



## ISSUE MEMORANDUM

<b>DATE</b>	April 23, 2021
<b>TO</b>	Legislation and Regulation Committee
<b>FROM</b>	Marc Johnson, Policy Analyst
<b>SUBJECT</b>	Agenda Item #4: Discussion and Possible Action on Legislative Proposal to Amend Business and Professions Code Section 3109; Possible Recommendation to Full Board

### Summary:

At a previous public meeting, Dr. Turetsky raised the issue of optometrists accepting employment from a physician and surgeon. Specifically, Business and Professions Code (BPC) Section 3109 allows an optometrist to accept employment from a physician and surgeon who practices in the specialty of ophthalmology. To improve patient access to care and allow for more optometry license flexibility, staff proposes to amend Section 3109 to remove the “specialty of ophthalmology” requirement. The committee may wish to discuss how such optometrists might be employed as independent contractors in such a scenario. Any changes will require legislative action.

### Discussion:

Optometrists commonly have areas of interest beyond refracting, fitting contacts and diagnosing and treating eye disease. However, BPC Section 3109 allows an optometrist to accept employment from a physician and surgeon who practices in the specialty of ophthalmology only. This language may be limiting to an optometry license and several examples exist where removing the “specialty” requirement would benefit consumers and licensees:

- Optometrists may have a practice that will emphasize traumatic brain injuries and working with patients to help them recover normal function relating to eye movements and tracking. However, as OD's cannot work for a neurologist, the patient would require a separate referral to an OD office with resulting communication back and forth between the optometrist and the neurologist. It would be much better for the patient if a neurologist could employ an OD to work directly in their office.
- Optometrists who emphasize hand-eye coordination and training are in demand in sports medicine clinics however, as they cannot be employed by a sports medicine physician, the patient must be referred to an OD's office.

- Pediatric/family practices, especially in rural or under-served communities, would greatly benefit from an OD who could work in the practice several times per month to evaluate potential vision issues, anomalies or conditions thus allowing working parents or guardians to receive "one-stop" care instead of the MD referring the patient out for evaluation and treatment.

Another related issue is the role of independent contractor employees who might work under such a scenario under Assembly Bill 5. In general, CSBO does not regulate the private business and employment practices of its licensees and their employers and, as a result, AB 5 would not appear to have a significant impact on CSBO's regulatory oversight of the practice. Instead, the Employment Development Department and the Department of Industrial Relations are responsible for interpreting and implementing the new law. There may be cases in which this business model does apply; the committee may wish to discuss these scenarios and direct staff in areas to research for a future meeting. There may be other stakeholders who can also present on these issues which could be invited as well.

### **Proposed Change to Business and Professions Code Section 3109:**

#### **3109.**

Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms "accepting employment to practice optometry" as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a license under this division ~~and who practices in the specialty of ophthalmology~~ or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.