amendment C, the Board amended the fingerprint requirement to clarify that the fingerprint requirement is applied to those with responsibility over the organization.

E. Added to subdivision (e) of section 1583 a requirement that: Applicants shall receive written notice of approval or denial from the Board within 60 days from the date the Board receives a completed application. “Completed application” means that all required information, documentation, and fees have been filed by the applicant as required by this article or Section 3070.2 of the code.

The Board added this language to establish a reasonable expectation and timeline for the applicant.

F. Removed subdivision (b)(4) of section 1584 that required the mobile optometric office owner and operator to confirm they have read or received notice of the limitations on operating more than twelve (12) mobile optometric offices within the first renewal period contained in section 3070.2 (c)(3) of the code.

The Board removed this requirement because it now finds that citing in regulation to a specific clause of the code would be problematic and confusing should the law later change. Additionally, the Board removed this requirement as unnecessary because the Board can design the business process to preclude issuing more than 12 permits within the first renewal period.

G. Renumbered subdivision (b)(5) of section 1584 accounting for Amendment G.

The Board renumbered this subdivision accounting for the deletion of subdivision (b)(4) of section 1584.

H. Renumbered subdivision (b)(6) of section 1584 accounting for Amendment G.

The Board incorporates by reference its response to Amendment G.

I. Renumbered subdivision (b)(7) of section 1584 accounting for Amendment G.

The Board incorporates by reference its response to Amendment G.

J. Renumbered subdivision (b)(8) of section 1584 accounting for Amendment G.

The Board incorporates by reference its response to Amendment G.

K. Renumbered subdivision (b)(9) of section 1584 accounting for Amendment G.

The Board incorporates by reference its response to Amendment G.

L. Replaced “the” with “any” in subdivision (b)(2)(C) of section 1584.5 to clarify that the owner and operator of a mobile optometric office shall provide identifying information on any licensed optometrist providing

services at the mobile optometric office.

The Board made this change to require the owner and operation of a mobile optometric office to provide information on any licensed optometrist providing services. Mobile optometric offices may use the services of one or more licensed optometrists.

M. Added “or other alternative method, as documented in a written plan, to accommodate patients with access issues” after “ramp or lift” to the requirement in subdivision (b)(2)(F)(vii)(a) of section 1584.5.

The Board made this change to provide additional flexibility to mobile optometric offices to ensure that all patients can access mobile optometric services. If a mobile optometric office does not have an access ramp or lift, it will need to have an alternative method documented in a written plan to ensure patients can access care.

N. Added “For purposes of this section, “on the premises” includes accessible facilities that are located at the physical site where the mobile optometric office is providing services” to (b)(2)(F)(vii)(b) of section 1584.5.

The Board made this change to provide a definition of the phrase “on the premises” related to the requirement that the mobile optometric office have accessible handwashing facilities. The inclusion of the definitional phrase “on the premises” allows for the mobile optometric office to not have an onboard handwashing facility if the physical location where the mobile optometric office is located has accessible facilities.

O. Corrected a reference error in subdivision (b) of section 1585 by amending the reference citation from “subdivision (b)(2)(H) in section 1583” to subdivision (b)(2)(D) in section 1583.”

The Board made this change to correct an erroneous cross-reference.

P. Added “For purposes of advertisement, solicitations, and other presentments to the public, a registrant may include any and all permit numbers of the potential mobile optometric offices servicing the location” to subdivision (d) of section 1584.5.

The Board made this change to provide additional flexibility to the scheduling and availability of mobile optometric offices to allow for the listing on advertisements, solicitations, and other presentments to the public all permit numbers of all potential mobile optometric offices that might service the location.

Q. The Board deletes “and address” in subdivision (b)(2)A of section 1586.

The Board made this change because it already possesses the address of the owner and operator of the mobile optometric office and does not need it reported as part of the quarterly report requirements.

R. The Board adds “the consumer notice required by subdivision (b)” after “retain” and adds “medical record” after “patient’s” in subdivision (c) in section 1587. The Board deletes the requirement that the owner and operator retain a patient or parent or guardian acknowledgement of receipt of the consumer notice, including date of receipt. The Board adds a requirement that “the optometrist shall record all of the following in the medical record: (1) that the patient, caregiver, or guardian has received the consumer notice; and (2) the date the optometrist provided the consumer to the patient, caregiver, or guardian.”

The Board made the change to require the consumer notice be retained in the patient’s medical record consistent with statutory law found at subsection (h)(2) of Business and Professions Code section 3070.2. The Board deleted the requirement that an acknowledgement of the consumer notice also be retained because it may delay access to care to have to receive, file, and date, patient, or guardian acknowledgement. The Board added a requirement that the optometrist must record in the medical record that the patient, caregiver, or guardian received the notice and must document the date it was provided to ensure consumer protection. During an investigation involving an allegation that a mobile optometric office did not provide the required consumer notice, the Board may utilize inspection authority to investigate the patient’s medical record. Requiring proof that the notice was provided to be documented assists the Board in carrying out its consumer protection mission and ensures that consumers receive notice of mobile optometric office services prior to receiving care.

Following the modified text period, during the OAL final review period, the Board made the following non-substantive changes, as follows:

S. The Board capitalized the word “Section” throughout the regulation text wherever the word referenced a specific statutory or regulatory code section.

This non-substantive change was made for consistency throughout the regulation.

T. The Board replaced roman numerals with Arabic numerals throughout the regulation text.

This non-substantive change was made for consistency with the Board’s existing regulations.

U. The Board adds the phrase “Certificate to Operate” to the heading of Section 1583.

Section 1583 establishes the application requirements for a certificate to own and operate a mobile optometric office. This non-substantive change was made to accurately reflect the title of the section.

V. The Board added “under penalty of perjury” after “following information” in subdivision (b)(2) of Section 1583 and deletes the language after “through”, replacing it with the word “BreEZe.”

This non-substantive change was made to be consistent with the electronic signature requirements found at subdivision (b)(2)(l) of Section 1583. The Board deleted the statement “the link that is referenced in subdivision (b) of this section” and replaced it with “BreEZe” because that is the system that is referenced, and it is clearer to state that fact than it is to state a reference.

W. The Board deleted the phrase “a web link to BreEZe on the Board’s website at: www.optometry.ca.gov in subdivision (b)(2)(e) of Section 1583 and replaced it with the word “BreEZe”.

The Board made this change because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

X. In subdivision (b)(2)(l) of Section 1583 the Board made the following changes:

- a. Replaced “the online portal” with BreEZe;
- b. Replaced “appropriate” with “signature”;
- c. Replaced “the Board’s online portal” with BreEZe;
- d. And, added “in the signature field”

The Board made the changes related to BreEZe because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

The Board replaced “appropriate” with signature because this subdivision is requiring a signature that is achieved by typing it into a field. It is more accurate to call this field a “signature field”.

Y. The Board deleted “a link to BreEZe on the Board’s website at www.optometry.ca.gov” in subdivision (b)(3)(A) of Section 1583 with BreEZe.

The Board made this change because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

Z. The Board changed the heading of Section 1584 by moving the phrase “Certificate to Operate a Mobile Optometric Office”.

This non-substantive change was made to accurately reflect the title of the Section.

AA. The Board replaced “this Article” with “Section 1583” in subdivision (a) of Section 1584.

This non-substantive change was made because the specific provision establishing the certificate to operate is found at Section 1583.

BB. The Board replaced “is” with “are” in subdivision (b)(3) of Section 1584.

This non-substantive change was made to be grammatically correct.

CC. The Board correct an erroneous cross-reference at subdivision (a) of Section 1584.5.

This non-substantive change was made to correct the cross-reference to Section 1583, which establishes the application requirements for a certificate to operate a mobile optometric office.

DD. The Board replaced “an online portal designated by the Board” with “BreEZe” in subdivision (a)(1) of Section 1584.5.

This non-substantive change was made because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

EE. The Board deleted “through a web link to the Department of Consumer Affairs’ online licensing system entitled “BreEZe” located on the Board’s website at: www.optometry.ca.gov in subdivision (b) of Section 1584.5 and replaced it with the word “BreEZe”.

This non-substantive change was made because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

FF. The Board changed the word “submit” to “enter” in subdivision (b)(1) of Section 1584.5.

This non-substantive change was made to clearly state that the owner and operator must enter their username and password to access BreEZe.

GG. The Board added “under penalty of perjury” after “following information” in subdivision (b)(2) of Section 1584.5.

This non-substantive change was made to be consistent with the electronic signature requirements found at subdivision (b)(2)(H) of Section 1584.5.

HH. In subdivision (b)(2)(H) of Section 1584.5 the Board made the following changes:

- a. Replaced “the online portal” with BreEZe;**
- b. Replaced “appropriate” with “signature”;**
- c. Replaced “the Board’s online portal” with BreEZe;**
- d. And, added “in the signature field”**

The Board made the changes related to BreEZe because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

The Board replaced “appropriate” with signature because this subdivision is requiring a signature that is achieved by typing it into a field. It is more accurate to call this field a “signature field”.

II. The Board deleted “Subject to subdivision (b) of this section” and added “as described in this section in subdivision (a) of Section 1585.

This non-substantive was made because Section 1585 establishes the fingerprint requirements.

JJ. The Board replaced “BCIA 8016 (Rev. 04/2020), for a state criminal history record in accordance with the provisions of Section 11105 et seq. of the Penal Code” with “form” in subdivision (b) of Section 1585. The Board also corrected an erroneous cross reference in subdivision (b) of Section 1585.

These non-substantive changes were made to avoid having to do future regulation changes if the specific form changes. The Board also corrected an erroneous cross reference.

KK. The Board added “through Live Scan” to subdivision (d) of Section 1585. The Board added the phrase “the California Department of Justice and Federal Bureau of Investigation fingerprint” and deleted “in the amount of \$49.”

This non-substantive change was made to provide clarity that the electronic fingerprint is through Live Scan. The Board added the phrase “the California Department of Justice and Federal Bureau of Investigation fingerprint” and deleted “in the amount of \$49” to provide clarity and avoid conflict if the fee were to change.

LL. The Board added “pursuant to the procedures and criteria referenced in Section 1583 (e)” to subdivision (e) of Section 1585.

This non-substantive change was made to connect the fingerprint requirements with Section 1583 (e), which provides that an application may be denied if the applicant does not comply with the requirements of Section 1583, or the laws that establish the mobile

optometric office program (Business and Professions Code section 3070.2) and the criteria for denying an applicant a license (Business and Professions Code section 480).

MM. The Board replaced “an online portal designated by the Board” with “BreEZe” in subdivision (a) of Section 1586.

This non-substantive change was made because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

NN. The Board deleted “a web link to the Department of Consumer Affairs’ online licensing system entitled BreEZe located on the Board’s website at: www.optometry.ca.gov in subdivision (b) of Section 1586 and replaced it with the word “BreEZe”.

The Board made this change because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

OO. The Board replaced “submit to the Board” with “enter” in subdivision (b)(1) of Section 1586.

This non-substantive change was made to clearly state that the owner and operator must enter their username and password to access BreEZe.

PP. The Board added “under penalty of perjury” after “following information” in subdivision (b)(2) of Section 1586.

This non-substantive change was made to be consistent with the electronic signature requirements found at subdivision (b)(2)(l) of Section 1583. The Board deleted the statement “the link that is referenced in subdivision (b) of this section” and replaced it with “BreEZe” because that is the system that is referenced, and it is clearer to state that fact than it is to state a reference.

QQ. In subdivision (b)(2)(F) of Section 1586 the Board made the following changes:

- a. Replaced “the online portal” with BreEZe;**
- b. Replaced “appropriate” with “signature”;**
- c. Replaced “the Board’s online portal” with BreEZe;**
- d. And, added “in the signature field”**

The Board made the changes related to BreEZe because the Board established in subdivision (b) of Section 1583 that applications for the mobile optometric office program must be received through the online licensing system entitled “BreEZe.”

The Board replaced “appropriate” with signature because this subdivision is requiring a

signature that is achieved by typing it into a field. It is more accurate to call this field a “signature field”.

Local Mandate: A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Board has determined that the proposed regulations would not affect small businesses. Although the proposed regulation will directly affect businesses statewide, which may include small businesses, the Board does not anticipate any adverse economic impact as described in the Business Impact Estimates section of the Initial Statement of Reasons. The Board regulates and licenses the individual optometric professionals in the State of California. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted. However, to the extent that any optometric professionals or other business entities, such as those that may be applying for a mobile optometric office permit are considered a “small business”, the Board provides the following analysis of the economic impact of this proposal.

After completing a revised workload cost analysis, the Board has determined that the initial certificate to operate, as well as the biennial renewal is more accurately assessed at \$360, as opposed to the originally proposed amount of \$2,632. Individuals and entities opting to operate a mobile optometric office will be required to apply for licensure and pay applicable fees, including:

- Certificate to Operate (Owner Application): \$360
- Mobile Optometric Office Permit (Initial Application): \$472
- Fingerprint Background Check: \$75
- Certificate to Operate (Biennial Renewal): \$360
- Mobile Optometric Office Permit (Biennial Renewal): \$472

The Board anticipates seven individuals and entities will initially apply for licensure in year-one of implementation and up to ten applicants per year thereafter, which will result in economic impacts ranging from approximately \$6,350 to \$42,350 per year and up to \$244,400 over a ten-year period as follows:

CA Board of Optometry													
Mobile Optometric Office Owner & Permit Program - Economic Impact (Costs)													
Registration Type	Costs	Applicants Per Year	Years Ongoing										
			1*	2	3	4	5	6	7	8	9	10	Total
Certificate to Operate - Owner Application	\$360	7*/10	\$2,520	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$34,920
MOO Permit - Initial Application	\$472	7*/10	\$3,304	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$45,784
Fingerprint Background Check	\$75	7*/10	\$525	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$7,275
		Sub-Total:	\$6,349	\$9,070	\$9,070	\$9,070	\$9,070	\$9,070	\$9,070	\$9,070	\$9,070	\$9,070	\$87,979
Certificate to Operate - Renewal	\$360	Various	-	-	\$2,520	\$3,600	\$6,120	\$7,200	\$9,720	\$10,800	\$13,320	\$14,400	\$67,680
MOO Permit - Biennial Renewal	\$472	Various	-	-	\$3,304	\$4,720	\$8,024	\$9,440	\$12,744	\$14,160	\$17,464	\$18,880	\$88,736
		Sub-Total:	-	-	\$5,824	\$8,320	\$14,144	\$16,640	\$22,464	\$24,960	\$30,784	\$33,280	\$156,416
		Total:	\$6,349	\$9,070	\$14,894	\$17,390	\$23,214	\$25,710	\$31,534	\$34,030	\$39,854	\$42,350	\$244,395

MOO - Mobile Optometric Office

The costs of the fingerprint background check (\$75), includes \$32 being forwarded to the Department of Justice (DOJ), \$17 to the Federal Bureau of Investigation, and \$26 remaining with the fingerprint processing business. As a result, these fingerprint businesses are projected to have increased revenues ranging from \$182 to \$260 per year and up to \$2,522 over a ten-year period.

The Board notes, entities applying to operate a mobile optometric office under the proposed regulations and in compliance with current law must qualify as a non-profit or charitable organization. As a result, any organization authorized to operate under this proposal are providing optometric healthcare services as non-business entities.

The Board further notes, these non-profit and charitable entities are anticipated to focus on providing optometric services to underserved populations, including rural and poor areas, and not competing direction with optometric businesses in the state.

FISCAL IMPACT

The Board received three-year limited-term resources (\$262,000 and 2.0 positions) in 2021-22 to implement the provisions of AB 896. Any workload and costs related to this proposal are a result of current law and included in the resources provided in 2021-22.

The regulations will result in licensing fee revenues ranging from approximately \$5,820 to \$41,600 per year and up to approximately \$237,120 over a ten-year period as follows:

CA Board of Optometry													
Mobile Optometric Office Owner & Permit Program - Fiscal Impact (Revenues)													
Registration Type	Costs	Applicants Per Year	Years Ongoing										Total
			1*	2	3	4	5	6	7	8	9	10	
Certificate to Operate - Owner Application	\$360	7*/10	\$2,520	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$34,920
MOO Permit - Initial Application	\$472	7*/10	\$3,304	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$4,720	\$45,784
		Sub-Total:	\$5,824	\$8,320	\$8,320	\$8,320	\$8,320	\$8,320	\$8,320	\$8,320	\$8,320	\$8,320	\$80,704
Certificate to Operate - Renewal	\$360	Various	-	-	\$2,520	\$3,600	\$6,120	\$7,200	\$9,720	\$10,800	\$13,320	\$14,400	\$67,680
MOO Permit - Biennial Renewal	\$472	Various	-	-	\$3,304	\$4,720	\$8,024	\$9,440	\$12,744	\$14,160	\$17,464	\$18,880	\$88,736
		Sub-Total:	-	-	\$5,824	\$8,320	\$14,144	\$16,640	\$22,464	\$24,960	\$30,784	\$33,280	\$156,416
		Total:	\$5,824	\$8,320	\$14,144	\$16,640	\$22,464	\$24,960	\$30,784	\$33,280	\$39,104	\$41,600	\$237,120

MOO - Mobile Optometric Office

Additionally, the Board estimates fingerprint background check revenues to the DOJ ranging from \$224 to \$320 per year and up to \$3,104 over a ten-year period.

The regulations do not result in any costs or savings in federal funding to the state.

Anticipated benefits from this regulatory action:

The anticipated benefits of the MOO program are substantial and wide-reaching, positively impacting both regulatory alignment and public welfare. Here are the key advantages:

The proposed changes aim to align Title 16 CCR sections 1505 and 1524 with BPC 3070.2, ensuring that the program is in full regulatory compliance. This alignment sets a solid foundation for seamless integration and operation.

Introducing new sections 1583-1587 establishes comprehensive guidelines for creating and managing a Mobile Optometric Office. These guidelines serve as a roadmap, providing clarity and direction for MOO operators.

Application guidelines for the owner and operator certificate and the Mobile Optometric Office Permit set compliance standards for MOO applicants. This ensures that only qualified and capable individuals or organizations are entrusted with providing optometric care.

Requiring biometrics and identifying information for key program members bolsters public safety measures. This step helps in effective enforcement, safeguarding the well-being of patients and the community.

The institution of fees for the Owner and Operator (OAO) certificate and the MOO permit enables the Board to efficiently administer the MOO program. This financial structure ensures that the program remains sustainable and well-supported.

The MOO program directly benefits Californians residing in underserved, low-income, and rural areas of the state. By providing no-cost optometric care, the program addresses a critical healthcare gap, ensuring that vulnerable populations have access to essential vision services.

Access to no-cost optometric care has the potential to significantly improve the health outcomes of individuals in underserved communities. Early detection and intervention for vision issues can prevent more severe complications and enhance overall well-being.

The MOO program aligns with regulatory requirements and prioritizes public safety, efficient administration, and, most importantly, the health and well-being of Californians in need. This initiative represents a significant step towards ensuring equitable access to high-quality optometric care for all.

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 more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. During the public comment period, the Board received comments from stakeholders that the Board considered. After considering the comments, the Board modified the text to include revisions based on these comments. The Board did not accept all the comments or alternatives, as

discussed in greater detail below.

Objections or Recommendations/Responses: The Board received three adverse (3) comments (Comments) during the 45-day comment period on the Board’s proposed amended language of sections 1505 and 1524, and adoption of sections 1583 – 1587. Some of the comments were accepted and others were rejected. A summary of the responses to comments can be found below.

A. April 9, 2024 email from Ann Hollister, CEO, Vision To Learn.

Comment A-1 Summary:

Ms. Hollister states that Vision To Learn is “pleased to submit comments and recommendations regarding the proposed regulations” implementing the mobile optometric office program. Ms. Hollister also states that she “hopes Vision To Learn’s accumulated expertise will be helping in crafting regulations that will support school-based mobile vision care in its mission to help kids get the glasses they need to succeed, throughout California.”

Response:

The Board acknowledges and thanks Ms. Hollister and Vision To Learn for their comments.

Comment A-2 Summary:

Ms. Hollister states “the proposed Application fee for a certificate to operate an owner and operator of a mobile optometric office - \$2,632 – is nearly ten times the existing registration fee for an optometrist. Based on this fee, and the fee for each mobile optometric office permit, a nonprofit mobile optometric provider operating 12 mobile clinics in California would pay over \$8,000 in fees every two years. Vision To Learn understands the need for fees to cover the cost of administering licensing and reporting requirements. We request that the Board carefully balance the true costs of staff hours needed to do so with the goal of allowing nonprofit providers to use carefully raised philanthropic funding to directly help as many kids as possible.”

Response:

The Board accepts this comment.

The Board conducted a revised workload cost analysis which supports an initial fee of \$360 for an owner and operator of a mobile optometric office, and a biennial renewal fee of \$360.

California State Board of Optometry			
Mobile Optometric Office Owner and Operator - Business and Professions Code 3070.2			
(Workload Costs)			
Workload Tasks	Per Application	Minutes Per Application	SSA
Application received, processed & distributed	1	15	15
Cashiering - Input into IT systems & prepare trial balance	1	15	15
Initial review of application & identify deficiencies: verify 501c3 or c4 status, verify OPT in charge, verify officers/officials	1	60	60
Match officers/officials background check with application	1	30	30
Verify all required documents and attachments per Section 1583	1	45	45
Communication - email, phone, etc.	0.5	15	15
Mailing receipts upon request	0.5	15	15
Prepare & issue license	1	30	30
Minutes per Classification			225
Hours by Classification			3.8
*Total Costs:			\$360

California State Board of Optometry			
Mobile Optometric Office Owner and Operator Renewal - Business and Professions Code 3070.2			
(Workload Costs)			
Workload Tasks	Per Application	Minutes Per Application	SSA
Application received, processed & distributed	1	15	15
Cashiering - Input into IT systems & prepare trial balance	1	15	15
Initial review of application & identify deficiencies: verify 501c3 or c4 status, verify OPT in charge, verify officers/officials	1	60	60
Match officers/officials background check with application	1	30	30
Verify all required documents and attachments per Section 1583	1	45	45
Communication - email, phone, etc.	0.5	15	15.0
Mailing receipts upon request	0.5	15	15.0
Prepare & issue license	1	30	30
Minutes per Classification			225
Hours by Classification			3.8
*Total Costs:			\$360

Comment A-3 Summary:

Ms. Hollister states that the definition of “responsible officers or officials” is “the individuals listed by the applicant as the principal officers or officials responsible for the operations of the applicant’s organization.” However, Ms. Hollister states, it is unclear how the entity should identify those responsible officers and whether it applies to board members and/or executive staff and the term “officers” is also unclear if that means all corporate officers or only those required by the Secretary of State.

Ms. Hollister recommends “increasing the grace period to report changes to the Board from fourteen to thirty days” to “allow adequate time to collect the relevant information and is more consistent with what is required under other state laws”, citing for example the 35 days that Medi-Cal allows for changes to be reported.

Ms. Hollister states that Vision To Learn is concerned that the fingerprint requirement for all responsible officers or officials is broad and may seem to apply to the entire board of Vision To Learn. Ms. Hollister cites Medi-Cal requirements which only requires providers deemed to be high risk to submit fingerprints and states that under the mobile optometric office program, only nonprofits and charitable organizations may operate the clinics and these organizations, nonprofits and charities, do not have the same high risk that other providers might.

Response:

The Board accepts in part and rejects in part these comments.

The Board accepts the comments regarding the broad fingerprint requirement for responsible officers or officials and accepts that nonprofits and charitable organizations are generally lower risk entities than for profit enterprises. As such, the Board amended the requirement to provide a list of all officers or officials responsible for the operations of the organization, including their addresses, social security numbers, phone numbers, and emails. Instead, the modified text requires the applicant to identify the “responsible” officers or officials “in positions of authority either elected or designated, as determined by” the organization.

Nonprofit corporations organized as 501(c)(3) or charitable organizations organized as a 501 (c)(4) must elect or designate the officers or officials having responsibility for the organization and the Board requires information on these individuals for the reasons stated on pages 14 and 15 of the Initial Statement of Reasons.

The Board rejects the comment recommending an increase in the grace period to report changes to the Board from 14 days to 30. Business and Professions Code section 3070.2 (g) requires the owner and operator of the mobile optometric office to notify the Board of any change to this information within 14 days.

Comment A-4 Summary:

Ms. Hollister recommends that subdivision (b)(4) of section 1584, which would require the owner and operator to “confirm they have read or received notice of the limitations on operating more than twelve (12) mobile optometric offices within the first renewal period” be amended to reference the code number of the authorizing statute to provide consistency if the statute should ever change in the future.

Response:

The Board accepts this comment and proposes in the modified text to delete the requirement that the owner and operator “confirm they have read or received notice of

the limitations on operating more than twelve (12) mobile optometric offices within the first renewal period.”

Comment A-5 Summary:

Ms. Hollister states that Vision To Learn appreciates the Board needs information regarding each mobile optometric permit and office that is operating but is “concerned that the requirements are burdensome and impossible to comply with given the nature of mobile services.” Ms. Hollister states that optometrists operating at mobile clinics frequently change and last-minute schedule changes are frequent. Ms. Hollister states that Vision To Learn maintains accurate records of which optometrists saw which patients on any given day.

Ms. Hollister states that in their largest region, Los Angeles County, they may have more than a dozen optometrists working different days on a single mobile clinic and they may also work on other clinics. Ms. Hollister states rather than requiring the owner to disclose where each licensed optometrist is providing services at the specific mobile optometric office location, Vision To Learn would request that each owner provide a master list of all the optometrists working in a particular region who might provide services on various clinics.

Ms. Hollister states that “it will be very hard to provide accurate and complete information” to comply with the requirement of subdivision (b)(F)(ii)-(vi) of Section 1584.5, which requires information about the licensed optometrists and registered opticians providing patient care, intended dates of operation, and cities and counties served. Ms. Hollister states it would be hard to provide this information because the optometrists who provide services in the mobile optometric office work in multiple offices.

Ms. Hollister states that subdivision (b)(F)(vii)(a) of section 1584.5 requires the mobile optometric office to provide an access ramp or lift, which Vision To Learn does not have on all offices. Ms. Hollister recommends adding the phrase “or written plan to accommodate students with disabilities.”

Ms. Hollister states that subdivision (b)(F)(vii)(b) requires the mobile optometric office to attest that it has an accessible handwashing facility on the premises. Ms. Hollister states that “Vision To Learn always makes sure that there is an accessible handwashing facility either on the mobile optometric office or on the site where the mobile optometric office will conduct examinations.” Ms. Hollister recommends “that “on the premises” be defined to include accessible facilities on the site where the mobile optometric office will conduct exams.

Ms. Hollister states that subdivision (d) of section 1584.5 requires “that each specific ID number of the mobile optometric office be identified on all forms of advertisement, solicitation, or other presentments made to the public.” Ms. Hollister states that “due to the nature of mobile services, this is not always possible well in advance of services, when public notice (such as letters sent home to parents/guardians) would be provided.

Ms. Hollister suggests “the more relevant information for a parent/guardian would be the name of the specific optometrist providing services, which could be provided on paperwork sent home following the eye examination.” Ms. Hollister states that “if permit ID numbers are required, we would recommend allowing paperwork to list the permit numbers of all the potential mobile optometric offices that might service the location.”

Response:

The Board accepts in part and rejects in part these comments.

The Board accepts that the nature of mobile optometric services is such that scheduling changes do occur and that the licensed optometrist directing the medical operations of the mobile optometric office may change. However, the Board rejects the comment and recommendation that a master list be provided by the owner and operator of all the optometrists working in a particular region who might provide services on various clinics because Business and Professions Code section 3070.2 (e)(2) requires the owner and operator of a mobile optometric office to provide the names and license number of optometrists who are providing care.

Further, the Board rejects the comment because Business and Professions Code section 3070.2 (n) requires any licensed optometrist who provides care in conjunction with a mobile optometric office to obtain a Statement of Licensure with the mobile optometric office’s address as registered with the Board, unless their primary address of record is the mobile optometric office.

While the Board rejects this comment for the stated reasons, it did modify the text in subsection (b)(2)(C) of section 1584.5 to require the identifying information of “any” licensed optometrist providing services, instead of “the” licensed optometrist. This change was made to accommodate the fact that there may be more than one licensed optometrist providing services at the mobile optometric office and the Board, pursuant to Business and Profession Code section 3070.2 must receive information about all of them.

The Board rejects the comment that “it will be very hard to provide accurate and complete information” to comply with the requirement of subdivision (b)(F)(ii)-(vi) of section 1584.5, which requires information about the licensed optometrists and registered opticians providing patient care, intended dates of operation, and cities and counties served. The Board rejects the comment because Business and Professions Code section 3070.2 (e) requires this information to be provided.

The Board accepts the comment and recommendation that a written plan to accommodate those with disabilities may be acceptable in lieu of the mobile optometric office having a ramp or lift. The Board modified the text to read: “or other alternative method, as documented in a written plan, to accommodate patients with access issues.”

The Board accepts the comment and recommendation to define “on the premises” as it pertains to the requirement that each mobile optometric office have accessible

handwashing facilities on the premises. The Board modified the text to read: “For purposes of this section, “on the premises” includes accessible facilities that are located at the physical site where the mobile optometric office is providing services.”

The Board accepts the comment and recommendation to list the permit numbers of all potential mobile optometric offices that might service the location on advertisements, solicitations, and other presentations. The Board modified the text to read: “For purposes of advertisement, solicitations, and other presentments to the public, a registrant may include any and all permit numbers of the potential mobile optometric offices servicing the location.”

Comment A-6 Summary:

Ms. Hollister states that Vision To Learn is concerned that the fingerprint requirement is too broad if applied to board members and executives and may be inconsistent with other provisions of law. Ms. Hollister “encourages the Board to consider limiting the fingerprint requirement to Executive Staff as it is not appropriate or necessary to include the entire board members.”

Response:

The Board accepts in part and rejects in part these comments.

On pages 18 and 45 of Initial Statement of Reasons, the Board discussed the purpose and rationale for subdivisions (b)(3) of section 1583 and section 1585, which established the fingerprint requirement for officers and officials of a nonprofit or charitable organization seeking application for owner and operator of a mobile optometric office. As noted therein, the Board is fully within its legal authority to require every officer and official of a nonprofit or charitable organization who is seeking application as an owner and operator of a mobile optometric office to be fingerprinted. This authority is supported both by statutory law and case law.

However, the Board agrees that such a broad requirement could be onerous for nonprofit and charitable organizations.

The Board modified the text to require the applicant to identify the “responsible” officers or officials “in positions of authority either elected or designated, as determined by” the organization.

Nonprofit corporations organized as 501(c)(3) or charitable organizations organized as a 501 (c)(4) must elect or designate the officers or officials having responsibility for the organization and the Board requires information on these individuals for the reasons stated on pages 14 and 15 of the Initial Statement of Reasons.

Comment A-7 Summary:

Ms. Hollister states that “Vision To Learn’s electronic health records database is not currently able to store a mobile optometric office permit number in relation to each exam day or patient record” as would be required by subdivision (b)(2)(E) of section 1586.

Instead, Vision to Learn can “broadly” track which offices an optometrist serves, but it would take a significant amount of time to report this information in a quarterly report. Ms. Hollister states that if “there were ever a problem or complaint made about a particular visit, Vision To Learn would be able to review records and determine what offices was associated with what particular issue. However, regularly reporting on this information would take significant time and resources and would take away from our ability to serve patients.”

Response:

The Board rejects this comment. Business and Professions Code section 3070.2 (f) requires, with no exception, the owner and operator of a mobile optometric office to file a quarterly report with the Board that contains a list of all visits made, including dates of operation, address, care provided, and names and license numbers of optometrists and opticians who provided care. Section 1586 implements this requirement.

Comment A-8 Summary:

Ms. Hollister states that “Subsection (c) would require mobile optometric offices to collect and store acknowledgement of receipt of the consumer notice” and that this “would not be possible for Vision To Learn, as our services are provided in California using opt-out consent, under Ed Code Section 49455.5.” Ms. Hollister recommends this requirement be deleted.

Response:

The Board accepts this comment.

Business and Professions Code section 3070.2 (h)(1) requires the owner and operator of the mobile optometric office to provide each patient and, if applicable, the patient’s caregiver or guardian, a consumer notice prescribed by the board. This section implements that requirement. However, the section also would require acknowledgement of this notice and require the acknowledgement to be documented. This requirement to opt-in to mobile optometric services would be in conflict with existing law which authorizes opt-out consent and may serve to weaken access to care instead of increasing it.

The Board modified the text to remove the acknowledgement requirement and clarified that each owner and operator of a mobile optometric office shall retain the consumer notice in the patient’s “medical record”, consistent with Business and Professions Code section 3070.2 (h)(2). The Board also modified the text to require that the optometrist also record in the medical record: (1) that the patient, caregiver, or guardian received the notice and (2) the date the optometrist provided it.

B. April 9, 2024, Email from Kristine Shultz, Executive Director, California Optometric Association (COA)

Comment B-1 Summary

Ms. Shultz states COA is pleased to comment on the proposal and “supports the

board’s proposed regulations that implement this law.”

Response:

The Board acknowledges and thanks the COA for their comments.

Comment B-2 Summary

Ms. Shultz states that COA is “concerned about the proposed fees. Ms. Shultz states that the proposed fee of \$2,632 is “very high and might prohibit smaller, non-profit organizations from operating in California.” Ms. Shultz encourages the Board to reduce the reporting requirements to only those mandated by statute as a way to help reduce the cost to the Board, allowing the fee to be reduced.

Response:

The Board accepts this comment.

The Board conducted a revised workload cost analysis which supports an initial fee of \$360 for an owner and operator of a mobile optometric office, and a biennial renewal fee of \$360.

California State Board of Optometry Mobile Optometric Office Owner and Operator - Business and Professions Code 3070.2 (Workload Costs)			
Workload Tasks	Per Application	Minutes Per Application	SSA
Application received, processed & distributed	1	15	15
Cashiering - Input into IT systems & prepare trial balance	1	15	15
Initial review of application & identify deficiencies: verify 501c3 or c4 status, verify OPT in charge, verify officers/officials	1	60	60
Match officers/officials background check with application	1	30	30
Verify all required documents and attachments per Section 1583	1	45	45
Communication - email, phone, etc.	0.5	15	15
Mailing receipts upon request	0.5	15	15
Prepare & issue license	1	30	30
Minutes per Classification			225
Hours by Classification			3.8
*Total Costs:			\$360

California State Board of Optometry Mobile Optometric Office Owner and Operator Renewal - Business and Professions Code 3070.2 (Workload Costs)			
Workload Tasks	Per Application	Minutes Per Application	SSA
Application received, processed & distributed	1	15	15
Cashiering - Input into IT systems & prepare trial balance	1	15	15

Initial review of application & identify deficiencies: verify 501c3 or c4 status, verify OPT in charge, verify officers/officials	1	60	60
Match officers/officials background check with application	1	30	30
Verify all required documents and attachments per Section 1583	1	45	45
Communication - email, phone, etc.	0.5	15	15.0
Mailing receipts upon request	0.5	15	15.0
Prepare & issue license	1	30	30
Minutes per Classification			225
Hours by Classification			3.8
*Total Costs:			\$360

C. April 6, 2024 Letter from Barbara B. Hines, President & CEO, Queens Care, postmarked April 8, 2024 and received on April 11, 2024.

Comment C-1 Summary:

Ms. Hines states she is “pleased to submit comments and recommendations regarding the proposed regulations” and that since 2000 QueensCare has provided vision screenings and glasses to students of Los Angeles Unified School District, having screened more than 250,000 students and provided more than 40,000 pairs of prescription glasses.

Response:

The Board acknowledges and thanks Ms. Hines and QueensCare for their comments.

Comment C-2 Summary:

Ms. Hines states that the proposed fee is “nearly ten times the existing registration fee for an optometrist” and the proposed application fee for a mobile optometric office is “nearly seven times the existing branch office license fee for a traditional brick-and-mortar office.” Ms. Hines requests that the Board “consider that every dollar spent on licensing and fees is one less dollar spent serving a child whose only access to vision care and glasses is through these non-profit programs.”

Response:

The Board accepts in part and rejects in part this comment.

The Board accepts the comment regarding the initial and biennial fees to own and operate a mobile optometric office. The Board conducted a revised workload cost analysis which supports an initial fee of \$360 for an owner and operator of a mobile optometric office, and a biennial renewal fee of \$360.

The Board rejects the comment regarding the fee for a mobile optometric office. Business and Professions Code section 3070.2 (d) mandates a minimum permit fee of \$472 which can be raised to a maximum of \$600. Subdivisions (u) and (v) of section

1524 implement the minimum fee of the range provided for in statute.

California State Board of Optometry			
Mobile Optometric Office Owner and Operator - Business and Professions Code 3070.2			
(Workload Costs)			
Workload Tasks	Per Application	Minutes Per Application	SSA
Application received, processed & distributed	1	15	15
Cashiering - Input into IT systems & prepare trial balance	1	15	15
Initial review of application & identify deficiencies: verify 501c3 or c4 status, verify OPT in charge, verify officers/officials	1	60	60
Match officers/officials background check with application	1	30	30
Verify all required documents and attachments per Section 1583	1	45	45
Communication - email, phone, etc.	0.5	15	15
Mailing receipts upon request	0.5	15	15
Prepare & issue license	1	30	30
Minutes per Classification			225
Hours by Classification			3.8
*Total Costs:			\$360

California State Board of Optometry			
Mobile Optometric Office Owner and Operator Renewal - Business and Professions Code 3070.2			
(Workload Costs)			
Workload Tasks	Per Application	Minutes Per Application	SSA
Application received, processed & distributed	1	15	15
Cashiering - Input into IT systems & prepare trial balance	1	15	15
Initial review of application & identify deficiencies: verify 501c3 or c4 status, verify OPT in charge, verify officers/officials	1	60	60
Match officers/officials background check with application	1	30	30
Verify all required documents and attachments per Section 1583	1	45	45
Communication - email, phone, etc.	0.5	15	15.0
Mailing receipts upon request	0.5	15	15.0
Prepare & issue license	1	30	30
Minutes per Classification			225
Hours by Classification			3.8
*Total Costs:			\$360

Comment C-3 Summary:

Ms. Hines states that in subdivision (a)(2)(F) of section 1583, the term “owners or officials responsible for the operations of the organization” is unclear whether that applies to board members and/or executive staff. Ms. Hines recommends “amending this section to read "A list of all officers and governing board members (collectively,

"Officials")... " Then "Officials" would be substituted for "officers or officials" elsewhere in the regulations."

Ms. Hines states that QueensCare understand the need to ensure safety by instituting a fingerprint requirement but recommends not applying it to governing board members as it might create a barrier to service on volunteer boards. Instead of requiring fingerprints for board members, Ms. Hines recommends that the "owner and operator attest to the board members clearance following a thorough background check to include local and national criminal checks and sex offender checks."

Ms. Hines states that they recommend that the grace period to report changes to the Board as required in subdivision (c) of section 1583 be increased from 14 days to 45 days.

Ms. Hines recommends adding in subdivision (e) of section 1583 the following language: "Completed applications shall be approved or denied within 60 days of submission." This sets reasonable expectations for the applicant and allows program planning around the time required to process a completed application."

Response:

The Board accepts in part and rejects in part these comments.

The Board accepts the comments regarding the broad fingerprint requirement for responsible officers or officials and accepts that nonprofits and charitable organizations are generally lower risk entities than for profit enterprises. As such, the Board amended the requirement to provide a list of all officers or officials responsible for the operations of the organization, including their addresses, social security numbers, phone numbers, and emails. Instead, the modified text requires the applicant to identify the "responsible" officers or officials "in positions of authority either elected or designated, as determined by" the organization.

Nonprofit corporations organized as 501(c)(3) or charitable organizations organized as a 501 (c)(4) must elect or designate the officers or officials having responsibility for the organization and the Board requires information on these individuals for the reasons stated on pages 14 and 15 of the Initial Statement of Reasons.

The Board rejects the comment recommending an increase in the grace period to report changes to the Board from 14 days to 45. Business and Professions Code section 3070.2 (g) requires the owner and operator of the mobile optometric office to notify the Board of any change to this information within 14 days.

The Board accepts the comment recommending the inclusion of language stating that "completed applications shall be approved or denied within 60 days of submission" and modifies the text to state that: "Applicants shall receive written notice of approval or denial from the Board within 60 days from the date the Board receives a completed application. "Completed application" means that all required information, documentation,

and fees have been filed by the applicant as required by this article or Section 3070.2 of the code.”

Comment C-4 Summary:

Ms. Hines states that the optometrists who work for QueensCare largely do not have an interest in the business aspects of the mobile practice. Ms. Hines recommends that subdivision (b)(3) of section 1584, be revised, which requires the medical operations of the clinic to be directed by a licensed optometrist, to not include other business aspects such as hiring and supervising staff, scheduling patients, and establishing charges. Ms. Hines states that “these duties detract from the optometrist’s ability to provide patient care.” Instead, Ms. Hines recommends the following language: “The medical operations of the mobile optometric office are directed by a licensed optometrist, including the selection and supervision of patient care staff, the amount of time the optometrist spends with patients, the examination procedures, the treatment provided to patients, and the follow-up care.”

Ms. Hines states that subdivision (b)(4) of section 1584 be revised to reference the statutory code section instead of including specific language, because should the statute change the regulation would be out of agreement.

Ms. Hines states that the Federal Trade Commission “Eyeglass Rule requires optometrists to provide patients their prescription post-exam whether they ask for it or not. We recommend deleting Sec. (6) or the words, "Upon request by the patient's caregiver or guardian.”

Response:

The Board accepts in part and rejects in part these comments.

The Board rejects the comments regarding subdivision (b)(3) of section 1584 because the Board’s proposal implements statutory requirements. Business and Professions Code section 3070.2 (c)(2) states: “The medical operations of the mobile optometric office shall be directed by a licensed optometrist and in every phase shall be under the exclusive control of the licensed optometrist, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist or optician spends with patients, the fees charged for optometric products and services, the examination procedures, the treatment provided to patients, and the followup care pursuant to this section.”

The Board accepts the comment regarding subdivision (b)(4) of section 1584 and proposes in the modified text to delete the requirement that the owner and operator “confirm they have read or received notice of the limitations on operating more than twelve (12) mobile optometric offices within the first renewal period.”

The Board rejects the comment regarding the “Eyeglass Rule” and the recommendation to either delete subdivision (b)(6) of section 1584 or to delete the words “Upon request by the patient’s caregiver or guardian.” Federal law, under what is commonly known as the Eyeglass Rule, provides that it is an “unfair act or practice” for an optometrist to “fail

to provide to the patient one copy of the patient's prescription immediately after the eye examination is completed." The proposed language at subdivision (b)(6) of section 1584 is not in conflict with the Federal Eyeglass Rule because it would require a copy of the prescription that was provided to the patient to *also* be provided to the parent or guardian.

Comment C-5 Summary:

Ms. Hines recommends changing subdivision (b)(2)(C) and subdivision (b)(2)(F)(iv) of section 1584.5 to require an annual report with updates required every 45 days of any change. Ms. Hines states this is needed because of variation in provider services and staffing issues.

Ms. Hines states that subdivision (b)(F)(vii)(a) of section 1584.5 implies that an access ramp or lift is a required feature of the mobile optometric office and suggests a requirement that the program is required to have a policy and procedure for accommodating students and patients with disabilities.

Ms. Hines suggests in subdivision (b)(F)(vii)(b) of section 1584.5 that a definition of "on the premises" be included to define accessible facilities on the site where the mobile optometric office will conduct exams.

Response:

The Board accepts and rejects in part these comments.

The Board rejects the comments regarding subdivision (b)(2)(C) and subdivision (b)(2)(F)(iv) of section 1584.5 because the Board's proposal implements statutory requirements. Business and Professions Code section 3070.2 (e)(2) requires the owner and operator of a mobile optometric office to provide the following information to the Board: "The names and optometry license numbers of optometrists, registration numbers of opticians, and names of any other persons who are providing patient care, as described in Section 2544."

The Board accepts that the nature of mobile optometric services is such that scheduling changes do occur and that the licensed optometrist directing the medical operations of the mobile optometric office may change. However, the Board rejects the comment and recommendation that an annual report listing the providers serving the program with updates required every 45 days be provided in lieu of the proposal because it is not consistent with the statutory requirements.

Further, the Board rejects the comment because Business and Professions Code section 3070.2 (n) requires any licensed optometrist who provides care in conjunction with a mobile optometric office to obtain a Statement of Licensure with the mobile optometric office's address as registered with the Board, unless their primary address of record is the mobile optometric office.

While the Board rejects this comment for the stated reasons, it did modify the text in

subsection (b)(2)(C) of section 1584.5 to require the identifying information of “any” licensed optometrist providing services, instead of “the” licensed optometrist. This change was made to accommodate the fact that there may be more than one licensed optometrist providing services at the mobile optometric office and Board, and pursuant to Business and Profession Code section 3070.2 must receive information about all of them.

The Board rejects the comment with respect to subdivision (b)(F)(ii)-(vi) of Section 1584.5, which requires information about the licensed optometrists and registered opticians providing patient care, intended dates of operation, and cities and counties served. The Board rejects the comment because Business and Professions Code section 3070.2 (e) requires this information to be provided.

The Board accepts the comment and recommendation that a policy or procedure for accommodating those with disabilities may be acceptable in lieu of the mobile optometric office having a ramp or lift. The Board modified the text to read: “or other alternative method, as documented in a written plan, to accommodate patients with access issues

The Board accepts the comment and recommendation to define “on the premises” as it pertains to the requirement that each mobile optometric office have an accessible handwashing facilities on the premises. The Board modified the text to read: “For purposes of this section, “on the premises” includes accessible facilities that are located at the physical site where the mobile optometric office is providing services.”

Comment C-6

Ms. Hines states “requiring fingerprint submission from volunteer governing board members places an undue burden on the applicant when those members rarely encounter patients and staff at the program level, other than at site visits and through board reports.” Ms. Hines recommends that instead of a fingerprint requirement there be a requirement that the applicant “clear each governing board member by performing a background check that includes criminal history at both the local and national level.”

Response:

The Board accepts in part and rejects in part these comments. The Board accepts that the fingerprint requirement may place an undue burden on volunteer board members who are unlikely to come into contact with patients or otherwise be involved in patient care.

On pages 18 and 45 of Initial Statement of Reasons, the Board discussed the purpose and rationale for subdivisions (b)(3) of section 1583 and section 1585, which established the fingerprint requirement for officers and officials of a nonprofit or charitable organization seeking application for owner and operator of a mobile optometric office. As noted therein, the Board is fully within its legal authority to require every officer and official of a nonprofit or charitable organization who is seeking application as an owner and operator of a mobile optometric office to be fingerprinted.

This authority is supported both by statutory law and case law.

However, the Board agrees that such a broad requirement could be onerous for nonprofit and charitable organizations. As such, the Board amended the requirement to provide a list of all officers or officials responsible for the operations of the organization, including their addresses, social security numbers, phone numbers, and emails. Instead, the modified text requires the applicant to identify the “responsible” officers or officials “in positions of authority either elected or designated, as determined by” the organization.

Nonprofit corporations organized as 501(c)(3) or charitable organizations organized as a 501 (c)(4) must elect or designate the officers or officials having responsibility for the organization and the Board requires information on these individuals for the reasons stated on pages 14 and 15 of the Initial Statement of Reasons.

Comment C-7:

Ms. Hines “respectfully request that the reporting requirements outlined in subdivision (b)(2)(E) of section 1586 be provided annually, unless a complaint is received.” Ms. Hines suggest this would better align with other reporting requirements held by other agencies and suggests a recommendation that the regulations be drafted to require reporting within 45 days of any complaint report.

Response:

The Board rejects these comments. Business and Professions Code section 3070.2 (f) requires, with no exception, the owner and operator of a mobile optometric office to file a quarterly report with the Board that contains the following information:

- (1) A list of all visits made by each mobile optometric office, including dates of operation, address, care provided, and names and license numbers of optometrists and opticians who provided care.
- (2) A summary of all complaints received by each mobile optometric office, the disposition of those complaints, and referral information.
- (3) An updated and current list of licensed optometrists, registered opticians, and any other persons who have provided care within each mobile optometric office since the last reporting period.
- (4) An updated and current list of licensed optometrists who are available for followup care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.

Subdivision (b)(2)(E) of section 1586 implements this requirement.

Comment C-8:

Ms. Hines states that “QueensCare would not be able to comply with Subsection (c) as LAUSD utilizes an opt-out consent, under Ed Code Section 49455.5. While we send extensive communications to parents about our program, parents are not required to sign or return any notices. We recommend that subsection (c) be deleted.”

Response:

The Board accepts this comment.

Business and Professions Code section 3070.2 (h)(1) requires the owner and operator of the mobile optometric office to provide each patient and, if applicable, the patient's caregiver or guardian, a consumer notice prescribed by the board. This section implements that requirement. However, the section also would require acknowledgement of this notice and require the acknowledgement to be documented. This requirement to opt-in to mobile optometric services would be in conflict with existing law which authorizes opt-out consent and may serve to weaken access to care instead of increasing it.

The Board modified the text to remove the acknowledgement requirement and clarified that each owner and operator of a mobile optometric office shall retain the consumer notice in the patient's "medical record", consistent with Business and Professions Code section 3070.2 (h)(2). The Board also modified the text to require that the optometrist also record in the medical record: (1) that the patient, caregiver, or guardian received the notice and (2) the date the optometrist provided it.