



## ISSUE MEMORANDUM

<b>DATE</b>	May 21, 2021
<b>TO</b>	Members, California State Board of Optometry
<b>FROM</b>	Marc Johnson, Policy Analyst
<b>SUBJECT</b>	Agenda Item #4c: Discussion and Possible Action on Proposed 2021 Legislation – Currently Tracked Legislation

The 2021 Legislative session resumed on January 4, 2021. Upcoming Legislative deadlines of note:

- July 14 – Last day for policy committees to meet and report bills
- September 7 – Last day to amend bills on the floor

Most bills are in preliminary form and will not be in final form until later in the Legislative session in the summer. Some may become “two-year” bills since this is year one of a two-year legislative cycle. The Legislation and Regulation Committee (LRC) reviewed these bills at the April 21, 2021 public meeting.

The information below is current as of May 13. Text and analysis of a bill may change rapidly; links to the bill text and committee analyses are provided in the meeting packet rather than possibly outdated hard copies. If a position is adopted by the Board, the author’s office will be notified and staff will engage with the Legislature on the Board’s position.

### **Bills directly pertaining to the practice of Optometry or Board operations:**

#### **[1. Assembly Bill 29 \(Cooper\) State bodies: meetings](#)**

Text as introduced December 7, 2020.

LRC Recommended Position: Oppose, unless amended

Summary: This bill would require that notice to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require those writings or materials to be made available on the state body’s internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier.

Comments: Staff always complies with notice requirements and generally posts its meeting materials between 10 days and 72 hours before its public meetings. However, there are some exceptions concerning materials that are provided to the Board such as public comments or legislative updates too close to the date of the meeting. In addition, the Board relies on DCA's Internet Team for posting and they request documents be provided ten days in advance of posting. This puts staff in a bind with a burdensome production deadline resulting in documents posted the same day the materials are disseminated to the Board members. Staff suggests amending the text to include an exemption for legislative materials which are already listed on a posted agenda and any closed session materials.

### [2. Assembly Bill 407 \(Salas and Low\) Optometry: scope of practice](#)

Text as amended April 20, 2021. On consent calendar.

LRC recommended position: Support

Summary: This bill allows an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat acquired blepharoptosis (drooping eyelids), ametropia (blurry vision), and presbyopia (loss of near-focusing ability) through medical treatment.

Comments: This bill is sponsored by the California Optometric Association (COA). The Board does not have enforcement data in opposition to this expansion of scope. As authority would be granted under the current licensing scheme, staff projects little to no change in the processing of licensing applications. In the crafting of implementing regulations, the Board may consider the inclusion of continuing education material specific to this area of treatment.

### [3. Assembly Bill 691 \(Chau\) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations.](#)

Text as amended April 5, 2021. On consent calendar.

LRC recommended position: Support with amendments

Summary: (Urgency bill) This bill would expand the authorization for a TPA-certified optometrist to perform procedures to include a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) necessary to detect the presence of SARS-CoV-2. The bill would establish the substance of an application form for the immunization certification and expand the certificate to cover the administration of immunization for SARS-CoV-2. The bill would establish an application fee for the immunization certification.

Comments: This bill has four practical effects:

- It would place the Board's AB 443 regulatory package, which just completed the 45-day comment period, into law effective upon signing. Licensees still would need to complete an immunization course, complete a form and fulfill other requirements.
- Adds immunization for COVID-19 to the list of immunizations a licensed optometrist is authorized to administer.

- Authorizes optometrists, under their scope of practice, to perform simple laboratory tests for COVID-19.
- It would transfer the responsibility from CDPH to the Board for registration of the COVID-19 vaccination.

Staff projects approximately 700 current licensees may register. The bill would establish a \$50 certification fee, which would see \$35,000 in initial revenue for the Board. New optometry school graduates, who already have this training and are applying for licensure, would likely take advantage. With 300 new applicants a year, the Board would see \$15,000 a year in potential revenue ongoing. However, staff anticipates a significant increase in license processing workload. Each application (current and new optometry graduates) would take an additional 45 minutes to review and approve by an Associate Governmental Program Analyst. Currently, the licensing unit only has one AGPA on staff who already carries a full workload with initial optometry and opticianry applications. Based on the projected new and renewal applications, staff projects a .50 FTE AGPA may be needed to assist with the workload generated by this bill.

The LRC questioned whether the test being performed was a PCR or Antigen test (PCR being typically performed in a laboratory setting); COA confirms the test is only an antigen test. Additionally, concern was raised whether the wording of the law was too limiting to only the COVID-19 virus and not other potential variants which may emerge. The Board may wish to discuss potential amendments to recommend to the Legislature.

#### [4. Assembly Bill 1236 \(Ting\) Healing arts: licensee: data collection](#)

Text as amended April 5, 2021.

LRC Recommended Position: Watch

Summary: Existing law requires specific boards under DCA to collect and report certain demographic information of their licensees. This bill would repeal those provisions and would, instead, require all boards that oversee healing arts licensees to request at the time of electronic application for a license and license renewal, or at least biennially, specified demographic information from its licensees and, if designated by the board, its registrants and to post the information on the internet websites that they each maintain. The bill would specify that licensees and registrants shall not be required to provide the requested information.

Staff Comments: As the information requested is optional for each Board, implementation details have not been determined, but Board impact is expected to be low with information being collected in BreZE and annual reporting facilitated by DCA. Additionally, having this kind of demographic information for each profession may, over time, highlight trends and provide more of an understanding of each Board license and registration, assisting with the state's efforts in workforce development.

#### [5. Assembly Bill 1534 \(Committee on Business and Professions\) Optometry: mobile optometric clinics: regulations.](#)

Text as introduced February 19, 2021. On Assembly Appropriations consent calendar.

LRC Recommended Position: Support

Summary: Existing law requires the board, by January 1, 2022, to adopt regulations establishing a registry for mobile optometric clinics and to set a registration fee at an amount not to exceed the costs of administration. This bill would require the board to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development when it has completed the adoption of those regulations.

Staff Comments: This is the Board's Sunset Bill for 2021. Amendments are expected as the bill moves through the Senate.

[6. Senate Bill 509 \(Wilk\) Optometry: COVID-19 pandemic: temporary licenses](#)

Text as amended April 26, 2021

LRC Recommended Position: None

*Senate Floor Analysis Attached.*

Summary: This bill creates a temporary optometrist license for an individual who is immediately unable to take the required Section III-Clinical Skills Examination developed by the National Board of Examiners of Optometry (NBEO Part III), but has met other specified requirements; requires a temporary license holder to practice under the direct supervision of a licensed optometrist, as specified; and, permits the temporary license holder to perform any services under the Optometric Practice Act (Act).

Comments: The LRC did not take a position on the bill pending amendments added after the meeting. This bill is sponsored by the California Optometric Association. Staff has been working with Sen. Wilk's staff, the sponsors and the Senate Business and Professions Committee on this bill.

Although the ultimate impact is unclear with the lessening of COVID-19, staff believes this bill would have a significant impact on the Board's workload. Staff believes the proposed \$100 fee is insufficient to cover the processing of temporary license and maintenance of application files while the exams are being completed. Currently, the licensing unit only has one AGPA on staff who already carries a full workload with initial and renewal optometry applications. The Board receives approximately 300 applications for licensure each calendar year. Each one takes approximately six hours of an AGPA's time to review from start to finish.

If a temporary license was an option, staff estimates half might take advantage, 150 persons per year. Each application would require additional processing and review of approximately four hours to determine if they meet the requirements as set out in the bill such as insurance and supervisory requirements. This would add about 600 hours of staff time per year to implement. Additionally, staff would need additional time to implement BreZE requirements and respond to applicant inquiries. Therefore, staff estimates the need for a .50 FTE AGPA position to implement. If this bill would become law, the current 6-8 week processing times would dramatically increase without additional staff. Additionally, enforcement workload would likely increase due to a rise in complaints and more in-depth investigations may be needed for the temporary license type.

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THIRD READING

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Bill No: SB 509  
Author: Wilk (R), et al.  
Amended: 4/26/21  
Vote: 27 - Urgency

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SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 13-0, 4/19/21  
AYES: Roth, Archuleta, Bates, Becker, Dodd, Eggman, Hurtado, Jones, Leyva,  
Min, Newman, Ochoa Bogh, Pan  
NO VOTE RECORDED: Melendez

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT:** Optometry: COVID-19 pandemic: temporary licenses

**SOURCE:** California Optometric Association

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**DIGEST:** This bill creates a temporary optometrist license for an individual who is immediately unable to take the required Section III-Clinical Skills Examination developed by the National Board of Examiners of Optometry (NBEO Part III), but has met other specified requirements; requires a temporary license holder to practice under the direct supervision of a licensed optometrist, as specified; and, permits the temporary license holder to perform any services under the Optometric Practice Act (Act).

**ANALYSIS:**

Existing law:

- 1) Establishes the California State Board of Optometry (Board) to regulate the practice of optometry through the Optometry Practice Act. (Business and Professions Code (BPC) § 3010.5)
- 2) Authorizes the Board to adopt regulations clarifying the level of training and the level of supervision of assistants. (BPC § 3025.6)

- 3) Defines that acts which constitute optometry, as specified. (BPC § 3041)
- 4) Requires the Board, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice, as specified in under the Optometry Practice Act (Act). (BPC § 3041.2)

This bill:

- 1) Requires the Board to issue a temporary license to practice optometry to any person who applies for, and is eligible for licensure, but who is unable to immediately take the NBEO Part III, as specified, due to the state of emergency, proclaimed by the Governor on March 4, 2020 in response to the COVID-19 pandemic.
- 2) Requires, in addition to meeting specified requirements for licensure, the individual seeking a temporary license must also satisfy the following conditions: 1) The person has never been previously licensed to practice optometry in any state in the United States; 2) The person pays to the Board, the applicable fee of \$100 or a fee in amount determined by the Board, not to exceed the reasonable cost of administering the license; 3) The person has received approval from their accredited school of optometry that the person meets the educational requirements to practice optometry; and, 4) The person satisfies all other conditions to licensure under the Act.
- 3) Subjects a person holding a temporary license to the same rights and restrictions afforded to a person holding a valid, unrevoked California optometrist license.
- 4) Defines “temporary licensee” for purposes of the Act, to mean a person holding a temporary license.
- 5) Requires a temporary licensee to practice under the direct supervision of a supervising optometrist.
- 6) Defines a “supervising optometrist” to mean a California licensed optometrist who has been licensed for a minimum of five years.
- 7) States that a temporary licensee may perform services authorized under the Act if both the following requirements are met:

- a) The temporary licensee renders the services under the direct supervision of a supervising optometrist who is not subject to disciplinary condition imposed by the Board prohibiting that supervision or prohibiting the employment of a temporary licensee; and,
  - b) The supervising optometrist is legally and professionally responsible for the actions of the temporary licensee
- 8) Defines “direct supervision”, for purposes of this bill, to mean that a supervising optometrist oversees the activities of, and accepts responsibility for, the services rendered by a temporary licensee.
  - 9) States that direct supervision requires the supervising optometrist to be physically present and immediately available in the facility or office in which the optometric services are provided when the temporary licensee is with a patient.
  - 10) Requires the supervising optometrist to have a formal written procedure in place by which patients are informed that an optometrist with a temporary license will be performing the services. Additionally, the patient must be informed that the supervising optometrist is supervising the temporary licensee and the supervising optometrist must be identified to the patient.
  - 11) Requires the temporary licensee to note in the medical record, the patient’s consent to this process prior to performing services, as specified.
  - 12) Prohibits a temporary license holder from opening their own optometric office or place of practice.
  - 13) States that a temporary license expires upon the date that the temporary licensee completes all of the requirements for licensure, or six months after the date the state of emergency, proclaimed by the Governor on March 4, 2020, in response to the COVID-19 pandemic has ended, whichever occurs first.
  - 14) Permits the Board to take enforcement action against a temporary licensee, as specified.
  - 15) Declares this bill as an urgency measure necessary for the immediate preservation of the public peace, health, or safety, as specified, and the facts constituting the necessity are: in order to protect public health and preserve the

future health care workforce by ensuring that qualified optometry graduates are permitted to practice during the COVID-19 pandemic as soon as possible.

- 16) Makes findings and declarations about the impact of the COVID-19 pandemic on the closure of the National Board of Examiners in Optometry (NBEO) test center leading to the inability of students from being licensed.

## **Background**

*Optometrists.* To obtain an optometry license in California, an individual must have a degree of optometry issued by an accredited school or college of optometry, successfully pass the examinations developed by the NBEO, along with the California Laws and Regulations Examination (CLRE), and not have been convicted of a crime, or disciplined for acts substantially related to the profession. As currently drafted, this bill would permit the Board to issue a temporary license to practice optometry if an applicant is unable to take the NBEO Part III due to the COVID-19 pandemic.

*Examinations.* As noted by the Board, the primary purpose of the required examinations is “to help ensure public health and safety by assessing the candidate’s ability to safely practice optometry at a minimum entry level within California’s laws and regulations...” The NBEO develops the national examination, which the Board has required for licensure since 2001. Parts I and II of the NBEO are offered to students while in optometry school and are computer-based tests available at Pearson VUE testing centers in California. However, the administration of NBEO Part III is only available at a testing site exclusively located in North Carolina. Currently, all 50 states, the District of Columbia, and Puerto Rico require passage of the NBEO examinations for licensure.

*The COVID-19 Pandemic, Testing Access & Emergency Declarations.* Without a testing site closer to California, licensure applicants have had to travel to North Carolina to complete their examination requirements. This issue became particularly challenging during the COVID-19 pandemic as air travel was strongly discouraged, flight schedules and hotel availability was limited, and in certain areas restricted by health officials, and there are no testing alternatives available. Further compounding this issue, the NBEO testing center in North Carolina closed for a brief period. However, the testing center reopened in May of 2020. In response to the current COVID-19 crisis, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive licensure requirements relating to healing arts during the duration of the COVID-



19 pandemic – including rules relating to examination, education, experience, and training. However, to date, there is not a waiver to suspend any portion of, or suspend any required examination for licensure for optometrist applicants, including the NBEO Part III.

Concerns about optometry applicants in California not being able to travel to North Carolina to complete the NBEO Part III was brought to the Board’s attention during the current state of emergency. However, without statutory authority or a waiver, there is not currently a pathway for the Board to issue an optometry license to any applicant who has not completed NBEO Part III. This bill is likely in response to the Board’s limited ability to address this issue.

Currently, all 50 states, the District of Columbia, and Puerto Rico all use the NBEO examination for licensure, so an elimination of the requirement would significantly affect license portability options for California optometrists.

*Temporary License and Direct Supervision.* In an effort to create a pathway for individuals who are unable to complete the NBEO Part III, this bill will permit the Board to issue a temporary license to practice under the direct supervision of a licensed optometrist, to anyone who may otherwise be eligible for licensure, but is unable to *immediately* take the NBEO Part III only. Currently, third and fourth year optometric students participate in clinical work and are supervised by licensed optometrists. Supervision of students occurs at the same location, where the supervising optometrist is present. As currently drafted in this bill, the supervising optometrist and the temporary license holder must have a “written agreement” in place and the temporary licensee must inform a patient prior to performing services that they are under supervision of a supervising optometrist. This bill subjects a person holding a temporary license to the same rights and restrictions afforded to a person holding a valid, unrevoked, optometrist license. As current drafted, this bill does not limit or restrict the types of services that a temporary license holder can provide. This bill does not extend the Board’s authority to provide a temporary license beyond the declared state of emergency, and a temporary license holder must obtain a full license within six-months of the end of the state of emergency declaration.

*Other States.* According to information from the sponsors, other states permit some type of waiver of examinations or issuance of temporary licenses during states of emergency or under other considerations including Arizona, Colorado, Michigan, Missouri, North Carolina, Oklahoma, Utah, Vermont and West Virginia.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:** (Verified May 5/12/21)

California Optometric Association (source)  
Vision Service Plan

**OPPOSITION:** (Verified 5/12/21)

None received

**ARGUMENTS IN SUPPORT:** The California Optometric Association writes in support, “When the pandemic hit, the only testing agency recognized for optometry was forced to close and students were told they may not be able to be licensed on time. When the testing site opened back up, students were forced to travel across the country and put themselves and their families at great risk, just to take a test. This is unacceptable.”

Vision Service Plan writes in support, “During this pandemic optometry students are still required to travel to North Carolina to take Part III of the NBEO exam. Optometry students go through rigorous training at schools of optometry and are deemed competent before being able to sit for the NBEO exam. This bill will ensure optometry students can temporarily practice while also ensuring public safety and the safety of students.”

Prepared by: Elissa Silva / B., P. & E.D. / 916-651-4104  
5/12/21 15:32:47

\*\*\*\* END \*\*\*\*