



ISSUE MEMORANDUM

DATE	February 25, 2021
TO	Consumer Protection Committee
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5: Discussion and Possible Action on Regulations to Implement Assembly Bill 458 (Nazarian, Chapter 425, Statutes of 2019); Possible Referral to Full Board

Summary:

This regulatory proposal would implement [Assembly Bill 458 \(Nazarian, Chapter 425, Statutes of 2019\)](#), which amended Business and Professions Code (BPC) Section 3070.1.

BPC 3070.1 authorizes a TPA-certified optometrist to practice optometry in the residence of an individual who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition, provided they complete a permit application, pay fees, and meet certain record retention and patient disclosure requirements. Additionally, the optometrist is required to provide a patient notice prescribed by the Board and an authorization to release the patient's medical information to the Board if desired for specified enforcement purposes.

This proposal would create a new Title 16, California Code of Regulations (CCR) Section 1507.5 (Home Residence Permits) and amend existing Section 1524 (Fees) by doing the following:

- Creating an initial application for a home residence permit;
- Creating an application for renewal of a home residence permit;
- Sets out requirements for a consumer notice to be provided to the patient and an acknowledgment that the patient has received it;
- Allows release of a patient's medical record to the Board for enforcement purposes;
- Sets the application and renewal fees at \$50.00.

For the text and rationale of this proposal, please see attachment A. For the text of BPC 3070.1, please see attachment B.

Suggested Motion: *"I move to recommend to the full Board the proposed regulatory text for Title 16, California Code of Regulations Sections 1507.5 and 1524 as presented and discussed here today."*

Implementation of AB 458 – Proposed Text

Adopt Section 1507.5 of Article 2 of Division 15 of Title 16 of the California Code of Regulations as follows:

§1507.5. Home Residence Permits

(a) A licensed optometrist, who is certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code section 3041.3 and seeks to obtain a home residence permit pursuant to section 3070.1, shall complete an application which shall be accompanied by payment of the fee pursuant to Section 1524 in this Article. The initial home residence permit shall be in effect for two years or until the licensee's optometry license renewal date, whichever comes first. The application shall require the following information:

(1) First, Middle and Last Name;

(2) Address of the optometrist's primary business office, that the optometrist maintains pursuant to Business and Professions Code section 3070.1(c)(1);

(3) Primary business office telephone Number;

(4) Email address;

(5) Current license number;

(6) A declaration by the applicant that the information provided including any accompanying documents is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board, under the penalty of perjury; and

(7) A declaration by the applicant under the penalty of perjury that the applicant will comply with all state and federal recordkeeping, reporting, and patient record disclosure requirements, including requirements as set forth in Section 3070.1(c).

(b) A licensed optometrist who seeks to renew a home residence permit shall complete a renewal application which shall be accompanied by payment of the fee pursuant to Section 1524 in this Article. The renewal permit shall expire on the same date the license's optometry license expires. The application shall require the following information:

(1) First, Middle and Last Name;

(2) Address of the optometrist's primary business office, which the optometrist maintains pursuant to Business and Professions Code section 3041.3(c)(1);

(3) Primary business office telephone number;

(4) Email address;

(5) License number;

(6) A declaration by the applicant that the information provided including any accompanying documents is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board, under the penalty of perjury; and

(7) A declaration by the applicant under the penalty of perjury that the applicant will comply with all state and federal recordkeeping, reporting, and patient record

Commented [JM1]: Proposed Sect.1507.5(a) implements BPC Sect. 3070(b)(1), which requires initial application to be made via a form. The form's requirements are set out within the regulation since it will likely be made online via BreEZe.

Commented [JM2]: Proposed Sect. 1507.5(b) implements BPC Sect. 3070(b)(2), which requires a renewal application be made. Similar to 1507.5(a).

disclosure requirements, including requirements as set forth in Business and Professions Code section 3070.1(c).

(c) Consumer notice.

(1) Each patient shall be issued a consumer notice. A copy of the consumer notice may be provided to each patient or the patient's caregiver either in-person or electronically.

(2) The notice shall be in a minimum of 14-point font and must contain the following information:

(A) The name, license number, email address, telephone number, primary business address and normal business hours of the optometrist;

(B) At a minimum, the additional following information:

CONSUMER NOTICE

The practice of optometry in California is regulated by the California State Board of Optometry. The Board of Optometry receives and investigates all consumer complaints involving the practice of optometry. Complaints or grievances involving a California-licensed optometrist or optician should be directed in writing to:

California Department of Consumer Affairs
Board of Optometry
2540 Del Paso Road, Suite 105
Sacramento, CA 95834
Phone: 1-866-585-2666 or 916-575-7170
Email: optometry@dca.ca.gov
Website: optometry.ca.gov

PRESCRIPTIONS

Optometrists are required to provide patients with a copy of their ophthalmic lens prescriptions as follows:

- Spectacle prescriptions: Release upon completion of exam.
- Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process.

VOLUNTARY RELEASE OF PATIENT'S MEDICAL INFORMATION

The patient may choose to release their medical information related to the optometrist's provision of optometry services to the Board of Optometry. This authorization is voluntary, and the medical information will only be used to investigate complaints and to conduct the Board of Optometry's enforcement duties under Optometry Practice Act.

(3) Each patient, or the patient's caregiver if applicable, must sign and acknowledge that they have received the consumer notice. The signature must

Commented [JM3]: Proposed Sect 1507.5(c) implements BPC Sect. 3070.1(e), which requires a patient notice be given with specific information and the patient to acknowledge receipt. Notice and receipt can be done electronically.

Staff requests discussion on additional text to be included on the notice.

Commented [JM4]: Question was raised if the statute requires each patient, regardless of location, each sign a notice? In the case of a care facility or retirement home, can one notice suffice for the entire facility and be given to the medical or social service director? Or should the notice in proposed section (1) be separate from the signed authorization listed in (2) and (3)?

Legal Counsel advises the statute sets out individuals, not a care facility on behalf of an individual.

What about a patient's guardian who is only with the patient once a month?

be accompanied by a printed patient or patient caregiver's name. The signed acknowledgement must be retained in the patient's file.

Commented [JM5]: Can this be on the back of the prescription rather than a separate page?

(d) The authorization provided by the optometrist to the patient or patient's caregiver to release the patient's medical information to the Board of Optometry shall be signed separately from the signature required in subdivision (c)(3) above.

Note: Authority cited: Sections 3025 and 3070.1 Business and Professions Code.
Reference: Section 3070.1, Business and Professions Code.

Amend Section 1524 of Article 5 of Division 15 of Title 16 of the California Code of Regulations as follows:

§1524. Fees

- (a) Application fee for certificate of registration as an optometrist by examination \$275
- (b) Biennial renewal of a certificate of registration as an optometrist \$425
- (c) Delinquency fee for failing to renew a certificate of registration timely \$50
- (d) Application fee for a branch office license \$75
- (e) Annual renewal of a branch office license \$75
- (f) Penalty fee for failure to renew a branch office license timely \$25
- (g) Issuance fee for a certificate of registration or upon change of name of a person holding a certificate of registration \$25
- (h) Application fee for a fictitious name permit \$50
- (i) Annual renewal of a fictitious name permit \$50
- (1) Delinquency fee for failure to renew a fictitious name permit timely \$25
- (j) Application fee for a statement of licensure \$40
- (1) Biennial renewal of a statement of licensure \$40
- (2) Penalty fee for failure to renew a statement of licensure timely \$20
- (k) Application fee for a certificate to use therapeutic pharmaceutical agents \$25
- (l) Application fee for approval of a continuing education course \$50
- (m) Application fee for a certificate to treat primary open angle glaucoma \$35
- (n) Application fee for a certificate to perform lacrimal irrigation and dilation \$25
- (o) Application fee for a retired license \$25
- (p) Application fee for a retired license with a volunteer designation \$50
- (r) Application fee for an immunization certification \$50
- (s) Application fee for a home residence permit is \$50.
- (t) Renewal fee for a home residence permit is \$50.
- (u) Delinquency fee for a home residence permit is \$25.

Note: Authority cited: Sections 3025, 3041, 3044, 3075, 3152 and 3152.5, Business and Professions Code. Reference: Sections 3041, 3075, 3078, 3151, 3151.1, 3152 and 3152.5, 3070.1, Business and Professions Code.

Implementation of AB 458

Bill text: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB458

Business and Professions Code Section 3070.1

- (a) For purposes of this section, the following terms have the following meanings:
- (1) “Health facility” means a health facility, as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.
 - (2) “Residential care facility” means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:
 - (A) Adult residential facilities.
 - (B) Adult residential facilities for persons with special health care needs.
 - (C) Residential care facilities for the chronically ill.
 - (D) Residential care facilities for the elderly.
 - (E) Continuing care retirement communities.
 - (F) Social rehabilitation facilities.
 - (3) “Home residence” means the primary residence of an individual who is restricted by a disabling physical or mental condition. “Home residence” does not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a community care facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, but does include an individual condominium unit, apartment, single-family home, cooperative unit, mobilehome, or trailer, if it is used as a residence.
- (b) (1) An optometrist who is certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3 may, in the form and manner prescribed by the board, submit an application to the board for a home residence permit, and pay all applicable fees prescribed in Section 3152. The board shall, upon application and payment of the fee prescribed in Section 3152, issue a home residence permit to an optometrist certified as a therapeutic pharmaceutical agent pursuant to Section 3041.3. A home residence permit authorizes the holder to engage in the practice of optometry at a home residence as specified in this section.
- (2) A home residence permit shall expire on the same date the licensee’s optometry license expires. A home residence optometrist may renew the permit by submitting an application, in the form and manner prescribed by the board, to the board for renewal, and paying any applicable fees prescribed in Section 3152.
- (3) A person engaging in the temporary practice of optometry, as defined in subdivision (b) of Section 3070, is not required to obtain a home residence permit in order to engage in the temporary practice of optometry at a home residence.
- (c) An optometrist may engage in the practice of optometry at any health facility or residential care facility, and in a home residence, if all of the following requirements are satisfied:
- (1) The optometrist maintains a primary business office, separate from the health facility, residential care facility, or home residence, that meets all of the following requirements:
 - (A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

- (B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.
 - (C) Is registered by the optometrist with the Board of Optometry.
 - (D) Is owned or leased by the optometrist or by the employer of the optometrist.
 - (E) Is not located in or connected with a residential dwelling.
- (2) The optometrist maintains or discloses patient records in the following manner:
- (A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1).
 - (B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).
 - (C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.
 - (D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:
 - (i) Name.
 - (ii) Optometrist license number.
 - (iii) The place of practice and the primary business office.
 - (iv) Description of the goods and services for which the patient is charged and the amount charged.
 - (E) A copy of any referral or order requesting optometric services for a patient from the health facility's or residential care facility's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.
- (3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility, residential care facility, or home residence.
- (4) The optometrist provides each patient and, if applicable, the patient's caregiver, a consumer notice prescribed by the board that includes the following:
- (A) The name, license number, primary telephone number, and primary business address of the optometrist.
 - (B) Information for filing a complaint with the board.
- (d) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility, residential care facility, or home residence shall not be required to comply with Section 3070 with regard to providing notification to the board of each health facility, residential care facility, or home residence at which the optometrist practices.

(e) Before engaging in the practice of optometry at a home residence, an optometrist shall provide each patient and, if applicable, the patient's caregiver, both of the following:

(1) A consumer notice prescribed by the board that includes any information the board deems appropriate to safeguard the public from substandard optometric care, fraud, and other violations of the act. The patient, or, if applicable, the patient's caregiver, shall sign the consumer notice.

(2) An authorization to release the patient's medical information related to the optometrist's provision of optometry services to the board. The authorization shall disclose that the patient's authorization to release medical information to the board is voluntary and that the medical information shall be used by the board only to investigate complaints and to conduct the board's enforcement duties under the act.

(f) An optometrist subject to subdivision (e) shall maintain in the patient's file a copy of the signed consumer notice described in paragraph (1) of, and, if signed, the signed authorization described in paragraph (2) of, subdivision (e).

(g) The board may adopt regulations to conduct quality assurance reviews for optometrists engaging in the practice of optometry at a home residence.

(Amended by Stats. 2019, Ch. 425, Sec. 1. (AB 458) Effective January 1, 2020.)