

**TITLE 16. California State Board of Optometry
DEPARTMENT OF CONSUMER AFFAIRS
INITIAL STATEMENT OF REASONS**

Hearing Date: No hearing scheduled.

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

Background and Statement of the Problem:

The California State Board of Optometry (Board) currently licenses and 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 sections 3021 and 3025 authorize the Board to make and promulgate rules and regulations governing procedure of the Board, the admission of applicants for examination for a license as an optometrist, the practice of optometry and rulemakings for dispensing opticians.

The Mobile Optometric Office (MOO) program was established by Assembly Bill (AB) 896 (Low, Chapter 121, Statutes of 2020), which due to an urgency clause, became effective upon signing on September 24, 2020, and created BPC Section 3070.2. The following year, AB 1534 (Committee on Business and Professions, Chapter 630, Statutes of 2021), made further changes to BPC section 3070.2. Among other things, Section 3070.2 allows for specified nonprofits and charitable organizations to provide optometric services to patients regardless of the patient's ability to pay through mobile optometric offices under a new registration program within the Board.

BPC section 3070.2, subdivision (j), also requires the Board to adopt regulations establishing a registry for the owners and operators of mobile optometric offices, and to set a registration fee at an amount not to exceed the reasonable regulatory costs of administration by January 1, 2023. Since AB 1534 was enacted, the Board has been working with the Department of Consumer Affairs (DCA) to create an online licensing system to allow electronic filing of applications via the BreEZe online portal. As further explained below, the online portal is necessary for the most efficient and secure method of collecting and transmitting this data.

The data will be collected in an online format inside the BreEZe portal and submitted data will only be viewable by the individual who submitted the data and Board employees who are accessing the submitted data on the Department of Consumer Affairs' (DCA's) secure network. The measures DCA, which provides general IT services to the Board, takes to protect personal identifying information stored on its networks includes:

- Data loss prevention software to detect sensitive data and confidential information and keep it from leaking outside DCA through email.
- Extended detection and response tools to block advanced malware, exploits, and ransomware attacks.
- Functional, security, accessibility, and performance testing of the software applications.

In compliance with Government Code section 16.5, the Board’s proposed submission process through the online portal will be limited to an authorized external user who establishes a username and password as is common to many online software applications. Prior to submission to the Board, an electronic signature will be collected and linked to the submission. From the point of submission to evaluation, the submitted data will not be able to be modified by the submitter to preserve the integrity of the data for the subsequent Board staff’s review.

Existing regulations do not provide the process for registering owners and operators of mobile optometric offices or set a registration fee for the regulatory costs of administration of the MOO program by the Board, including submission of application information electronically online. This proposal would set such standards in regulation by adopting proposed amendments to CCR sections 1505 and 1524, and further adopt new MOO program standards at CCR sections 1583 – 1587.

This proposal would include the following requirements in regulation:

- (1) Requirements for providing a statement of licensure for those licensees who will engage in the practice of optometry exclusively at a mobile optometric office.
- (2) Fees for all of the following: (A) the certificate to operate as an owner and operator of a MOO, (B) the biennial renewal fee for a certificate to operate as an owner and operator of a MOO, (C) the delinquency fee for failure to renew a certificate to operate as an owner and operator of a MOO, (D) the application fee for a MOO permit, (E), the biennial renewal fee for a MOO permit; and (F) the delinquency fee for failure to renew a MOO permit.
- (3) Application and qualifying registration requirements for an owner and operator of a mobile optometric office who wishes to offer optometric services at the MOO as specified, including electronic submission of the application through an online portal on the Board’s website as specified;
- (4) Standards for reporting to the Board any change in information provided to the Board within 14 days of the change,
- (5) The time frame for when an application shall be deemed to have been abandoned by the Board, the associated requirements for filing a new application if an application is deemed abandoned, and the grounds for denying a MOO registration application;
- (6) The issuance process and expiration dates for a certificate to operate a MOO, and the process and minimum compliance standards that must be met to renew including,

- (A) Payment of a renewal fee and certification of compliance with specified standards;
 - (B) Compliance standards that prohibit an owner and operator of a mobile optometric office and the optometrist providing services from accepting payment for services other than those provided to Medi-Cal beneficiaries.
 - (C) Compliance standards that mandate that the medical operations of the mobile optometric office be directed by a licensed optometrist and in every phase is under the exclusive control of the licensed optometrist.
- (7) The consequences for an owner and operator who fails to renew timely, and the process and the time frames for seeking reinstatement of an expired certificate.
 - (8) Minimum standards for responding to a Board inquiry or request and grounds for disciplining an owner and operator's certificate to operate.
 - (9) Specified application and permit requirements for an owner and operator who has obtained approval from the Board and wishes to operate a mobile optometric office, including: the requirements that they apply for a permit from the Board before beginning operation of each mobile optometric office and the minimum processing, procedures and standards for obtaining and maintaining such permit, including that the permit application be electronically submitted through an online portal on the Board's website, as specified.
 - (10) Separate permit requirements for each MOO operated by each owner and operator with a certificate to operate and the limitations on the number of permits issued to any owner and operator until after the owner and operator's first renewal period is complete.
 - (11) The issuance process and expiration dates for a MOO permit, and the process and minimum compliance standards that must be met to renew.
 - (12) Requirements for an owner and operator to file a quarterly report and the process and procedures for submitting a compliant filing, including timeframes for filing and filing electronically with the Board through the online portal on the Board's website as specified.
 - (13) Fingerprint and background check requirements for applicants to register as an owner and operator of a mobile optometric office.
 - (14) Requirements for an owner and operator of a MOO to post consumer notice as specified in the mobile optometric office, and provide an additional written consumer notice to each patient or patient's caregiver or guardian regarding mandated disclosures required by this Board as specified.
 - (15) Record retention requirements for an owner and operator to show compliance with BPC section 3070.2 and Article 13 of the Board's regulations governing mobile optometric offices.

In an effort to begin implementation of this program and solicit stakeholder feedback, at the January 7, 2022, full-board meeting, the Board voted to create a two-member workgroup. The workgroup met with members of the public, school district officials, and supporting organizations.

The workgroup met on February 16, 2022 where the new package was reviewed and

discussed, including information gathering changes and the development of a new report. On April 13, 2022 the workgroup discussed feedback from the Sacramento Unified School District regarding mobile optometric care provided to students. The California Optometric Association also attended this meeting. On April 27, 2022, a third meeting was held, and Vision to Learn discussed their service and employment structure.

At the Board meeting held on May 20, 2022, the workgroup presented their findings and recommended that the Board begin the rulemaking process with the text as proposed in the meeting materials. The Board unanimously voted to approve the proposed regulatory text for Section(s) 1505, 1524, 1583, 1584, 1584.5, 1585, 1586, and 1587, and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day comment period and no hearing is requested, the Board authorized the Executive Officer to take all steps necessary to complete the rulemaking and amend sections 1505 and 1524, and adopt section(s) 1583, 1584, 1584.5, 1585, 1586 and 1587 as noticed.

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 Board’s MOO 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 specific direction and standards for MOO owners and operators.

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

Requiring fingerprinting, background checks, and personally 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 application, renewal, and delinquency 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 authorizing through regulation services to be provided through mobile optometric offices, MOO owners and operators will be able to increase access to no-cost optometric care. As a result, the proposed MOO program addresses a critical healthcare gap, ensuring that vulnerable populations have access to essential vision services at more locations.

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.

This proposal complies with the legislative mandate to establish such standards and prioritizes public safety, efficient administration, and, most importantly, the health and well-being of Californians in need. This proposal represents a significant step towards ensuring equitable access to high-quality optometric care for all.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

Amend Section 1505 – Notification of Intention to Engage in Practice

Subdivision (b)

Purpose:

The purpose of the amendment to CCR Section 1505 is to add a requirement for optometrists who engage in the practice of optometry exclusively at a mobile optometric office to comply with the notice requirements set forth in BPC Section 3070.2 (n). This amendment aims to ensure that optometrists can provide proper notification to the Board of Optometry of their intention to engage in the mobile practice of optometry in California.

Rationale:

Existing regulation at Section 1505 requires notification to the Board by a licensee of the intention to engage in the practice of optometry and to list the address or addresses of the office or offices at which the licensee will be employed. However, licensees engaging in the practice exclusively at a mobile optometric office must meet the specific requirements in section 3070.2 to remain in compliance with mobile optometric office standards. As a result, this change is necessary to provide adequate notice to the regulated community of the specific requirements for those practicing exclusively at a mobile optometric office location.

In addition, the mobile optometric office will serve the most marginalized and underfunded communities. However, the unique nature of the mobile optometric practice

presents certain challenges to the practitioner that are not encountered in traditional optometry practice settings. By amending section 1505 subdivision (b), the Board can ensure that optometrists who practice exclusively at a mobile optometric office comply with the notice requirements established in section 3070.2(n). The proposed amendment would require that licensees provide appropriate notification to the Board by listing as their primary address of record the owner and operator of the mobile optometric office's address as registered with the board if they are not practicing at a location other than with the owner and operator of the mobile optometric office as provided in BPC section 3070.2.

Amend Section 1524 – Fees

Subdivision (r)

Purpose:

This proposal adds a new subdivision (r) and establishes the application fee for a certificate to operate as an owner and operator of a mobile optometric office at \$2,632.

Rationale:

Pursuant to Business and Professions (BPC) Code sections 3070.2, the Board has statutory authority to assess fees for registration of MOO owners and operators. AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 3070.2 (j) to say, "By January 1, 2023, the board shall adopt regulations establishing a registry for the owners and operators of mobile optometric offices and shall set a registration fee at an amount not to exceed the reasonable regulatory costs of administration."

The State of California State Administrative Manual (SAM), section 8752, provides that it is state policy for departments to recover full costs whenever goods or services are provided to others. Section 8752 of the SAM specifies that full costs include "all costs attributable directly to the activity plus a fair share of indirect costs which can be ascribed reasonably to the good or service provided." The revenue generated from the fees is placed in the Optometry Fund and is utilized by the Board to perform the duties and functions authorized by the Optometry Practice Act.

The Board has conducted a cost analysis of the Board's current fee structure and program administration to justify setting the fee for MOO initial registration (see Underlying Data -- Underlying Data "Workload Costs Tables"). At its May 20, 2022 meeting, the Board voted to initiate a rulemaking to adopt the proposed fees set forth in this proposal. Updating the regulation will make it consistent with the language in the controlling statute establishing a fee to meet the reasonable regulatory cost of administration. For a breakdown of these costs see the California State Board of Optometry Mobile Optometric Office – Underlying Data "Workload Costs Tables."

Subdivision (s)

Purpose:

This proposal adds a new subdivision (s) and establishes the biennial renewal fee for a certificate to operate as an owner and operator of a mobile optometric office, fee is established at \$2,632.

Rationale: AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 3070.2 (j) to say, “By January 1, 2023, the board shall adopt regulations establishing a registry for the owners and operators of mobile optometric offices and shall set a registration fee at an amount not to exceed the reasonable regulatory costs of administration.” The Board proposes to create a fee category and title for a biennial renewal fee for a certificate to operate as an owner and operator of a mobile optometric office in the amount of \$2,632.

BPC section 3055 authorizes the Board to issue a license or certificate to an applicant who meets the requirements of the Optometry Act including payment of the prescribed renewal fee and meeting the requirements for renewal prescribed by the Board. A Workload Cost Analysis was completed which determined that the total cost to the Board to for the MOO certificate to operate biennial renewal is \$2,632. Updating the regulation will make it consistent with the language in the controlling statute and the SAM manual directives discussed above to establish a fee to meet the reasonable regulatory cost of administration for renewals. For a breakdown of these costs see the California State Board of Optometry Mobile Optometric Office – Underlying Data “Workload Costs Tables.”

Subdivision (t)

Purpose:

This proposal adds a new subdivision (t) and establishes a delinquency fee for failure to renew a certificate to operate as an owner and operator of a mobile optometric office at \$150.

Rationale:

BPC section 3055 authorizes the Board to provide for the late renewal of a license or certificate as provided for in BPC section 163.5. As stated in BPC 163.5, “Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for such license in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than one hundred fifty dollars (\$150).” The Board is adding a delinquency fee. This delinquency fee will cover increased administrative costs for processing late renewals as described in the Underlying Data “Workload Costs Tables”. Due to the limitations imposed by BPC section 163.5 (fee is half the cost of the renewal

fee up to \$150), the Board is charging the statutorily required fee of \$150.

Subdivision (u) and (v)

Purpose:

This proposal adds a new subdivision (u) and establishes the application fee for a MOO permit at \$472 and adds a new subdivision (v) to establish the renewal fee for a mobile optometric office permit at \$472.

Rationale:

AB 1534 (Committee on Business and Professions) Chapter 630, Statutes of 2021 amended BPC 3070.2 (d) to say, “An owner and operator who has obtained approval from the board pursuant to paragraph (1) of subdivision (c) and wishes to operate a mobile optometric office shall apply for a permit from the board before beginning operation of each mobile optometric office. The application shall be made on a board-prescribed form which requests any information the board deems appropriate to register a mobile optometric office pursuant to this section. The form shall be accompanied by a nonrefundable fee of four hundred seventy-two dollars (\$472). The board may increase the fee, as necessary to cover the reasonable regulatory costs of administration, to not more than six hundred dollars (\$600).” BPC section 3070.2(d)(4) authorizes a MOO permitholder to apply for renewal by attesting to compliance with the requirements of BPC section 3070.2 and payment of the biennial renewal fee prescribed by the Board.

Updating the regulation will make it consistent with the language in the controlling statute establishing a fee to meet the reasonable regulatory cost of administration as the Board has determined that charging \$472 is sufficient to cover the costs of issuing, administering, and enforcing the MOO permit as set forth in the Underlying Data “Workload Costs Tables”.

Subdivision (w)

Purpose:

This proposal adds a new subdivision (w) and establishes a delinquency fee for failure to renew a mobile optometric office permit at \$150.

Rationale:

BPC section 3055 authorizes the Board to provide for the late renewal of a license or certificate as provided for in BPC section 163.5. BPC section 23.7 defines a “license” to include: “Unless otherwise expressly provided, “license” means license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600,” which would include permits issued under BPC

3070.2 As stated in BPC 163.5, “Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for such license in effect on the date of the renewal of the license, but not less than twenty-five dollars (\$25) nor more than one hundred fifty dollars (\$150)”. The Board is adding a delinquency fee. This delinquency fee will cover increased administrative costs as set forth in the Underlying Data “Workload Costs Tables”. Permit holders will only incur this cost if they fail to renew timely as provided in BPC 163.5. Due to the limitations imposed by BPC section 163.5 (fee is half the cost of the renewal fee up to \$150), the Board is charging the statutorily required fee of \$150.

Adopt Section 1583 and title – Registration Requirements for Ownership and Operation of Mobile Optometric Offices; Notice of Changes; Abandonment; Grounds for Denial

Subdivision (a)

Purpose:

This proposal adopts a new title and subdivision (a) and establishes registration requirements for obtaining the owner and operator (OAO) certificate, including using an online portal designated by the board, and that upon approval will receive a certificate to operate as an owner and operator of a mobile optometric office.

Rationale:

Existing regulations and law do not specify the exact content of an application needed to register a mobile optometric office with the board. This section would establish such standards to ensure only qualified applicants are authorized to operate a mobile optometric office in this State. The Board proposes to add this subdivision requiring submission of a completed application to the Board for a mobile optometric office owner and operator applicant that includes, for the protection of the public, requirements for registration with the Board in compliance with this section prior to offering optometric services, and a title to establish the application requirements for the MOO registration under BPC section 3070.2. This subdivision is necessary to inform applicants what must be submitted to satisfy the requirements in BPC section 3070.2 and this section, provide a complete list of requirements in one convenient location for applicants, and help ensure the Board only receives completed applications for processing. The title is being added for ease of reference and to help guide affected readers to the location of these provisions for better organization of this Article.

This proposal was created with the aim of ensuring the safety and quality of mobile optometric offices. By establishing registration requirements for ownership and operation, the Board can more effectively monitor and regulate these types of businesses. Additionally, the use of an online portal for registration submissions will make the process more efficient and accessible for all parties involved. Ultimately, this will help to protect the public and ensure that mobile optometric offices are operating in compliance

with necessary regulations.

Subdivision (b)

Purpose:

This proposal adopts a new subdivision (b) and establishes the requirement that applicants electronically file a specified completed application according to requirements set forth in this section using the online licensing system entitled “BreEZe.” Applications would be required to be completed according to specified requirements, including:

1) The owner and operator shall first register for a user account by creating a username and password.

(2) The owner and operator shall provide identifying and contact information for the applicant organization, its responsible officers, a description of the services rendered within the MOO, a description of how follow-up care for all patients will be provided, and an electronic signature, as specified.

(3) Requirements for submission of additional items for processing including:

(A) The non-refundable fee fixed by the Board pursuant to Section 1524 that would be electronically submitted at the time of registration through a link to BreEZe on the Board’s website at: www.optometry.ca.gov;

(B) Full and complete fingerprints in the manner specified, and pursuant to the conditions and requirements set forth, in Section 1584 for all responsible officers or officials as defined.

Rationale:

The proposed language adds several conditions that are necessary to establish the new portal submission process for completing and electronically submitting an application. The first is that specified information be submitted electronically through a web link to the Department of Consumer Affairs’ online licensing system entitled “BreEZe”. This is necessary to inform applicants that the submission process begins by going to the Board’s online portal which is described in the Background. Applicants are also being informed that the location of the portal is the Board’s website, now specifically designated at www.optometry.ca.gov. This section was added to provide clear guidance and instructions for applicants who wish to register for the specified platform. By establishing a new subdivision and expanding on specific requirements, this proposal aims to simplify the registration process and ensure that all applicants can easily access and utilize the platform. The registration requirements included in this section will help to streamline the process and ensure that applicants provide a completed and accurate application to the Board for processing.

Subdivision (b)(1)

Purpose:

This proposal adopts a new subdivision (b)(1) and requires the applicant to register for a “BreEZe” user account by creating a username and password.

Rationale:

To reduce waste and streamline the application process the Board approved the use of an online application portal used for online licensing within the Department of Consumer Affairs, this platform is known as BreEZe. The first step in that process is that an owner and operator applicant sets up an account with the Board via the DCA’s BreEZe platform and create a username and password.

As explained in the Background section above, security of information is key to protecting the integrity of the application process when using an electronic transmission method. When setting up a secured account, it is standard to have the user create a user name and password to make sure unauthorized persons cannot access the account. This allows the Board to hold the owner and operator responsible for any information submitted through the portal and liable for any consequences.

Subdivision (b)(2)

Purpose:

This proposal adopts a new subdivision (b)(2) to require specific information on the application, as spelled out in subdivisions (b)(2)(A) – (b)(2)(I), below.

Rationale:

The registration requirements are needed for the Board to effectively evaluate applications.

Subdivision (b)(2)(A)

Purpose:

This subdivision requests the owner and operator organization’s (OAOs) legal name.

Rationale:

Requesting this information is crucial for the effective and efficient processing of the application, as it enables the Board to confirm the identity of the organization and that the organization is a legally recognized entity, authorized to transact business for the purposes of BPC section 3070.2(c) in this State (non-profit or charitable organization as

specified in Section 3070.2). Additionally, by requiring this information upfront, it reduces the likelihood of errors or discrepancies, which could potentially delay the processing of the application. Overall, the inclusion of a basic information section on the OAO application is a practical and necessary step towards streamlining the application process and ensuring that all relevant details are captured accurately.

Subdivision (b)(2)(B)

Purpose:

This subdivision requests the OAOs contact information, including the OAOs primary physical address, city, state, zip code and telephone number.

Rationale:

The contact information is necessary to contact the applicant if there is any questionable information submitted or suspicious activity with the applicant’s account and to confirm the identity of the applicant. This information is crucial for the effective and efficient processing of the application, as it enables the Board to verify the legitimacy of the organization and prevent any potential fraud or misrepresentation. Additionally, by requiring this information upfront, it reduces the likelihood of errors or discrepancies in the organization's details, which could potentially delay the processing of the application. Overall, the inclusion of an OAO contact information section on the OAO application is a practical and necessary step towards ensuring that all relevant details are captured accurately, and the responsible authorities can verify the organization's legitimacy effectively. In addition, the collection of the physical address of the OAO allows the Board an address where legal process may be served in the event that subpoenas are necessary to obtain further information from the OAO as part of the investigation of the applicant’s qualifications.

Subdivision (b)(2)(C)

Purpose:

This subdivision requests the OAOs address of record, city, state, zip code, telephone number, and website address, if applicable.

Rationale:

To ensure that all relevant and necessary details about the organization are captured accurately. An address of record is information that must be made available to the public on the Board’s website in accordance with requirements in BPC section 27(a), which requires this Board to disclose a licensee’s “address of record”.. Overall, the inclusion of an OAO address of record information section on the OAO application is a practical and necessary step towards complying with BPC section 27 and ensuring that all relevant details are captured accurately, and the responsible authorities can verify the

organization's legitimacy effectively. A website address is requested, if available, to help provide further identifying information to the Board and the public as part of the application and registration process.

Subdivision (b)(2)(D)

Purpose:

This subdivision requests name and personal identifying information, including title, direct telephone number, and email address of the authorized contact person for the MOO applicant.

Rationale:

Providing the name, title, direct telephone number, and email address of the authorized contact person for the MOO is important for various reasons. Firstly, it facilitates clear communication channels between the MOO and the Board, thereby enabling effective and timely communication. Secondly, having a designated contact person ensures that all queries and concerns are directed to the right person, which helps to avoid confusion and delays. Additionally, it helps to establish accountability and responsibility, as the authorized contact person is the point of contact for all matters related to the MOO, follow-ups, or any other Board inquiries.

Subdivision (b)(2)(E)

Purpose:

This proposed subdivision requests proof of documentation to verify the nonprofit status of the organization seeking to operate a MOO, and instructions to submit the attachments to the OAO application.

Rationale:

Requiring a copy of the articles of incorporation or acknowledgment of intent to operate and employer identification number (EIN) demonstrating that the owner and operator is a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code serves to comply with BPC 3070.2(c) ensuring that only eligible organizations are granted licensure; in the case of the MOO program, only nonprofit and charitable organizations can apply for this program.

Scanning and electronically uploading the documents in a PDF format attached to the application through a web link to BreEZe on the Board's website at a specific URL helps streamline the application process and makes it more efficient. This digital approach removes the need for physical copies and enables the Board to retain the information in a readily retrievable and accessible form. Finally, this PDF format is a common and widely available format that should be easy for applicants to use to meet the Board's

compliance requirements.

Requiring a copy of the articles of incorporation or acknowledgment of intent to operate and employer identification number demonstrating that the owner and operator is a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code is a crucial step in ensuring the integrity of the licensure process. Since articles of incorporation or acknowledgement of intent to operate under 501(c)(4) documents are necessary to establish non-profit or charitable status with the Internal Revenue Service pursuant to Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, the Board would necessarily need these documents to confirm that the IRS requirements were met and that these organizations would qualify as an applicant pursuant to BPC section 3070.2(c).

Subdivision (b)(2)(F)(i-iii)

Purpose:

This proposed subdivision requests personal identifying information of all officers or officials responsible for the operations of the organization (non-profit or charitable organization), and personally identifying information including name, title, address, city, state, and zip code, SSN/ITIN of individuals who are responsible for the operations of the organization (non-profit or charitable).

Rationale:

As per BPC 3070.2(e)(7) the Board is authorized to adopt “Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.” Maintaining transparency by providing a list of all officers or officials responsible for the organization's operations is crucial for the Board to understand who oversees the organization and how to contact them if needed. The names and titles of officers and officials will help the Board identify key decision-makers within the organization. Providing the address, city, state, and zip code of the officers and officials will help maintain communication. Additionally, their social security numbers (SSN) or individual taxpayer identification numbers (ITN), business telephone numbers, alternate telephone numbers (if any), and email addresses will allow the Board to enforce the MOO program properly.

In addition, the Board collects the SSN, or ITIN as required by BPC sections 30 (implementing section 17520 of the Family Code), 31 and 494.5. Family Code section 17520(a)(6) defines a licensee (and therefore subject to the SSN/ITIN disclosure requirements) to include the following: “For licenses issued to an entity that is not an individual person, “licensee” includes an individual who is either listed on the license or who qualifies for the license.” Consistent with the requirements in BPC 30(a) and section 17520 of the Family Code to collect the SSN or ITIN for all other non-partnership-type applicants, the applicant is required to report the SSN or ITIN of the officers or officials who are responsible for the operations of the organization and therefore considered

“listed on the license” by the Board since they are responsible for management and control of the entity as determined by the applicant.

This collection of this information is for the purpose of tax enforcement (e.g., sales or use tax owed since charitable and nonprofits are exempt only from income tax), and compliance with any judgment or order for family support in accordance with Family Code section 17520. Though this information may seem sensitive, it is necessary to ensure that the organization operates within the bounds of the law.

Subdivision (b)(2)(G)

Purpose:

This proposed subdivision requires a description of services that will be rendered on the OAO application.

Rationale:

This item is necessary for the Board to comply with the legislative mandate to collect this information from the MOO applicant. As per the BPC 3070.2(e)(1) “The description of services to be rendered within the mobile optometric office.” The Board needs to have a clear understanding of the services that will be provided within the mobile optometric office in order to enforce and confirm that they are within the scope of practice of optometry. This requirement serves to protect the health and safety of patients and maintain the integrity of the optometry profession. Providing this information on the application along with other discretionary items allows the Board to provide all requirements in one convenient location and to avoid applicant confusion.

Subdivision (b)(2)(H)

Purpose:

This proposed subdivision requires a description of how follow-up care will be provided for those who are seen at a MOO.

Rationale:

Requiring a description of how follow-up care will be provided is necessary for the Board to comply with the legislative mandate to collect this information from the MOO applicant. As per BPC 3070.2(e)(4), "A description of how follow-up care will be provided," serves an important purpose in ensuring that patients receive adequate and appropriate care if needed after receiving services through the MOO. By outlining the steps and protocols for follow-up care, the Board can ensure that patients receive any necessary treatment, address any complications that may arise, and prevent any potential negative health outcomes. This requirement helps to promote patient safety, ensure quality care, and improve overall patient outcomes. Providing this information on the application along with other discretionary items allows the Board to provide all requirements in one

convenient location and to avoid applicant confusion.

Subdivision (b)(2)(I)

Purpose:

This proposed subdivision establishes an electronic signature as a method of legally signing documents required by the MOO program.

Rationale:

To ensure authenticity and compliance with legal signature requirements, the Board requires an electronic signature for any filing made through the online portal. This includes attestation under penalty of perjury. To file, an authorized representative of the mobile optometric office must affix their electronic signature by typing their name in the appropriate field and submitting the filing via the Board's online portal. By doing so, the Board can verify that the individual has reviewed and approved the filing. Moreover, the electronic submission serves as evidence of a legal signature by any individual whose name is typed on the filing. This can be used to verify the authenticity of the filing in the event of any legal disputes or investigations.

This new electronic application submission process requires access to a portal to submit the required information and the uploading of an electronic document per subsection (b)(2)(E), and therefore must rely on an electronic signature. Electronic signatures are authorized under California Government Code section 16.5. The proposed language sets out the process for the submission of an OAO application for a mobile optometric office registration electronically and therefore, the typical certification that has been done using a “wet” signature is now being done through an electronic signature, using the signature of the authorized MOO representative.

Under section 1633.9 of the Uniform Electronic Transaction Act (UETA -- Civil Code sections 1633.1-1633.17), “An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.” This standard is met here as the security procedures established in subsection (b) above, including the establishment of a user name and password, provides a security procedure to assure that only the person with authority to access the portal could submit an application.

As the submission of an application requires a legally valid signature, the new process of submitting an application via the Board’s online portal requires that this be met by the use of an electronic signature.

The purpose of this section is to inform applicants submitting their MOO application of the signature requirement, to reaffirm that the signature is required by this filing, and then to explain that the requirement is met if the authorized MOO representative types their

name into the appropriate field and then submits the application via the online portal. The process outlined here for signing the document is also a widely used and recognized method for signing a document electronically and therefore would be easy for the representative to understand and use.

For the certification under penalty of perjury, the Board relies upon applicants' self-reported information in evaluating applications or other forms submitted for processing by the Board. This requirement helps ensure that the representations on the form are accurate, truthful and made in good faith. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. ["The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true." *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

The statement that "submission of a filing in this manner shall constitute evidence of legal signature by any individual whose name is typed on the filing," is needed to provide notice of the legal effect of signing the document electronically, in accordance with UETA and section 1633.7 of the Civil Code, which states that: "(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form," and "(d) If a law requires a signature, an electronic signature satisfies the law..."

Subdivision (b)(3)

Purpose:

This proposed subdivision outlines the fee and fingerprint scan requirements needed for OAO application registration, further outlined in subdivision (b)(3)(A) and (b)(3)(B).

Rationale:

The two requirements set forth in subdivision (b)(3)(A) and (b)(3)(B) are required to consider OAO registration complete for review by the Board.

Subdivision (b)(3)(A)

Purpose:

This proposed subdivision includes the non-refundable fee fixed by the Board pursuant to Section 1524 required at the time of submission of the OAO application. The subdivision also includes the electronic submission of the fee at the time of registration

through a link to BreEZe on the Board's website.

Rationale:

The non-refundable fee that is fixed by the Board pursuant to Section 1524 is necessary to cover the costs associated with the processing of applications for licensure. The application fee is non-refundable because the Board incurs staff hours and resources to review the application regardless of whether the application is approved or denied. These statements are necessary to provide notice to the applicants of these requirements for a completed application and to help ensure the Board receives completed applications through the portal. The electronic submission of the fee through a link to BreEZe on the Board's website is a convenient and secure method of payment that helps reduce the administrative burden on both the Board and the applicants.

Subdivision (b)(3)(B)

Purpose:

This proposed subdivision establishes fingerprint requirements for applicant officials to the Board for use in criminal background checks, including the submission of full and complete fingerprints by responsible officers and officials of the organization, as defined; and, mandating compliance with the fingerprint submission requirements of proposed CCR section 1585.

Rationale:

This proposal is necessary to specify those processes and procedures to allow the applicant to successfully submit their fingerprints and meet this eligibility requirement when requested by the Board in accordance with BPC section 144(b)(5) (which requires the Board to collect fingerprints from every applicant). This includes the submission of full and complete fingerprints as incomplete prints would result in the inability to successfully submit them to the Department of Justice (DOJ); therefore, resulting in an incomplete submission. This proposal is also essential for ensuring that the individuals who are responsible for the operations of the MOO do not have a history that would be grounds for denial of the application for the organization pursuant to BPC section 480. Under this interpretation, acts of the responsible agents of the charitable or nonprofit organizations are attributable to the principal applicant and therefore would be grounds for denying registration of the organization (see, e.g., "The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license... *Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 186.) . By obtaining fingerprints and conducting criminal background checks, the Board can also ensure compliance with BPC section 144 and Section 1585, which sets out the conditions and requirements for submitting fingerprints and conducting criminal background checks as a condition of registration in compliance with the legislative

mandate for all applicants to furnish fingerprints for the purpose of conducting criminal history records checks in compliance with BPC section 144. A definition for “responsible officers or officials” is included to avoid confusion and to make specific the individuals required to meet this requirement as determined by the organization.

Subdivision (c)

Purpose:

This proposed subdivision (c) establishes instructions for MOOs to report changes in information to the Board within 14 days, including change of primary business address, responsible officers or officials, records location, and the name and license number of the optometrist responsible for directing medical operations.

Rationale:

The requirement for the owner and operator of a mobile optometric office to report any changes in their information to the Board within fourteen (14) days of the change is necessary to ensure transparency and accountability in the provision of services provided by MOOs. This measure helps the Board to keep an up-to-date record of the critical contact and identifying information related to the MOO, including the change of primary business address, responsible officers or officials, records location, and the name and license number of the optometrist responsible for directing medical operations. The timely reporting of these changes helps the Board ensure that the mobile optometric office complies with the relevant laws and regulations and that the quality of medical services provided by the office remains consistent. This measure also helps protect patients' rights and interests by ensuring they have access to accurate and up-to-date information about the mobile optometric office and the optometrist responsible for their medical care. In the Board's experience, 14 days is sufficient time for an applicant to report changes to its identifying information to the Board. This timeframe is also consistent with similar requirements for reporting changes to a MOO permit application set forth in BPC section 3070.2(g), which will make it easier for the regulated community to remember.

Subdivision (d)

Purpose:

The proposed subdivision (d) establishes grounds for abandonment, which would include failure to complete the registration process within one year of being notified by the Board of deficiencies in their application. Applicants who abandon in accordance with this section would be required to submit a new application and meet all registration requirements in effect at the time of reapplication.

Rationale:

For Boards, such as this Board, who have elected to have the DCA administer any specified licensing services, the following statute applies. BPC section 142(b) provides:

“[n]otwithstanding any other provision of law, the abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application.”

As a result, the Board cannot deem an application abandoned until 12 months have passed from the date of returning the application (which is accomplished by way of notice of deficiencies to the applicant to easily identify when the application was officially returned). This section is necessary to apply the Board’s abandonment of application procedures to owners and operators seeking the Board’s approval to register as a MOO with the Board and to provide such notice to affected applicants. In the Board’s experience, setting such a standard encourages applicants to submit timely information. The Board proposes to require a new application be submitted after an applicant abandons an application to simply and clearly communicate to affected applicants that they must submit a new application to obtain Board approval to register.

In addition, the Board has a responsibility to ensure that only qualified individuals are registered to provide optometric services to the public through a MOO. This policy is necessary to maintain the integrity of the registration process and to ensure that all applicants meet the required standards before being granted registration. By requiring applicants to complete the registration process within one year of being notified of deficiencies, the Board can ensure that the process is completed in a reasonable timeframe. This policy also ensures that the Board is not burdened with incomplete or abandoned applications, which could delay the registration process for other applicants.

Subdivision (e)

Purpose

This proposed subdivision (e) outlines the grounds for denial if applicants fail to comply with any of the requirements of this section or Section 3070.2 of the code or upon the grounds specified in Section 480 of the code.

Rationale:

The rationale for including proposed section (e) is to provide a clear and concise outline of the grounds for denial of an application. By specifying that an application may be denied if an applicant fails to comply with any of the requirements of this section or BPC 3070.2, or upon the grounds specified in Section 480 of the code, the proposed section (e) covers a broad range of potential violations in one convenient location and ensures that applicants are aware of the consequences of non-compliance. This section is crucial in maintaining the integrity of the application process and ensuring that only qualified

applicants are approved and registered to provide optometric services to the public.

Adopt Section 1584 – Certificate to Operate a Mobile Optometric Office; Renewal Requirements; Grounds for Discipline; Reinstatement of Expired Certificate.

Subdivision (a)

Purpose:

This proposed section (a) establishes the two-year term limit for the certificate to operate a MOO that is approved by the Board, unless renewed prior to expiration by meeting the requirements of this section.

Rationale:

BPC 3070.2(c)(3) states “The owner and operator of a mobile optometric office shall not operate more than 12 mobile optometric offices within the first renewal period of **two years**, but may operate more than 12 offices after the first renewal period is complete (emphasis added).” By establishing a two-year term length for the permit this section will comply with implied authority to set that term length at two years at BPC 3070.2(c)(3).

Also, biennial renewal is consistent with other license types issued by the Board (e.g., optometrist’s license), making it easier for an affected applicant to recall and manage. In addition, this requirement is important to ensure that applicants understand when to submit their renewal applications, that such renewals must follow the requirements of this section to meet regulatory requirements for renewal and to avoid a lapse in registration with the Board.

Section (b)

Purpose:

This proposal adds a new section (b) and establishes the requirement to pay the fee specified in section 1524 and specifies the requirements for renewal of a certificate to operate including certification of compliance with the listed standards in subsections (1)-(9).

Rationale:

BPC section 3055 states, “The board shall issue a license to an applicant who meets the requirements of this chapter, including the payment of the prescribed licensure, certification, or renewal fee, and who meets any other requirement in accordance with state law. A license or certificate issued under the chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license or certificate as provided for in Section 163.5.”

Adopting this section will make it consistent with the requirements in this controlling statute by specifying that this certificate be subject to renewal requirements including a fee and other requirements prescribed by the Board and to specify the method of such renewal. Establishment of these requirements at (b)(1)-(9) are the minimum necessary to ensure that the MOO is operating in compliance with the Board's standards for safe operation for the protection of the public and the mandates set by law at BPC section 3070.2 (as further specified below) for registration with the Board. This is also necessary to ensure that applicants understand the requirements for a compliant renewal and to avoid a lapse in licensure (aka registration). A certification (statement declaring) of compliance requirement is necessary to ensure that the applicant continues to meet minimum standards in operating the MOO. Further, the Board relies upon applicants' self-reported information in evaluating applications; therefore, this information is necessary to obtain reliable evidence of the renewal applicant's compliance with the Board's minimum standards.

Subdivision (b) (1-2)

Purpose:

This proposal adds new subdivisions (b)(1) and (b)(2) and establishes that optometric services are provided to patients regardless of the patient's ability to pay and that the owner and operator will not accept payment except through Medi-Cal benefits as two of nine requirements for the renewal of the certificate to operate.

Rationale:

BPC section 3070.2(c) requires as a condition of registration that the registering entity qualify as follows:

The ownership and operation of a mobile optometric office shall be limited to a nonprofit or charitable organization that is exempt from taxation pursuant to Section 501(c)(3) or Section 501(c)(4) of the United States Internal Revenue Code that provides optometric services to patients **regardless of the patient's ability to pay**. (Emphasis added.)

Requesting evidence of compliance in the manner specified in proposed subsection (b)(1) therefore helps ensure that the organization still qualifies to register with the Board in accordance with BPC section 3070.2(c).

BPC 3070.2(c)(1) states "The owner and operator of a mobile optometric office shall register with the board. The owner and operator of a mobile optometric office and the optometrist providing services shall not accept payment for services other than those provided to Medi-Cal beneficiaries." Requesting evidence of compliance in the manner specified in proposed subsection (b)(2) therefore helps ensure that the organization still meets the requirements set forth in BPC section 3070.2(c)(1).

Subdivision (b)(3)

Purpose:

This proposal adds a new subdivision (b)(3) that specifies that medical operations of the MOO are directed by a licensed optometrist and in every phase is under the exclusive control of a licensed optometrist, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, the fees charged for optometric products and services, the examination procedures, the treatment provided to patients, and the follow up care. This proposal will serve as the third of nine requirements to be acknowledged by the OAO for renewal of the certificate to operate.

Rationale:

Adopting the proposal language is necessary to confirm that the MOO is still operating in compliance with the authorizing statute. BPC 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 follow-up care pursuant to this section.” Requesting evidence of compliance in the manner specified in proposed subsection (b)(3) therefore helps ensure that the organization still qualifies to register with the Board in accordance with BPC section 3070.2(c)(2).

Subdivision (b)(4)

Purpose:

This proposal adds a new subdivision (b)(4) and establishes confirmation that the OAO has read or received notice of the limitations on operating more than twelve (12) mobile optometric offices within the first renewal period contained in BPC Section 3070.2(c)(3). This proposal will serve as the fourth of nine requirements to be acknowledged by the OAO for renewal of the certificate to operate.

Rationale:

Requiring certification that the MOO renewal applicant has read or received notice of the requirements in BPC 3070.2(c)(3) helps ensure greater notice to the regulated community and compliance with the requirements in BPC section 3070.2. Adopting this proposal will make it consistent with the language in the authorizing statute. BPC 3070.2(c)(3) states “The owner and operator of a mobile optometric office shall not operate more than 12 mobile optometric offices within the first renewal period of two years, but

may operate more than 12 offices after the first renewal period is complete.”

Subdivision (b)(5)

Purpose:

This proposal adds a new subdivision (b)(5) and establishes the acknowledgement by the OAO that they provided each patient and patient’s caregiver or guardian with the consumer notice prescribed by the Board in section 1587 and maintains a record of the notice prescribed by the Board in the patient’s medical record. This proposal will serve as the fifth of nine requirements to be acknowledged by the OAO for renewal of the certificate to operate.

Rationale:

As a condition of registration with the Board, the MOO, by law must provide a consumer notice, as specified, to each patient or patient’s caregiver or guardian and maintain record of the notice in the patient’s medical record. The Board has specified in this proposal the contents of such notice in proposed CCR section 1587. Adopting this proposal will make it consistent with the requirements in the authorizing statute and CCR section 1587 and helps ensure that the MOO continues to meet these consumer notice and records retention requirements by making documentation of compliance with that standard a condition of renewal.

BPC 3070.2 (h) (1) states, in part: “The owner and operator of the mobile optometric office shall provide each patient and, if applicable, the patient’s caregiver or guardian, a consumer notice prescribed by the board...” this proposal will comply with medical notice requirements.

See also: BPC 3070.2 (h) (2), which states “The optometrist shall maintain a copy of the consumer notice described in paragraph (1) in the patient’s medical record.”

Subdivision (b)(6)

Purpose:

The proposal includes the addition of a new subdivision (b)(6) and requires the OAO to provide, upon request by the patient’s caregiver or guardian, a copy of the prescription made for the patient. This proposal constitutes the sixth out of nine requirements that the OAO must acknowledge for the renewal of the certificate to operate.

Rationale:

BPC 3070.2 (h)(3) states “Upon request by the patient’s caregiver or guardian, a copy of the prescription made for the patient shall be provided.” This means that as a condition of registration with the Board, the MOO, by law must provide a copy of the prescription

made for the patient to the patient’s caregiver or guardian. Adopting this proposal will help ensure that the MOO continues to meet these registration standards by making documentation of compliance with that standard a condition of renewal.

Subdivision (b)(7)

Purpose:

This proposal includes the addition of a new subdivision (b)(7) that requires the OAO to confirm that all employees responsible for driving or transporting the MOO vehicle possesses a valid license. This proposal constitutes the seventh out of nine requirements that the OAO must acknowledge for the renewal of the certificate to operate.

Rationale:

Adopting this proposal will make it consistent with the language in the authorizing statute. BPC 3070.2 (i) states “Any person who is employed by the owner and operator of the mobile optometric office to drive or transport the vehicle shall possess a valid driver’s license.” This means that as a condition of registration with the Board, the MOO, by law must meet the standard set forth in subdivision (i) of Section 3070.2. Adopting this proposal will help ensure that the MOO continues to meet these registration standards by making documentation of compliance with that standard a condition of renewal.

Subdivision (b)(8)

Purpose:

This proposal includes the addition of a new subdivision (b)(8) and requires the OAO to confirm that records are maintained as prescribed by BPC section 3070.2 and makes them available to the Board upon request for inspection during normal business hours. This proposal constitutes the eighth out of nine requirements that the OAO must acknowledge for the renewal of the certificate to operate.

Rationale:

Adopting this proposal will make it consistent with the language in the authorizing statute. BPC 3070.2 (m) states “The owner and operator of a mobile optometric office shall maintain records in the following manner, which shall be made available to the board upon request for inspection...” Since this requirement is a condition of registration with the Board, the Board proposes to adopt this as part of the certification requirement as a condition of renewal to help ensure that the MOO continues to meet minimum standards in compliance with the requirements set forth in BPC 3070.2. Adopting this standard in regulation also gives notice to renewal applicants of all requirements for renewal and records maintenance and production in one convenient location.

Subdivision (b)(9)

Purpose:

This proposal includes the addition of a new subdivision (b)(9) and establishes a certification requirement for the OAO to report that a licensed optometrist who is certified to use pharmaceutical agents pursuant to BPC section 3041.3 performs all examinations at the MOO. This proposal constitutes the ninth out of nine requirements that the OAO must acknowledge for the renewal of the certificate to operate.

Rationale:

As a condition of registration with the Board, the MOO, by law at BPC section 3070.2(o) must meet the following requirement:

“All examinations performed at the mobile optometric office shall be performed by a licensed optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3.”

BPC section 3041.3 sets forth minimum standards for certification including (1) completion of a specified preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, (2) successful completion of a minimum of 100 hours of directed and accredited education in ocular and systemic diseases, as specified; and (3) passage of the National Board of Examiners in Optometry’s “Treatment and Management of Ocular Disease” examination. This proposal allows the Board to properly enforce the MOO program by ensuring that minimum standards in the Optometry Practice Act are met through collection of a certification, which may be used as documentation of compliance. This proposal would also provide notice to the renewal applicant that this requirement must be met and maintained as a condition of renewal.

Subdivision (c)

Purpose:

This proposal includes the addition of a new section (c) which establishes a standard that failure to comply with the requirements for renewal on this section renders any application for renewal of a certificate to operate incomplete and that the certificate will not be renewed until the MOO owner and operator demonstrates compliance with all requirements.

Rationale:

Existing regulations do not specify upon what grounds the Board would deem a renewal application incomplete or what the status of that applicant’s registration is if an incomplete application is received. This proposal would resolve that ambiguity by making specific that a completed renewal application is one that complies with all renewal requirements in Section 1584 and renewal will not happen until compliance with

the standards in Section 1584 is demonstrated. These new provisions are necessary to provide applicants with advance notice regarding the basis for deeming an application incomplete and the consequences for submitting an incomplete application: nonrenewal until compliance is obtained. This is important to ensure that applicants understand when to submit their renewal applications in compliance with the requirements of this section and to avoid a lapse in licensure.

The rationale behind this section is also to maintain the safety and quality of mobile optometric services. Compliance with all requirements is necessary to ensure that the equipment, personnel, and processes used in the mobile optometric office meet the required standards. This section also ensures that mobile optometric offices are held accountable for any violations or non-compliance. Failure to comply with the requirements means that the mobile optometric office may not be operating safely and efficiently, which can jeopardize the health of patients. Therefore, it is essential to ensure that all mobile optometric offices comply with the requirements to maintain the safety and quality of services provided.

Subdivision (d)

Purpose:

This proposal includes the addition of a new section (d) that establishes the expiration date for the MOO certificate to operate and the status of a MOO owner and operator's registration as "unlicensed" if not renewed in accordance with the requirements in this section. This section would also set the requirements for an expired certificate to operate to be reinstated, including the three-year timeframe for submission of such a request and payment of all accrued and unpaid renewal and delinquency fees.

Rationale:

This section mandates that the certificate to operate shall expire in the event the owner and operator do not renew it, and they will be considered unlicensed. This is aimed at preventing unlicensed operators from conducting business, which could be detrimental to public health and safety. Failure to renew timely results in the individual becoming unlicensed (see e.g., "There is nothing in the law which compels a licensed real estate broker to continue in business or to renew his license, and if he does not do so he is unlicensed after the expiration date." (*Mortgage Finance Corp. v. Strizek* (1957) 148 Cal.App.2d 817, 819.) In the Board's experience, applicants often fail to appreciate or understand the legal consequences of not submitting a timely renewal application (i.e., before the registration's expiration date). The purpose of the subdivision is therefore to give renewal applicants advance notice of and establish the legal status of a MOO owner and operator's certificate and the consequences for not timely renewing a MOO certificate.

The provision also allows the reinstatement and renewal of an expired certificate to

operate within three years after its expiration, provided the owner and operator meets the renewal requirements and pays the accrued and unpaid renewal and delinquency fees. This provision is intended to provide notice of the status of a license that is not renewed in accordance with the Board's requirements and an opportunity for the owner and operator to correct their non-compliance and continue operating their MOO.

This would allow the Board to ensure currency of knowledge and that the applicant is still qualified to be a MOO operator. Additionally, in the Board's experience there may be changes in the applicable laws and regulations or in the industry after 3 years, and the Board wants to ensure operators have sufficient time to be evaluated and can demonstrate compliance in light of those new standards. This timeframe is also consistent with the Board's laws for reinstating other types of licenses regulated by the Board (see BPC sections 3147 and 3147.6), which would make it easier to recall and manage for the owner and operator applicants. Requiring the applicants for reinstatement to meet all requirements for renewal and pay delinquency fees is necessary to ensure minimum standards for registration are met and recover costs authorized to be collected for the enforcement operations of the Board under BPC sections 3055 and 163.5.

Subdivision (e)

Purpose:

This proposal includes the addition of a new section (e) and establishes requirements for OAOs to remain registered with the Board, including responding to Board inquiries, submission of any documents requested by the Board, provision of any information requested by the Board, and cooperation in any investigation conducted by the Board regarding compliance with the Board's requirements including BPC section 3070.2. It further establishes that a response to any Board inquiry or request shall be provided within 14 days of the Board's written request.

Rationale:

BPC section 3070.2 (k) states "The board may adopt regulations to conduct quality assurance reviews for the owner and operator of a mobile optometric office and optometrists engaging in the practice of optometry at a mobile optometric office."

The purpose of this subdivision is to establish the requirements for owner and operator continued communication, cooperation and compliance with the Board's oversight and regulation of the MOO once registered with the Board. This subdivision is necessary to require registered owners and operators to submit documents, provide information and cooperate with a Board investigation by providing information and documentation within 14 days of a Board request. Based on document and information requests the Board

typically makes, 14 days is a sufficient time for businesses to provide the requested records. The Board typically makes requests for discrete categories of information that can be provided within that time. Therefore, this proposal would adopt such a standard to help validate compliance with the Board's regulations and governing statute at BPC 3070.2.

Finally, setting the standard for inquiries and cooperation, coupled with the OAO's obligation to cooperate with any Board investigation within 14 days of the board's written request, ensures that the Board can enforce any necessary actions promptly and ensure public safety.

Subdivision (f)

Purpose:

This proposal includes the addition of a new section (f) that specifies all of the following regulatory requirements for imposing discipline against the MOO owner and operator:

Failure to comply with any of the requirements of this Article or Section 3070.2 of the code, or furnishing false, inaccurate, incomplete or misleading information to the Board is considered unprofessional conduct and grounds for disciplinary action against the certificate to operate by the Board. The Board may also take disciplinary action against the owner and operator's certificate to operate on the grounds set forth in Section 3110 of the code for unprofessional conduct committed by the optometrist directing the medical operations of the owner and operator's mobile optometric office(s).
Disciplinary actions shall be conducted in accordance with Section 3092 of the code. For purposes of this section, a "disciplinary action" includes revocation, suspension, probation or public reproof.

Rationale:

The rationale for the above section is to ensure compliance with the requirements of this Article and BPC section 3070.2 since there currently are no existing regulations that specify on what grounds the Board may take disciplinary action against the MOO owner and operator's certificate to operate. This section establishes authority for the Board to take disciplinary action for failure to comply with any of the provisions outlined in this Article or BPC section 3070.2. Furnishing false, inaccurate, incomplete, or misleading information to the Board is also considered unprofessional conduct. The Board reserves the right to take disciplinary action against the certificate to operate, owner, and operator if any unprofessional conduct is committed by the optometrist directing the medical operations of the owner and operator's mobile optometric office(s). This makes specific the Board's authority to hold the MOO owner and operator for acts of its agent (as discussed more fully above).

Furthermore, disciplinary action shall be conducted in accordance with Section 3092 of the code, which provides for revocation, suspension, probation, or public reproof. This section aims to ensure that all optometrists and optometric offices operate in compliance with the Optometry Practice Act and maintain professional standards. The Board takes any violations seriously and will take appropriate disciplinary action to mitigate any potential harm to the public.

BPC section 3110 provides, in part:

“The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:”

The words “includes, but is not limited to” are terms of expansion and not limitation and therefore it is unclear what other grounds than those specifically enumerated in BPC section 3110 that the Board may consider “unprofessional conduct.”

Failing to comply with applicable regulatory or statutory requirements and providing false, inaccurate, incomplete or misleading information indicates the owner and operator is unable and/or unwilling to follow the law and Board regulations and undermines the Board’s trust in the owner and operator to meet minimum standards established for the protection of the public. As explained above, current law in the Optometry Practice Act does not specify the exact meaning of what is considered “unprofessional conduct” and therefore grounds for revocation or suspension of the license as specified in BPC section 3110. As a result, it is necessary for the effective enforcement of the Board’s laws established for the protection of the public to specify that any of the aforementioned conduct or failures would be considered “unprofessional conduct” and therefore grounds for disciplinary action or proceedings as authorized by BPC sections 3110 and 3092. Consistent with existing requirements of the Optometry Practice Act, this proposal makes specific to MOO discipline that any action would be conducted in accordance with the Administrative Procedure Act (APA) requirements specified in BPC section 3092.

This subdivision is also necessary to provide a definition for “disciplinary action” as used in this section. This information enables an applicant to easily understand the use of the term as set forth in this subsection. Each of these types of discipline is commonly understood and used within the Business and Professions Code (e.g., BPC sections 490 and 495), or Optometry Practice Act (see, e.g., BPC section 3024) to fall within the umbrella of “disciplinary action. These terms are also consistent with how a license may be restricted under the APA (see Gov. Code, § 11503, which states in part: “A hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned shall be initiated by filing an accusation. . . .”) Nevertheless, to avoid MOO registrant confusion, the Board proposes to specify what “disciplinary action” means as set forth in this section.

Adopt Section 1584.5 and title – Mobile Optometric Office Permits

Subdivision (a) and subsections (1-3)

Purpose:

This proposal includes the addition of a new title and section for better organizational structure and guidance to affected users and new subdivisions (a) (1-3). and establishes criteria for obtaining a MOO permit before the operation of each MOO.

Rationale:

BPC section 3070.2(d) specifies in pertinent part:

An owner and operator who has obtained approval from the board pursuant to paragraph (1) of subdivision (c) and wishes to operate a mobile optometric office shall apply for a permit from the board before beginning operation of each mobile optometric office. The application shall be made on a board-prescribed form which requests any information the board deems appropriate to register a mobile optometric office pursuant to this section.

The rationale for requiring an owner and operator who has been issued a certificate to operate by the Board pursuant to section 1584 to obtain a permit for a mobile optometric office is to ensure the safety and quality of optometric services provided to the public. However, Section 3070.2 does not specify the form in which the applicant shall submit the information to the Board or provide the information the Board deems appropriate to register a mobile optometric office. This proposal in subsection (a) is therefore necessary to specify the form in which the operator must submit the required information before beginning operation of each mobile optometric office as prescribed by subdivision (d) of BPC section 3070.2. Specifying that these actions must be done before beginning operation of each mobile optometric office clarifies all responsibilities for and provides notice to the MOO owner and operator of these requirements consistent with BPC section 3070.2(d) and helps ensure the MOO is operating in compliance with minimum standards set by law and regulations.

Subsection (a)(1)'s requirement for utilizing an online portal designated by the Board (BreZE as specified in subdivision (b)), to submit a completed mobile optometric office permit application will enable the owner and operator to provide all necessary information to the Board for review and approval in the most secure manner possible as described in the Background section of this statement. This is necessary to assure that all MOO owners and operators have the information they need to obtain a permit with the Board as required by statute, and the provisions of what to submit as required by the Code and the Board regulations.

Subsection (a)(2)'s requirements to provide optometric services at each office as provided in this section and BPC section 3070.2 ensures that the owner and operator

meets the minimum standards prior to operation for the protection of the public and knows and understands the regulations and guidelines for providing optometric services in a mobile setting.

Subsection (a)(3)'s requirement to receive written approval from the Board and issuance of a permit with a unique identifying number ensures that the Board and owner and operator can keep track of each MOO and the number provides an added layer of protection for the public that allows them to easily identify registered and permitted mobile optometric offices that are legally authorized to provide such optometric services to the public. Specifying that an owner and operator must receive written approval from the Board prior to beginning operations of each mobile optometric office ensures that such offices do not begin operating until they have demonstrated to the satisfaction of the Board that they have met minimum standards as prescribed by these regulations and the Code.

Section (b)

Purpose:

This proposal includes the addition of a new section (b) and requires applications to be completed according to the requirements in subdivision (b) and submitted through a web link to the Department of Consumer Affairs' online licensing system entitled BreZE located on the Board's website at www.optometry.ca.gov. It further specifies that for the application to be deemed complete, the requirements in subsections (b)(1) and (b)(2) must be met as specified below..

Rationale:

The proposed language adds several conditions that are necessary to establish the new portal submission process. In this section, the regulation proposal directs MOO permit applicants to electronically submit an online application provided on the Board's website as specified above and is necessary to ensure that applicants understand the processes and procedures for submitting such an application through the designated portal. The rationale behind the requirements for completing the application for mobile optometric office permit is to ensure that all applicants meet certain criteria and furnish relevant information that can be used to regulate the MOO in the most orderly and secure manner possible. By submitting the application electronically through the Department of Consumer Affairs' online licensing system entitled "BreZE," the process is streamlined and simplified for both applicants and the Board. Finally, the proposal places applicants on notice that their applications will not be considered complete unless they meet the requirements set out in proposed subdivisions (b)(1) and (b)(2).

Subdivision (b)(1)

Purpose:

This proposal includes the addition of a new subdivision (b)(1) and instructs the OAO or a responsible representative to use their username and password to log into BreEZe as referenced in section 1584.5(b).

Rationale:

The requirement for submitting the username and password created to access BreEZe ensures that only authorized persons can submit applications and provide the information required by this section. As discussed above, the proposed language adds several conditions that are necessary to establish the new portal submission process. The first is that owners and operators or their responsible representative are required to submit the permit application using the account set up under section 1584.5(b) (which requires the owner and operator to create a username and password). When setting up a secured account, it is standard to have the user create a username and password to make sure unauthorized persons cannot access the account. This process allows the Board to hold the applicant responsible for any information submitted through the portal and liable for any consequences. The contact information is necessary to contact the representative if there is any suspicious activity with the owner and operator's account and to confirm the identity of the owner and operator and its representative as set forth in the Board's records.

Subdivision (b)(2)(A)

Purpose:

This proposal adds a new subdivision (b)(2)(A) and sets forth a requirement for the OAO to provide their name and certificate to operate number for the MOO permit through BreEZe.

Rationale:

The provision of the owner and operator's legal name and certificate to operate number will bring the requirement in line with BPC 3070.2 and allows the Board to confirm the identity of the owner and operator applicant as set forth in the Board's records. This would allow the Board to link the MOO registration and permits together for each mobile optometric office location.

Subdivision (b)(2)(B)

Purpose:

This proposal adds a new subdivision (b)(2)(B) and sets forth a requirement for the OAO to submit a non-refundable registration fee of \$472 for each MOO permit.

Rationale:

BPC 3070.2 (d) requires a non-refundable fee of \$472 for the MOO permit application. As discussed in the “Fees” rationale above and supported by the “Workload Costs Tables” in the Underlying Data listed below, the addition of this requirement will assist with the administrative cost of the MOO permit.

Subdivision(b)(2)(C)(i-v)

Purpose:

This proposal introduces new subdivisions (b)(2)(C)(i-v). It requests the following identifying information to be entered into BreEZe for the MOO permit application regarding the licensed optometrist providing services at the MOO, including: their name, optometrist license number, and address of record (city, state, and zip code). If applicable, it also requires the statement of licensure number issued by the Board as required by section 1506 for each owner of an optometry practice or employees practicing optometry in more than one office, the address of record for the optometrist listed as having a statement of licensure, and their direct telephone number.

Rationale:

The rationale behind requiring identifying information of the licensed optometrist providing services at the mobile optometric office is to ensure that optometrists are in compliance with the Board. By providing their name and optometrist license number, patients can verify the credentials of the optometrist providing services. The address of record ensures that the optometrist's location is known and can be contacted if necessary in the event service of legal process (subpoena) is needed or for investigation of violations by the Board . If the optometrist is an owner of an optometry practice or an employee practicing optometry in more than one office, the statement of licensure number is required by section 1506 to ensure that all optometrists are properly licensed and meeting the requirements of the Board. The direct telephone number ensures that the Board can contact the licensed optometrist providing services at a mobile optometric office if necessary to verify information provided in the application.

Subdivision (b)(2) (D-E)

Purpose:

This proposal introduces new subdivisions (b)(2) (D-E), and requests the identifying information from the vehicle being used including make, model, And year and license plate or registration number of the mobile optometric office vehicle to be included in the MOO permit application through BreEZe.

Rationale:

This helps ensure accurate identification and permitting of the MOO vehicle in compliance with Section 3070.2 and to enable the Board to effectively enforce the laws and regulations applicable to MOO operations. This subdivision is consistent with BPC 3070.2 (m)(5) which states “the owners and operators of the mobile optometric offices shall maintain accurate records of the mobile optometric offices, including vehicle registration numbers and the year, make, and model of each trailer or van.”

Subdivision (b)(2)(F)

Purpose:

This proposal introduces a new subdivision (b)(2)(F). It requires information specific to the particular MOO for which a permit is sought to be submitted through BreEZe.as set forth in the following subsections (i) through (vii).

Rationale:

By requiring this further identifying and operational information that is unique to the particular MOO in subsections (i) through (vii), the Board can accurately identify each MOO and evaluate and enforce the requirements for the MOO set by BPC 3070.2.

Subdivision (b)(2)(F)(i)

Purpose:

This proposal introduces a new subdivision (b)(2)(F)(i) and requires service descriptions for each individual MOO to be submitted as part of the MOO permit application submitted through BreEZe.

Rationale:

This proposal brings this subdivision in line with the requirement stated in the governing statute BPC 3070.2(e)(1), which states, "The description of services to be rendered within the mobile optometric office." By providing a detailed description of the services to

be offered, the Board will be able to evaluate and determine if they are within the scope of the MOO program and therefore qualified to render services under the Board-issued permit.

Subdivision (b)(2)(F)(ii)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(F)(ii) and requires the name and license numbers for all optometrists to be submitted as part of the MOO application to be submitted through BreEZe.

Rational:

This proposal brings this subdivision in line with the requirement stated in the governing statute BPC 3070.2(e)(2), which states, "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." By including the optometrists' names and optometry license numbers in the MOO application, the Board will be able to evaluate and determine if the optometrist is in good standing with the Board and associate them with the MOO permit and registration. This will enable more efficient investigations of consumer complaints or allegations of violations made against the MOO or associated optometrist licensees.

Subdivision (b)(2)(F)(iii)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(F)(iii) and requires the name and registration numbers for all opticians to be submitted as part of the MOO application to be submitted through BreEZe.

Rationale:

This proposal brings this subdivision in line with the requirement stated in the governing statute BPC 3070.2(e)(2), which states, "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." By including the opticians' names and registration numbers in the MOO application, the Board will be able to evaluate and determine if the optician is in good standing with the Board and associate them with the MOO permit and registration. This will enable more efficient investigations of consumer complaints or allegations of violations made against the MOO or associated dispensing optician licensees.

Subdivision (b)(2)(F)(iv)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(F)(iv) and requires the names of any other persons who will be providing patient care as described in Section 2544 of the Code to be submitted as part of the MOO application to be submitted through BreEZe.

Rationale:

This proposal brings this subdivision in line with the requirement stated in the governing statute BPC 3070.2(e)(2), which states, "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." By including the personnel names, the Board will be able to evaluate and determine if the personnel are providing optometric services requiring a license with the Board or coordinate in the investigation of any possible violations or complaints with any other healing arts board that may have jurisdiction over the matters alleged for the protection of the public.

Subdivision (b)(2)(F)(v-vi)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(F)(v)-(vi) and requires the dates of operation and cities or counties served, to be submitted as part of the MOO application to be submitted through BreEZe.

Rationale:

BPC 3070.2(e)(3) states "The dates of operation and cities or counties served." This proposal implements this statute and places all such MOO requirements and qualifying criteria in one convenient location for affected applicants. This helps ensure the Board receives more accurate and complete permit applications and avoids delays in the processing of these applications.

Subdivision (b)(2)(F)(vii)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(F)(vii) and establishes reporting of specific accessibility and sanitary features of the MOO necessary for Americans with Disability Act (ADA) compliance and public health as part of the MOO application to be submitted through BreEZe, including:

- a. An access ramp or lift;

- b. An accessible handwashing facility on the premises. For purposes of this section, “accessible handwashing facilities” means a clean and sanitary sink with clean running water, disinfectant soap, and adequate drying devices such as a towel or electric hand dryer, which is physically separate from a lavatory or bathroom and is accessible to all relevant persons.
- c. A means of sanitation for optometric equipment.

Rationale:

This subdivision will ensure that the MOO has the features needed to be accessible to those with disabilities (ramp) and maintain proper sanitation as defined in subdivision (b)(2)(F)(vii)(a-c). Consistent with the Board’s mission of public protection, it is necessary to ensure that optometric services provided in mobile units have the necessary accessibility and sanitation features to protect against public harm to all relevant persons including members of the public and employees.

The proposal to require a means of sanitizing optometric equipment is necessary to help avoid infection for patients and contamination of equipment at these MOOs. In practice, there are certain types of optometric equipment that are used and reused across different patients that result in indirect contact between multiple patients. This could pose a risk of cross-contamination or infection between patients, especially with viruses and bacteria. Establishing a requirement for reporting a means of sanitation helps ensure that consumers are provided with some assurances that such preventative measures are in place.

Subdivision (b)(2)(F)(vii)(a)

Purpose:

This proposal would require disclosure of whether a mobile optometric office has an access ramp or lift on the MOO application to ensure equitable and accessible healthcare services for all individuals, including those with mobility impairments. This assessment aims to determine whether the mobile office is physically accessible to patients who use wheelchairs, walkers, or other mobility aids, thus promoting inclusivity and compliance with accessibility standards (see the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq). and accompanying regulations related to vehicle accommodations (49 C.F.R . Part 37 (commencing with 49 C.F.R. §§ 37.1 et seq.).

Rationale:

The Board assessing the presence of an access ramp or lift in a mobile optometric office is essential for legal compliance, ethical responsibility, equal access to healthcare, and overall patient satisfaction. It aligns with the principles of inclusivity and ensures that healthcare services are available to everyone, regardless of their mobility status.

Subdivision (b)(2)(F)(vii)(b)

Purpose:

This proposal would require disclosure of whether the MOO has an accessible handwashing facility on the premises (within a mobile optometric office) as specified. This is necessary to uphold and promote the highest standards of sanitation, patient safety, and public health. This evaluation ensures that essential hygiene measures are readily available to optometric professionals, staff members, and patients. The provision of an accessible handwashing facility aligns with the broader goal of maintaining a clean and safe healthcare environment while maintaining accessibility.

Rationale:

By assessing the presence of an accessible handwashing facility within a mobile optometric office, this proposal is needed to serve a vital purpose in promoting infection control, patient safety, and public health. It reflects a commitment to best practices in healthcare and compliance with regulatory standards, ultimately contributing to the delivery of high-quality care while safeguarding the well-being of both patients and healthcare providers. To avoid confusion, the Board adds a definition for “accessible handwashing facilities” to include a clean and sanitary sink with clean running water, disinfectant soap, and adequate drying devices such as a towel or electric hand dryer, which is physically separate from a laboratory or bathroom and is accessible to all relevant persons. In the Board’s experience, these Requirements are necessary to ensure the health and safety of all persons operating or served within a mobile optometric office.

Subdivision (b)(2)(F)(vii)(c)

Purpose:

This proposal would require disclosure of whether a mobile optometric office is equipped with a means of sanitation for optometric equipment to safeguard the health and well-being of both optometrists and patients while maintaining the highest standards of hygiene in the delivery of eye care services. This objective is driven by the recognition that cleanliness and infection control are fundamental aspects of optometric practice, ensuring that patients receive care in a safe and sanitary environment and reducing the risk of cross-contamination and the spread of infectious diseases.

Rationale:

By ensuring that a mobile optometric office is equipped with a means of sanitation for optometric equipment serves the fundamental purpose of safeguarding patient health, upholding professional standards, and minimizing the risk of infections and cross-contamination. It aligns with the ethical responsibilities of healthcare providers and legal requirements in BPC section 3070.2(f)(5) for the Board to set standards it “deems

appropriate to safeguard the public from substandard optometric care.” As described above, this proposal would accomplish that objective by ultimately enhancing patient safety and trust in the healthcare services provided.

Subdivision (b)(2)(G)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(G) and a mandate that mobile optometric offices meet the sanitary requirements outlined in California Code of Regulations (CCR) Section 1520, in addition to the provisions of BPC Section 3070.. The purpose is to prioritize the health and safety of patients, practitioners, and the general public who interact with mobile optometric services. By ensuring strict adherence to sanitary standards, this regulation aims to maintain a clean and hygienic environment within these mobile facilities, ultimately contributing to the overall quality of healthcare delivery.

Rationale:

Requiring mobile optometric offices to meet the sanitary requirements of CCR section 1520 and BPC section 3070.2 serves the fundamental purpose of prioritizing patient safety and well-being and ensures that optometrists follow the Board’s standards for infection control no matter the practice location. Existing regulation in CCR section 1520 does not directly address MOO applicability, therefore, this regulation is necessary to avoid confusion about the applicability of CCR section 1520 to this location type. This regulation is grounded in the rationale of infection control, professional standards, public health, legal and ethical responsibility, trust-building, and consistency in care delivery, ultimately contributing to the overall quality of optometric services provided in mobile settings. To ensure MOO owners and operators are placed on notice regarding all requirements for minimum operating standards, the Board includes references to the applicable requirements in BPC section 3070.2, and the sanitary requirements of CCR section 1520 in this one convenient location.

Subdivision (b)(2)(H)

Purpose:

This proposal includes the addition of a new subdivision (b)(2)(H) and establishes an electronic signature system for filings made through BreEze for the MOO application to streamline and modernize administrative processes while ensuring the authenticity and legality of submitted documents. This electronic signature method allows authorized representatives to efficiently attest to the accuracy and truthfulness of the information provided in filings, including affirmations made under penalty of perjury, while eliminating the need for physical signatures on paper documents.

Rationale:

As described above in more detail in the rationale for electronic signatures in proposed CCR section 1583, the introduction of electronic signatures within the mobile optometric office's online portal serves the purpose of increasing efficiency, reducing costs, enhancing accessibility, ensuring security, and maintaining legal validity. It aligns with modern business practices while safeguarding the authenticity and legality of the submitted documents.

This proposal includes a certification under penalty of perjury as part of the submission process. The Board relies upon applicants' self-reported information in evaluating applications or other forms submitted for processing by the Board. This requirement helps ensure that the representations on the form are accurate, truthful and made in good faith. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. ["The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true." *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

Subdivision (c)

Purpose:

This proposal requires a separate permit for each MOO operated by each owner and operator and no more than a total of twelve (12) until after the first renewal period is complete. The purpose of requiring a separate permit for each mobile optometric office operated by each owner and operator, with a restriction of issuing no more than 12 permits until after the owner and operator's first renewal period of two years, is to ensure effective oversight, regulation, and accountability within the MOO program.

Rationale:

The requirement that only one permit per mobile unit and up to 12 within the first 2 years will ensure that there is proper oversight and regulation of Mobile Optometric Offices.

BPC section 3070.2(d) states, in part:

An owner and operator who has obtained approval from the board pursuant to paragraph (1) of subdivision (c) and wishes to operate a mobile optometric office shall apply for a permit from the board before beginning operation of each mobile optometric office.

(3) Mobile optometric office permits are specific to the vehicle registered with the board. Permits are not transferrable.

However, in the Board's experience, applicants have a difficult time understanding that these provisions mean that a separate permit is required for each MOO and must be obtained by each owner and operator. These provisions are therefore necessary to avoid applicant confusion and delay in the application process.

BPC section 3070.2(c)(3) states:

The owner and operator of a mobile optometric office shall not operate more than 12 mobile optometric offices within the first renewal period of two years, but may operate more than 12 offices after the first renewal period is complete.

However, that provision does not explicitly provide that such limitation means that an owner and operator would only be entitled to 12 permits in total until after the first renewal period of two years is complete. These provisions are therefore necessary to avoid applicant confusion and delay in the application process.

Subdivision (d)

Purpose:

This proposal would mandate inclusion of a unique identifier number issued by the Board and to be included in all forms of advertising, as follows:

Upon approval by the Board, the Board will issue a unique identifying number for each permit. A registrant shall include this number in all correspondence, quarterly reports, or any other communication with the Board. In addition, the unique identifying number for each permit shall be included in all forms of advertisement, solicitation, or other presentments made to the public in connection with the rendition of optometric services at each mobile optometric office, including any advertisement, card, letterhead, telephone listing, Internet Web site, written solicitation or communications to a prospective patient or patients, or contract proposal.

Rationale:

This provision aligns with existing law allowing the Board to issue a unique identifying number for each MOO upon permit approval (BPC section 3070.2(d)(1)) but also clarifies that the Board will issue such number to maintain accurate records of the permits issued by the Board. The purpose of mandating the inclusion of a unique identifying number issued by the Board in all correspondence, advertisements, and communications related to a MOO is to ensure transparency and to properly identify OAO permit holders across MOO applications and to implement the requirements for advertising set forth in BPC section 137, which states:

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

Such notice provides consumers with information they can use to identify licensed individuals before consulting with or contracting for professional services. There is no current regulation requiring a MOO registrant to provide their unique identifying number for each permit on all forms of advertising, soliciting, or presentments to the public, which include (for notice to MOO owners and operators) any advertisement, card, letterhead, telephone listing, Internet website, written solicitation or communications to a prospective patient or patients, or contract proposal. This leaves consumers at risk of contracting with an unregistered or unpermitted individual providing services or not knowing the status of the MOO providing services on their behalf. Licensure by the Board helps ensure minimum standards in the profession are continuously met and enforced. This proposal would help consumers make informed decisions about registered MOOs and implement the public policy protections established under BPC section 137 to require registered and permitted organizations to include their unique identifying number on all forms of advertisements, solicitations, or presentments to the public.

Subdivision (e)

Purpose:

This proposal adds a new subdivision and sets MOO permit term length to expire with an OAO certificate.

Rationale:

This provision aligns with existing law, which states, "Upon approval, the permit shall be valid until the next renewal date of the owner and operator registration." (BPC section 3070.2(d)(2)) and is needed to ensure more effective notice to the registrants and that all requirements for registration and permits be organized in one convenient location.

Subdivision (f)

Purpose:

To renew a mobile optometric office permit, an owner and operator shall pay the renewal fee for each mobile optometric office in section 1524 and attest in writing to the Board to compliance with the requirements as set forth in section 3070.2 of the code prior to the expiration of the permit. Renewal shall run concurrently with the owner and operator's certificate to operate and, upon expiration, may be reinstated in accordance with the provisions in section 1584.

Rationale:

The purpose of requiring owners and operators of mobile optometric offices to renew their permits, in accordance with the fees listed in Section 1524 and to attest in writing to the Board compliance with the requirements as set forth in BPC section 3070.2, is to ensure ongoing compliance with established regulatory standards and to maintain proper regulation by the Board. Permit renewal serves as a regulatory mechanism that promotes accountability, transparency, and continued enforcement operations by the Board are funded as explained under the “Fees” section above. The requirement that a renewal applicant “attest” (declare) their compliance with these standards is mandated by BPC section 3070.2(4) and therefore is included to make specific all requirements for renewal in one location.

Requiring owners and operators of mobile optometric offices to renew their permits by complying with Section 1524 and Section 3070.2, while aligning renewal with their certificates to operate serves to uphold quality, safety, and renewal standards. This process promotes public trust in the MOO program and ensures that MOO services continue to meet the healthcare needs of Californians served by the MOO.

Adding the requirements that specify that the renewal shall run concurrently with the owner and operator certificate to operate and upon expiration may be reinstated in accordance with the provisions in CCR section 1584 are necessary to provide adequate notice to the owner and operator that both the permits and registration should be renewed at the same time to avoid a lapse in registration or authority to operate a mobile optometric office. Since, as specified in BPC section 3070.2, subdivision (d)(2), the renewal and certificate to operate would appear to run concurrently (“(2) Upon approval, the permit shall be valid until the next renewal date of the owner and operator registration”), the Board proposes to authorize application of the renewal and delinquency procedures set forth in CCR section 1584 to avoid confusion and streamline these processes.

Adopt Section 1585 – Fingerprints and Background Checks for Applicants to Register as an Owner and Operator of Mobile Optometric Office

Subdivision (a)

Purpose:

This proposed section requires, subject to applicability requirements for “responsible officers or officials” as set forth in subsection (b), that all applicants for registration with the Board as an owner operator of a mobile optometric office must submit fingerprints through the California Department of Justice’s electronic fingerprint submission “Live Scan Service”.

Rationale:

To carry out the Board’s consumer protection mandate, it is necessary to mandate individuals seeking registration as owners and operators of mobile optometric offices to submit their fingerprints through California Department of Justice's Live Scan Service. BPC section 144(b)(15) requires the Board to collect fingerprints from every applicant in order to conduct a criminal history record check. However, Section 144 does not specify how such fingerprints need to be submitted or what process the applicant needs to follow to ensure that fingerprints are submitted to the Board according to California Department of Justice’s requirements. This proposal is necessary to specify those processes and procedures to allow the applicant to successfully submit their fingerprints and meet this eligibility requirement when requested by the Board in accordance with BPC section 144. The Board also proposes to add this subsection to facilitate a criminal background investigation. This would help ensure that applicants have not committed any crimes or acts that would be grounds for denial of the registration under BPC section 480. The proposed subsection notifies applicants that the fingerprints requested by the Board are to be taken using the Live Scan service, unless the applicant resides out of state and cannot use the Live Scan service, as noted in proposed subsection (d). Applicants residing in California will have to use the Live Scan service as described in subsection (b) for their “responsible officers or officials” (needed as explained in the rationale above for CCR section 1583).

These standards are necessary to specify the requirements by the Department of Justice for processing requests for criminal background checks as provided in BPC section 144 as they relate to Board applicants for licensure, specifically MOO owner and operator applicants. Live Scan is a system for the inkless, electronic submission of fingerprints and the subsequent automated background checks and responses conducted through the California Department of Justice’s (DOJ) database. These are the requirements set by the DOJ, which the Board has no authority to alter and must be met for the Board’s compliance with BPC section 144 to be implemented in accordance with the DOJ’s current procedures.

Subdivision (b)

Purpose:

This proposal would require all of the following:

Applicants must complete the Department of Justice Form “Request for Live Scan Service” (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 and submit fingerprinting through Live Scan for its responsible officers or officials. For the purposes of this section, “responsible officers or officials” means the individuals listed in response to subdivision (b)(2)(H) in section 1583 as the principal officers or officials responsible for the operations of the applicant’s organization.

Rationale:

Applicants living within the State of California and who are required to complete a criminal history background check by a state agency authorized by law to collect those fingerprints (as the Board is authorized per BPC section 144) must complete the DOJ's "Request for Live Scan Service" form (BCIA 8016 (Rev. 04/2020 —the current form available for use from the DOJ, see copy available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints>) to comply with this eligibility requirement (see Underlying Data from DOJ's website guidance document entitled "Fingerprint Background Checks"). The Board does not incorporate the DOJ's form by reference in this regulation as it is not a form that is created by this Board and for which the Board would be able to provide the rationale for each requirement on the form or make any changes to the form in response to public comment it might receive on the contents of the form (see similar approach taken by another agency at Cal. Code Regs., tit. 10, § 2034.5).

Applicants residing outside of California who cannot be fingerprinted electronically as described in subsection (d) would be excepted from this electronic submission requirement. This Live Scan process does not exist in regulation as it applies to the Board and the Board receives many questions from regular applicants, particularly out-of-state residents, on the process and procedures for submitting fingerprints through the Live Scan process for this Board. This proposal would add such detail to give applicants specific directions for completing this application requirement in accordance with DOJ requirements.

The rationale for requiring Live Scan fingerprinting for responsible officers or officials of an applicant's organization (defined to avoid ambiguity and cross-referenced in this section to CCR section 1583(b)(2)(H)) is rooted in safeguarding public safety, complying with legal mandates, and upholding the integrity and trustworthiness of organizations operating MOOs. The purpose of requiring applicants to complete the DOJ Form "Request for Live Scan Service" (BCIA 8016 (Rev. 04/2020)) for a state criminal history record is to ensure that individuals engaged in MOO program activities that may impact public safety and welfare are trustworthy and do not pose any threat to the integrity and security of the community. The law mandating this process is Section 11105 et seq. of the Penal Code.

Subdivision (c)

Purpose:

This proposal includes the addition of a new section (c) and establishes fingerprinting requirements for responsible officers or officials of the MOO, including payment of fingerprint processing fees payable to the Live Scan operator and any fees charged by the California DOJ and the Federal Bureau of Investigation (FBI). The regulation would direct applicants to information about fingerprint background checks and live scan locations to the attorney general's website at: <https://oag.ca.gov/fingerprints>.

Rational:

The rationale for requiring Live Scan fingerprinting for responsible officers or officials of an applicant's organization is rooted in safeguarding public safety, complying with legal mandates, and upholding the integrity and trustworthiness of organizations operating MOOs. Consistent with the requirements of the DOJ, the Board proposes to add this subsection to provide applicants the information they need to obtain fingerprints from a Live Scan location and provide them to the Board, which includes payment of the fingerprint processing fees through the Live Scan system at an approved Live Scan location (see Underlying Data "Fingerprint Background Checks"). The Board specifies that the applicant will generally be required to pay all processing fees payable to the Live Scan operator, including the "rolling fee" for fingerprint rolling and any fees charged by the DOJ and FBI. This requirement is necessary to ensure applicants to pay whatever fee is mandated by the Live Scan Operator (which can vary depending on whether offered by a private business or local law enforcement or school district) and the DOJ and FBI and to allow for changes in the fees set by the California Attorney General's Office (the fee is currently \$49). To ensure that applicants check with the DOJ for the most recent information regarding fingerprint background requirements and Live Scan locations, the Board directs applicants to visit the DOJ's website at: <https://oag.ca.gov/fingerprints>.

Subdivision (d)

Purpose:

This proposal includes adding a new section (d) and establishing fingerprinting requirements for individuals residing outside of California, which include (1) having their fingerprints taken at a law enforcement agency in their state of residence, using fingerprint cards, (2) completing two fingerprint cards, (3) retaining the second card to be used if the first card is determined to be unreadable and rejected by the Department of Justice, (4) mailing one fingerprint card together with fees in the amount of \$49 (either by personal check drawn on U.S. bank, money order, or certified check payable to the California DOJ) to the Board. The proposal would also specify that the applicant's responsible officers or officials will be notified if the first card is rejected and, if rejected, the applicant's responsible officers or officials must follow the instructions on the rejection letter and submit the second fingerprint card.

Rationale:

The proposed subdivision describes how applicants from outside of California who cannot be fingerprinted electronically through the Live Scan service must comply with the fingerprinting requirements in accordance with DOJ requirements. Out-of-state applicants will need to have their fingerprints taken at a law enforcement agency in their state of residence using fingerprint cards and submit two fingerprint cards to the Board,

along with a payment for the fees charged by the California DOJ and the FBI. The payment method would be required to be made either by personal check drawn on a U.S. bank, money order or certified check, payable to the “California Department of Justice”. The subsection provides the Board’s address where fingerprints cards need to be sent so that the Board may process the fingerprints manually through the DOJ.

The Board proposes this subsection to provide out-of-state applicants the information they need to have fingerprints taken and submitted to the Board in compliance with the current requirements for submission of fingerprints for applicants that cannot be fingerprinted electronically through Live Scan. The Board lacks the authority to waive the fingerprint requirements and fees to be paid to it directly to meet the DOJ fingerprint processing requirements for this type of applicant (See Underlying Data from the DOJ Website entitled “Applicant Agencies”). In order to provide a full criminal background check, applicants are required to pay fees for both DOJ and FBI processing through the two agencies’ databases. To ensure that applicants meet all requirements in a form of payment accepted by the DOJ, the Board specifies how payment needs to be addressed (by check, money order or certified check made out to the DOJ).

Individuals residing outside of California cannot be fingerprinted electronically through Live Scan; these individuals must be fingerprinted by a law enforcement agency in their state using fingerprint cards. This procedure is to strike a balance between accessibility, security, and compliance with legal requirements in BPC section 144. It aims to accommodate individuals residing outside of California, ensure the reliability of the fingerprinting process, and provide a contingency plan for potential issues while maintaining accountability through clear notification and instructions.

Subdivision (e)

Purpose:

This proposal includes adding a new section (e) to specify that no license will be issued until the Board receives a response from the DOJ for all persons required to submit fingerprint information under BPC section 144 and this section, and the Board determines that the applicant with whom the persons fingerprinted are associated merits approval. This requirement is intended to ensure that the Board only grants licenses to individuals who meet the necessary qualifications and do not pose a risk to public safety.

Rationale:

The rationale behind the requirement that no license will be issued until the Board receives a response from the DOJ and approves the associated persons is to uphold legal and regulatory standards, enhance accountability, protect public interests, ensure fairness, and prevent potential harm in the MOO program. The Board proposes this subsection to specify at what point in the process the Board will make a determination that the applicant is qualified for a certificate of approval and as meeting the fingerprint requirements of this section. This is necessary to provide adequate notice to applicants

and establish what criteria are needed to demonstrate that the minimum standards for registration of the MOO are met. These include that the applicant has met the standards in CCR section 1583 of this proposal (which incorporates this section by reference) and that no grounds for denial exist under BPC sections 3070.2 and 480 (which authorizes the Board to deny based upon specified criminal convictions, formal discipline by a state licensing board, or knowingly making a false statement of fact in the application).

Adopt Section 1586 – Mobile Optometric Office Quarterly Reporting Requirements

Subdivision (a)

Purpose:

This proposal includes a new section (a) and establishes reporting requirements for OAO to submit quarterly reporting requirements. As specified in subdivision (b), the online portal will be BreEZe, consistent with the application requirements in proposed CCR section 1583. These would include submission of an electronic copy of a completed quarterly report with the Board containing all the information required by this section. In addition, after the owner and operator has been registered with the Board, the information for the report shall be submitted to the Board no later than the third business day of the following months and covering each quarter of operations as a registrant: March, June, September and December. The proposal further specifies that hard copy documents will not be accepted.

Rationale:

BPC section 3070.2(f) requires:

The owner and operator of the mobile optometric office, on a form prescribed by the board, shall file a quarterly report containing 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 follow up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.

(5) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.

Existing law and regulation do not specify the form for submission of this information, or the specific content required to be disclosed therein. This proposal is necessary to set forth that process and content requirements to facilitate compliance and avoid inadvertent mistakes in compliance by the registered owners and operators. The rationale for implementing the online portal through BreEZe for MOOs is to establish a streamlined and efficient reporting system for OAO as described in more detail in the rationale above for CCR section 1583. This system aims to ensure compliance with statutory standards in BPC section 3070.2, maintain accurate records of operations and continued compliance with Board requirements, and facilitate timely communication between the MOOs and the Board. Using similar reporting processes to the application processes set forth in this proposal avoids registrant confusion and facilitates compliance by tying new data element reporting requirements to a familiar reporting obligation (as the MOO registrants already have to submit much of this information to the Board in their initial and renewal registration applications online). Setting these compliance dates (3rd business day of each quarterly report in March, June, September and December) facilitates compliance with these reporting obligations set by BPC section 3070.2, and allows the Board sufficient time to evaluate and investigate any issues that may be uncovered in these reports.

For the reasons set forth above in the “Background” statement, the Board requires on-line submission to facilitate the receipt of complete, accurate, secure and timely information. In the Board’s experience, it is necessary to restate what may appear to be obvious to ensure applicants do not attempt to avoid the electronic filing requirement: “Hardcopy documents will not be accepted.”

Subdivision (b)

Purpose:

This proposal includes a new section (b) and establishes the mandatory requirements for the submission of a quarterly report to the Board electronically through BreEZe. This report serves as a vital communication tool between OAO and the Board, ensuring transparency, compliance, and accountability in accordance with Section 3070.2 of the code.

Rationale:

By requiring electronic submission of the quarterly report of a structured and efficient reporting process that aligns with regulatory requirements, promotes effective oversight, and leverages modern technology for streamlined submissions. The proposed language adds several conditions that are necessary to establish the new portal submission process for completing and electronically submitting a quarterly report. The first is that specified information be submitted electronically through a web link to the Department of

Consumer Affairs' online licensing system entitled "BreEZe". This is necessary to inform registrants that the submission process begins by going to the Board's online portal which is described in the "Background" section of this statement of reasons. Applicants are also being informed that the location of the portal is the Board's website, now specifically designated at www.optometry.ca.gov. This section was added to provide clear guidance and instructions for registrants needing guidance on how to submit a compliant quarterly report. By establishing a new subdivision and expanding on specific requirements, this proposal aims to simplify the reporting process and ensure that all registrants can easily access and utilize the platform. The reporting requirements included in this section will help to streamline the process and ensure that all necessary information is provided by applicants to provide a completed and accurate application to the Board for processing.

Subdivision (b)(1)

Purpose:

This proposal includes new subdivision (b)(1) and establishes the requirement for the OAO to use their BreEZe username and password to log in to the electronic platform and provide the information required by this section. The OAO will submit the information covered in this section as part of the quarterly report.

Rationale:

To streamline the registrant reporting process, the Board approved the use of an online reporting platform used for online licensing within the Department of Consumer Affairs; this platform is known as BreEZe. The first step in that process, as outlined in CCR section 1583, is that an owner and operator applicant sets up an account with the Board via the DCA's BreEZe platform and creates a user name and password.

As explained in the Background section above, security of information is key to protecting the integrity of the application process when using an electronic transmission method. Using the same OAO's pre-existing BreEZe log-in establishes a clear process for providing the necessary data while safeguarding the integrity and confidentiality of sensitive reporting information within the BreEZe system. This allows the Board to hold the owner and operator responsible for any information submitted through the portal and liable for any consequences.

Subdivisions (b)(2)(A-D)

Purpose:

This proposal includes a new subdivision (b)(2)(A-D) for the owner and operator to provide the required information through BreEZe including:

- (A) identifying information including the name, address of the owner and operator of the mobile optometric office,

- (B) owner and operator certificate to operate number,
- (C) name, the mailing address, telephone number and e-mail address, if available of the authorized representative; and,
- (D) the total number of complaints received in the quarter being reported.

Rationale:

As explained above, BPC section 3070.2(f) requires the registrant to report specified information as set forth in subdivisions (1)-(4) of that section. Subdivision (f)(5) also permits the Board to require other information to be reported that as it “deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation” of the Optometry Practice Act. This proposal is therefore necessary to collect the information required by BPC section 3070.2(f) and other items that the Board “deems appropriate.”

Subdivision (b)(2)(A)-(B): “Name and address of owner and operator” and “certificate to operate” number is deemed necessary to avoid fraud in the reporting process, enforce accountability for violations of the Practice Act, and will be used to associate and establish the identity of the OAO in the Board’s records for meeting this reporting obligation.

Subdivision (b)(2)(C): requests identifying information including the name, mailing address, telephone number, and email address of the authorized representative. This identifying information is used to establish and, if needed, contact the authorized representative to investigate issues raised as a result of the information reported.

Subdivision (b)(2)(D): requests the total number of complaints received in the quarter to be reported on the quarterly report. This is necessary to implement the mandatory reporting obligation set forth in BPC 3070.2(f)(2) which states, “A summary of all complaints received by each mobile optometric office, the disposition of those complaints, and referral information.” Placing all regulatory and statutory requirements in one location will facilitate compliance and avoid registrant confusion.

Subdivision (b)(2)(E)(i-vi)

Purpose:

This proposal includes a new subdivision (b)(2)(E)(i-vi) and requires a list of all visits made by each MOO including identifying and location information including: MOO permit number, dates of operation of the MOO, physical street address where services were provided, a description of care provided, name and registration number of opticians who provided care and name and license number of optometrist who provided care.

Rational:

This proposal implements BPC 3070.2(f)(1) which states “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.” Placing all regulatory and statutory requirements in one location will facilitate compliance and avoid registrant confusion.

Subdivision (b)(2)(E)(vii)(a-h)

Purpose:

As part of the proposal, a new subdivision (b)(2)(E)(iv)(a-g) has been included. This subdivision mandates that a summary of all complaints received by each mobile optometric office be reported on the quarterly report. The summary must include the following details: the permit number of the mobile optometric office; the name, telephone number, and email address (if available) of the patient who lodged the complaint; the service(s) provided at the mobile optometric office and the date they were provided; the name and address of the organization being serviced at the mobile optometric office; the contact person for the organization being serviced by the mobile optometric office; the outcome of the complaints; referral information for follow-up care provided to the patient (i.e., the name of the follow-up provider) if applicable; and an updated and current list of licensed optometrists, including their license numbers and the organization for which they provide service, who are available for follow-up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.

Rationale:

This subdivision introduces a structured mechanism for tracking and addressing complaints allowing the Board to properly enforce and address the complaints. While the Board is required to collect specific statutory information as set forth in more detail below, the Board would also collect additional identifying information that it “deems appropriate” for review and investigation of all licensees operating or working at a MOO in compliance with the Board’s minimum standards of professional practice (see e.g., BPC sections 3091 and 3092) and the requirements of BPC section 3070.2. This information in the Board’s experience is necessary to ensure that the Board has immediate access to information that may indicate that violations of the Optometry Practice Act have occurred.

This proposal would also specifically implement the requirements for reporting set forth in BPC 3070.2 (f)(1-5) by making specific the types of information needed to be submitted to be deemed compliant with the Board’s reporting requirements. BPC section 3070.2(f)(1)-(5) includes the following reporting requirements:

“The owner and operator of the mobile optometric office, on a form prescribed by the board, shall file a quarterly report containing 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 follow-up care as a result of a complaint on a volunteer basis or who accept Medi-Cal payments.

(5) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.”

Subdivision (b)(2)(F)

Purpose:

This proposal aims to enhance administrative processes by introducing a new subdivision (b)(2)(F) that establishes an electronic signature system for filings made through BreEze for the quarterly report similar to other reporting requirements set forth in this proposal. The introduction of this electronic signature system will streamline and modernize administrative processes while ensuring the authenticity and legality of submitted documents. With this electronic system, authorized representatives can efficiently attest to the accuracy and truthfulness of the information provided in filings, including affirmations made under penalty of perjury, without the need for physical signatures on paper documents.

Rationale:

See justification above in CCR section 1583 for further rationale for requiring an electronic signature. The introduction of electronic signatures within the mobile optometric office's online portal serves the purpose of increasing efficiency, reducing costs, enhancing accessibility, ensuring security, and maintaining legal validity. It aligns with modern business practices while safeguarding the authenticity and legality of the submitted documents.

This proposal requires submission of a certification under penalty of perjury. The Board relies upon applicants' self-reported information in evaluating applications or other forms submitted for processing by the Board. This requirement helps ensure that the representations on the form are accurate, truthful and made in good faith. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who

may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

Adopt Section 1587 -Patient Notification and Records

Section (a)

Purpose:

This proposal adds a new section (a) and requires each MOO's OAO to post a patient notice within the MOO, meeting CCR sections 1566 and 1566.1 in a conspicuous place in the mobile optometric office.

Rationale:

Existing law at BPC section 138 requires Boards in this Department to adopt regulations to require licensees of each board to provide notice to their clients or customers that the practitioner is licensed by this state. The Board has existing notice to consumer regulations for other practice locations at CCR sections 1566 and 1566.1, but does not make these regulations specific to MOOs. Consistent with the Board's public protection mission, it is crucial to inform MOO patients of their rights, complaint-filing procedures, and prescription information. To keep in line with regulatory notice requirement standards set in CCR 1566 and 1566.1 for other practice locations and to comply with mandates in BPC section 138 for all of its license types, the Board would require an OAO to post a consumer notice in a conspicuous area of the MOO. This will ensure that useful information will be provided to consumers and uniformity in notice requirements to the consumer no matter where the optometric services are being provided.

Subdivision (b)

Purpose:

The purpose of this proposal is to establish section (b) comprising four sub-divisions (1-4) within the framework of the OAO operations. This section mandates the provision of a comprehensive written patient notice by the OAO or its designated representative to either the patient or their caregiver/guardian in at least 12-point font as specified. The notice shall encompass vital information, in subsection (b)(1) including the name, license number, telephone number, primary business address, and business e-mail address, if any, of the directing optometrist.

Subsection (b)(2) would require the owner and operator to provide the mobile optometric office is name, primary business address, telephone number, website or e-mail address, if any, and board issued certificate to operate number. Additionally, subsection (b)(3) would require the notice to contain information on follow up care available for the patient including a list of available Medi-Cal or volunteer optometrists. Finally, the patient notice would announce the Board's regulatory oversight, identify who to contact regarding complaints at the Board and different ways for consumers to communicate with the Board (by providing a mailing address, phone telephone numbers, email address and Board's internet address). It also includes notice regarding the requirements applicable to optometrists for providing patients with prescriptions and copies of medical records consistent with BPC 3070.2's requirements, ensuring transparency and patient empowerment in the mobile optometric service delivery process.

Rationale:

This proposal implements BPC section 3070.2(h)(1), which states “The owner and operator of the mobile optometric office shall provide each patient and, if applicable, the patient’s caregiver or guardian, a consumer notice prescribed by the board that includes the following:

- (A) The name, license number, and contact information for the optometrist.
- (B) Optometrists providing services at a mobile optometric office are regulated by the board and the contact information for filing a complaint with the board.
- (C) Information on how to obtain a copy of the patient’s medical information.
- (D) Information on follow-up care available for the patient, including a list of available Medi-Cal or volunteer optometrists. This list shall be updated every six months and is subject to the inspection by the board.
- (E) Any other information the board deems appropriate to safeguard the public from substandard optometric care, fraud, or other violation of this chapter.”

BPC section 3070.2(h)(3) further requires: “Upon request by the patient’s caregiver or guardian, a copy of the prescription made for the patient shall be provided to patients upon request.” The requirements for the notice that specify how optometrists are required to provide patients upon request with a copy of their ophthalmic lens prescriptions tracts the requirements that are currently set forth in CCR section 1566 and would ensure that consumers receive the same notice information whether it is posted at the mobile optometric office or provided in another writing. The requirement that consumers may obtain a copy of their medical records by contacting the owner and operator of this mobile optometric office as listed on this notice insures that consumers receive the most accurate contact information for accessing their records consistent with minimum standards expected for licensees of the Board. Since the MOO would be responsible for maintaining the records by law at BPC section 3070.2(m), the MOO would accordingly be responsible for responding to requests from the public for copies of those records.

By requiring notice as specified in this proposal, the Board aligns this proposed patient notice regulation with statute, implements the law as required by statute, adds additional detail “deemed” appropriate for adequate notice to the consumer and ensures patients are provided information in a font size (12-point font) that the Board believes, based upon experience in responding to accessibility requests, that most consumers would be able to read if provided in writing.

Subdivision (c)

Purpose:

This proposal adds a new section (c) outlining the consumer notice records retention requirements for a MOO’s OAO that includes an acknowledgement of receipt of the consumer notice that sets forth the patient has received the consumer notice required by this section, the printed name of the patient or the patient’s caregiver or guardian, the signature of the patient or the patient’s caregiver or guardian, and the date of receipt.

Rationale:

To ensure that a patient’s information and documentation are organized and easily accessible, while also promoting transparency and accountability in the storage and handling of sensitive patient data, it is important to establish clear guidelines for retaining proof of providing the consumer notice required by this section. By outlining these procedures, the proposal seeks to improve the overall quality of patient care by providing a standardized protocol for MOOs OAOs to follow. The Board proposes to ensure that acknowledgement be documented in a manner that ensures accountability while requesting information that would be simple and straightforward to collect. These items would include relevant patient or caregiver identifying information, and the date the notice was provided. This will enable the Board to investigate compliance in the event complaints are received.

Subdivision (d)

Purpose:

The proposal adds a new section (d) and requires a MOO OAO to maintain a copy of all records required by BPC section 3070.2, and this article at the primary business office in California to ensure that all pertinent patient information and documentation is easily accessible and available for review and investigation by the Board at a location in California. This requirement promotes transparency and accountability in storing and handling sensitive patient data, ensuring that the highest standards of patient care are maintained.

Rationale:

BPC section 3070.2(m) sets forth the minimum standards for retaining records for a MOO registered with the Board, including the seven-year retention period. However, those standards do not specify all types of records that need to be maintained, acceptable formats, or where they need to be maintained. Allowing the records to be maintained in either paper or electronic form provides flexibility to the OAO, allowing them to choose the best method that suits their business needs. This requirement also ensures that the records are protected from loss or damage, as they are kept in a centralized location. By maintaining these records, the OAO can provide continuity of care to their patients and also comply with regulatory requirements. Requiring that the records be maintained at the primary business office in California ensures that the Board maintains jurisdiction over and has access to the records for the purposes of legal process (subpoena or discovery) and effective enforcement of the laws under the Board's jurisdiction.

Non-substantive Changes

On December 4, 2023, the following non-substantive technical changes were made to the text approved by the Board at the May 20, 2022, meeting pursuant to the Executive Officer's delegation by the Board to the Executive Officer at that May meeting:

- (1) correcting a erroneous cross-reference in Section 1583(b)(3)(A) from CCR section 1584 to 1585 to indicate the correct CCR section for fingerprinting;
- (2) adding the word "including" to the introductory phrase leading to a list of items at CCR section 1584.5(b)(2)(F);
- (3) add BPC section 137 to the authority and reference note sections for CCR section 1584.5
- (4) correct the numbering of each subsection in CCR section 1584.5 after subsection (b) to remove a duplicate subsection (b) and change subsequent letters of these subsections accordingly;
- (5) change the word "license" to "certificate to operate" in CCR section 1585(e); and,
- (6) add BPC section 138 to the authority and reference note sections for CCR section 1587.

Underlying Data

1. Assembly Bill 896 (Low, Chapter 121, Statutes of 2020)
2. Assembly Bill 1534 (Committee on Business and Professions, Chapter 630, Statutes of 2021)
3. April 23, 2021 Legislation and Regulation Committee Agenda; Relevant Meeting Materials; Minutes
4. May 21, 2021 Board Meeting Agenda; Relevant Meeting Materials; Minutes
5. August 27, 2021 Board Meeting Agenda; Relevant Meeting Materials; Minutes
6. October 22, 2021 Legislation and Regulation Committee Agenda; Relevant Meeting Materials; Minutes
7. January 7, 2022 Board Meeting Agenda; Relevant Meeting Materials; Minutes

8. February 18, 2022 Legislation and Regulation Committee Agenda; Relevant Meeting Materials; Minutes
9. March 11, 2022 Board Meeting Agenda and Meeting Minutes
10. May 20, 2022 Board Meeting Agenda; Relevant Meeting Materials; Minutes
11. Workload Cost Tables:
 - A. Table entitled “California State Board of Optometry Mobile Optometric Office - Owner and Operator Application - Business and Professions Code 3070.2 Fiscal Impact - Initial & Renewal Application (Workload Costs)”
 - B. Table entitled “California State Board of Optometry Mobile Optometric Office - Owner and Operator Application - Business and Professions Code 3070.2 Fiscal Impact - Initial & Renewal Certificate (Workload Costs)”
 - C. Table entitled “California State Board of Optometry Mobile Optometric Office - Owner and Operator Application Fiscal Impact - Delinquent Renewal Application & Certificate (Workload Costs)”
11. DOJ’s website guidance documents entitled “Fingerprint Background Checks” and “Applicant Agencies”.

Business Impact:

The Board has made the initial determination that the proposed regulations will not have a significant adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The Mobile Optometric Office program is exclusive to charitable organizations and nonprofits that will provide eye care to underserved communities in California. 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): \$2,632
- Mobile Optometric Office Permit (Initial Application): \$472
- Fingerprint Background Check: \$75
- Certificate to Operate (Biennial Renewal): \$2,632
- 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 \$22,000 to \$156,000 per year and up to \$892,000 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	\$2,632	7*/10	\$18,424	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$255,304
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:	\$22,253	\$31,790	\$31,790	\$31,790	\$31,790	\$31,790	\$31,790	\$31,790	\$31,790	\$31,790	\$308,363
Certificate to Operate - Renewal	\$2,632	Various	-	-	\$18,424	\$26,320	\$44,744	\$52,640	\$71,064	\$78,960	\$97,384	\$105,280	\$494,816
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:	-	-	\$21,728	\$31,040	\$52,768	\$62,080	\$83,808	\$93,120	\$114,848	\$124,160	\$583,552
		Total:	\$22,253	\$31,790	\$53,518	\$62,830	\$84,558	\$93,870	\$115,598	\$124,910	\$146,638	\$155,950	\$891,915

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 directly with optometric businesses in the state.

Nearly all data required for the quarterly report set forth in this proposal is information already required to be reported by statute at BPC section 3070.2(f). As a result, it is anticipated that the owners and operators of the MOO can submit the quarterly report to the Board within normal business operations and without incurring additional workload or costs.

Economic Impact Assessment:

This regulatory proposal would have the following effects:

- It will not create or eliminate jobs within the State of California because the new business model was created by legislation enacting BPC section 3070.2 and the proposed regulation only aims to improve access to care for consumers and better define existing laws and processes for these types of businesses. These businesses may hire optometrists and other staff; however, the Board does not have data regarding the number of new jobs this program might create so the number of new jobs that could result from charitable and nonprofit organizations choosing to hire additional staff cannot be predicted.
- It will not create or eliminate existing businesses within the State of California because businesses are already authorized by BPC section 3070.2 to own and operate these offices. The proposed regulation only aims to improve access to care for consumers and better define existing laws and processes for these types

of businesses. This business will not charge consumers for services and materials rendered but can bill Medi-Cal.

- It will not affect the expansion of businesses currently doing business within the State of California, including those that offer optometric care, because the mobile optometric office program will intentionally serve low-income and rural communities with limited care choices. The proposed regulation only aims to improve access to care and better define existing laws and processes. Additionally, since mobile optometric care would be an optional service limited to non-profits or charitable organizations, it does not require startup costs that all licensees would be forced to implement.
- This regulatory proposal benefits the health and welfare of California residents because the proposed regulations will implement a mobile optometric office program that directly benefits Californians residing in underserved, low-income, and rural areas of the state. By authorizing through regulation services to be provided through mobile optometric offices, MOO owners and operators will be able to increase access to no-cost optometric care. This proposal will set minimum standards for MOO owners and operators to meet and therefore ensure that only qualified and capable individuals or organizations are entrusted with providing optometric care at these locations. This helps in effective enforcement, safeguarding the well-being of patients and the community.
- 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 unrelated to the state's environment.

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 Board does not anticipate any further costs to the state.

The regulations will result in licensing fee revenues ranging from approximately \$22,000 to \$155,000 per year and up to approximately \$885,000 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											
			1*	2	3	4	5	6	7	8	9	10	Total	
Certificate to Operate - Owner Application	\$2,632	7*/10	\$18,424	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$26,320	\$255,304
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	\$4,720	\$45,784
		Sub-Total:	\$21,728	\$31,040	\$31,040	\$31,040	\$31,040	\$31,040	\$31,040	\$31,040	\$31,040	\$31,040	\$31,040	\$301,088
Certificate to Operate - Renewal	\$2,632	Various	-	-	\$18,424	\$26,320	\$44,744	\$52,640	\$71,064	\$78,960	\$97,384	\$105,280	\$494,816	
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:	-	-	\$21,728	\$31,040	\$52,768	\$62,080	\$83,808	\$93,120	\$114,848	\$124,160	\$583,552	
		Total:	\$21,728	\$31,040	\$52,768	\$62,080	\$83,808	\$93,120	\$114,848	\$124,160	\$145,888	\$155,200	\$884,640	

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.

Specific Technologies or Equipment:

This regulatory proposal does not mandate the use of specific technologies or equipment to provide optometric services, however, to provide mobile optometric services, the owner and operator must have a mobile optometric office as defined by BPC 3070.2 (a), “mobile optometric office” means a trailer, van, or other means of transportation in which the practice of optometry, as defined in BPC section 3041, is performed and which is not affiliated with an approved optometry school in California. The mobile optometric office will need to have access to a ramp or lift, an accessible handwashing facility on the premises, and a means of sanitation for optometric equipment. Since mobile optometry is an optional service limited to nonprofits, this is not a required startup cost that all licensees will be forced to implement.

The regulation will also require applicants to submit data to the Board electronically through the Board’s on-line portal and use software to create a PDF to scan and submit articles of incorporation. However, the Board anticipates that most businesses already have computers or have access to one, and that the software used is standard in this industry. Therefore, this regulation would not require an applicant or registrant to obtain additional equipment or technology to comply with this regulation.

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.

No such alternatives have been proposed; however, the Board welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed; however, the Board welcomes comments from the public.