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CALIFORNIA STATE BOARD OF
OPTOMETRY



**LEGISLATION AND REGULATION COMMITTEE
MEETING AGENDA
November 12, 2015
10:00 AM – 2:00 PM
(or until conclusion of business)**

**Department of Consumer Affairs, HQ2
1747 North Market Boulevard
First Floor Hearing Room
Sacramento, CA 95834**

ORDER OF ITEMS SUBJECT TO CHANGE

1. Call to Order/Roll Call
2. Public Comment for Items Not on the Agenda
Note: The workgroup may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code §11125, §11125.7(a)].
3. Discussion and Consideration of Legislative Amendments Related to AB [684](#) Implementation; Recommendations to Full Board
 - A. Proposed Amendment to Business and Professions Code (BPC) § 655 to Regulate Optical Companies; Cite and Fine for Non-Compliance; Lease Information to be Provided by Licensees
 - B. Proposed Amendment to BPC § 2556.1 to Require Registered Dispensing Opticians to Report Co-location
 - C. Proposed Amendment to BPC § 2556.2 Related to Reporting Requirements
 - D. Review and Possible Amendment to BPC § 3011: Board Composition
 - E. Review and Possible Amendment to BPC § 3020: RDO Advisory Committee
4. Discussion and Consideration of Regulatory Proposals Related to AB 684 Implementation; Recommendations to Full Board
 - A. Proposed Addition to California Code of Regulations (CCR) for BPC § 2556.1: Co-Location Reporting Requirement
 - B. Proposed Addition to CCRs for BPC § 655: Implement Inspection Program
 - C. Proposed Amendment to CCR § [1399.260](#) RDO Fees, § [1399.261](#) Contact Lens Dispenser Fees, § [1399.263](#) Spectacle Lens Dispenser Fees
5. Review and Discussion of Legislation; Recommendations to Full Board
 - A. SB [402](#) (Mitchell) Pupil health: vision examinations
 - B. SB [496](#) (Nguyen) Optometry: graduates of a foreign university: examinations and licensure
 - C. SB [349](#) (Bates) Optometry: mobile optometric facilities
 - D. SB [622](#) (Hernandez): Optometry
6. Adjournment

The mission of the [California State Board of Optometry](#) is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry.

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the open meeting act. Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Lydia Bracco at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

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To: Committee Members

Date: November 12, 2015

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 1 – Call to Order and Roll Call

The meeting will be called to order and roll call of the committee members will be conducted.

Madhu Chawla, OD, Board President, Professional Member

Rachel Michelin, Board Secretary, Public Member

William H. Kysella, Jr., Public Member

Lilian Wang, OD, Professional Member

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To: Committee Members

Date: November 12, 2015

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 2 – Public Comment

The committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)].

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To: Committee Members **Date:** November 12, 2014
From: Jessica Siefertman **Telephone:** (916) 575-7184
Executive Officer
**Subject: Agenda Item 3 - Discussion and Consideration of Legislative Amendments
Related to AB 684 Implementation; Recommendations to Full Board**

Background:

During the October 16, 2015 Board meeting, the Board directed the Legislation and Regulation Committee to discuss and consider language proposed by staff to address concerns related to the topics below. After discussing each topic, please provide any suggested amendments and direct staff to bring committee recommendations back to the full Board during the November 20, 2015 Board meeting.

A. Proposed Amendment to Business and Professions Code (BPC) § 655 to Regulate Optical Companies; Cite and Fine for Non-Compliance; Lease Information to be Provided by Licensees

Please review and discuss the proposed amendments to BPC Section 655 (Attachment 1). The language proposed by staff addresses the concerns related to optical companies not being regulated under the auspicious of the Department of Consumer Affairs (DCA), the lack of strong ramifications for not complying with BPC Section 655, and the ability for subjects to redact lease information prior to submitting the lease to the Board.

B. Proposed Amendment to BPC § 2556.1 to Require Registered Dispensing Opticians to Report Co-location

BPC Section 2556.1 requires optometrists to report their co-location(s) to the Board. However, concerns have been raised that RDOs should also be required to report the co-locations. To address these concerns, please review and discuss the proposed amendments to BPC Section 2556.1 (Attachment 2).

C. Proposed Amendment to BPC § 2556.2 Related to Reporting Requirements

BPC Section 2556.2 requires RDO-owned health plans that employ optometrists to report certain milestones to the Board. However, the Board does not regulate health plans or capture any data pertaining to health plans that employ optometrists. In addition, there are no ramifications if health plan fail to report or meet the milestones indicated in 2556.2. In order to address these concerns, please review the proposed amendments to BPC Section 2556.2 (Attachment 3).

D. Review and Possible Amendment to BPC § 3011: Board Composition

BPC Section 3011 replaced one licensed optometrist Board Member with a Registered Dispensing Optician. Concerns have been raised that this composition change may not be in the best interest of consumer protection, and, given the specificity of the RDO member, caters specifically to special interest retailers. There was also a concern by the Board that the statute, as enacted, excluded

potential RDO members associated with educational institutions, which may not be prudent public policy.

Please review BPC Section 3011 and discuss/draft any possible amendments that may address these concerns while ensuring consumer protection (Attachment 4).

E. Review and Possible Amendment to BPC § 3020: RDO Advisory Committee

BPC Section 3020 creates a five-member RDO Advisory Committee comprised of two RDOs, two public members, and one Board Member. Similar to the concerns raised in Item D above, concerns have been raised that the creation of this committee is not in the best interest of consumers, the Board, or RDOs.

There are multiple committees under the DCA Boards. The various model structures rely on whether or not the intent is to task the committee with making decisions on licensing and discipline cases. As currently written, BPC Section 3020 tasks the committee with limited policy issues, but the Board is responsible for approving regulation changes or amendments and adjudicating any enforcement and disciplinary matters.

Examples of other committees are as follows:

- **Midwifery Advisory Council** within the Medical Board of California does consider policy issues and make recommendations but does not deliberate on licensing or disciplinary decisions.
- **Physician Assistant Board** was formerly a Committee of the Medical Board and although it deliberated on decisions, scope of practice issues and revisions had to be considered by the Medical Board.
- **The Dental Hygiene Committee** of California decides its own cases but has a statutory link to the Dental Board for policy issues.

In addition there are also bureaus within the DCA. Bureaus are considerably different because, generally speaking, the Director is the decision maker, while the bureau chief is the complainant that brings the disciplinary action. The Bureau for Security and Investigative Services, however, does have a Disciplinary Review Committees that can deliberate on specified disciplinary matters.

Please review BPC Section 3020 (Attachment 5), discuss any alternatives and provide any proposed amendments that may address the concerns raised.

Attachments (legislation effective January 1, 2016):

1. Proposed Amendments to BPC Section 655
2. Proposed Amendments to BPC Section 2556.1
3. Proposed Amendments to BPC Section 2556.2
4. BPC Section 3011
5. BPC Section 3020

Proposed Amendments to Business and Professions Code Section 655 (January 1, 2016)

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Health plan" means a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(2) "Optical company" means a person or entity that is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, health plans, or dispensing opticians of lenses, frames, optical supplies, or optometric appliances or devices or kindred products.

(3) "Optometrist" means a person licensed pursuant to Chapter 7 (commencing with Section 3000) or an optometric corporation, as described in Section 3160.

(4) "Registered dispensing optician" means a person licensed pursuant to Chapter 5.5 (commencing with Section 2550).

(5) "Therapeutic ophthalmic product" means lenses or other products that provide direct treatment of eye disease or visual rehabilitation for diseased eyes.

(b) No optometrist may have any membership, proprietary interest, coownership, or any profit-sharing arrangement, either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with any registered dispensing optician or any optical company, except as otherwise permitted under this section.

(c) (1) A registered dispensing optician or an optical company may operate, own, or have an ownership interest in a health plan so long as the health plan does not directly employ optometrists to provide optometric services directly to enrollees of the health plan, and may directly or indirectly provide products and services to the health plan or its contracted providers or enrollees or to other optometrists. For purposes of this section, an optometrist may be employed by a health plan as a clinical director for the health plan pursuant to Section 1367.01 of the Health and Safety Code or to perform services related to utilization management or quality assurance or other similar related services that do not require the optometrist to directly provide health care services to enrollees. In addition, an optometrist serving as a clinical director may not employ optometrists to provide health care services to enrollees of the health plan for which the optometrist is serving as clinical director. For the purposes of this section, the health plan's 91 Ch. 405 — 4 — utilization management and quality assurance programs that are consistent with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) do not constitute providing health care services to enrollees.

(2) The registered dispensing optician or optical company shall not interfere with the professional judgment of the optometrist.

(3) The Department of Managed Health Care shall forward to the State Board of Optometry any complaints received from consumers that allege that an optometrist violated the Optometry Practice Act (Chapter 7 (commencing with Section 3000)). The Department of Managed Health Care and the State Board of Optometry shall enter into an Inter-Agency Agreement regarding the sharing of information related to the services provided by an optometrist that may be in violation of the Optometry Practice Act that the Department of Managed Health Care encounters in the course of the administration of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code).

(d) An optometrist, a registered dispensing optician, an optical company, or a health plan may execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:

(1) (A) The practice shall be owned by the optometrist and in every phase be under the optometrist's exclusive control, including the selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, fees charged for optometric products and services, the examination procedures and treatment provided to patients and the optometrist's contracting with managed care organizations.

(B) Subparagraph A shall not preclude a lease from including commercially reasonable terms that: (i) require the provision of optometric services at the leased space during certain days and hours, (ii) restrict the leased space from being used for the sale or offer for sale of spectacles, frames, lenses, contact lenses, or other ophthalmic products, except that the optometrist shall be permitted to sell therapeutic ophthalmic products if the registered dispensing optician, health plan, or optical company located on or adjacent to the optometrist's leased space does not offer any substantially similar therapeutic ophthalmic products for sale, (iii) require the optometrist to contract with a health plan network, health plan, or health insurer, or (iv) permit the landlord to directly or indirectly provide furnishings and equipment in the leased space.

(2) The optometrist's records shall be the sole property of the optometrist. Only the optometrist and those persons with written authorization from the optometrist shall have access to the patient records and the examination room, except as otherwise provided by law.

(3) The optometrist's leased space shall be definite and distinct from space occupied by other occupants of the premises, have a sign designating 91 — 5 — Ch. 405 that the leased space is occupied by an independent optometrist or optometrists and be accessible to the optometrist after hours or in the case of an emergency, subject to the facility's general accessibility. This paragraph shall not require a separate entrance to the optometrist's leased space.

(4) All signs and displays shall be separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith. This paragraph shall not prohibit the optometrist from advertising the optometrist's practice location with reference to other occupants or prohibit the optometrist or registered dispensing optician from advertising their participation in any health plan's network or the health plan's products in which the optometrist or registered dispensing optician participates.

(5) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the registered dispensing optician, health plan or optical company.

(6) Except for a statement that an independent doctor of optometry is located in the leased space, in-store pricing signs and as otherwise permitted by this subdivision, the registered dispensing optician or optical company shall not link its advertising with the optometrist's name, practice, or fees. (7) Notwithstanding paragraphs (4) and (6), this subdivision shall not preclude a health plan from advertising its health plan products and associated premium costs and any copayments, coinsurance, deductibles, or other forms of cost-sharing, or the names and locations of the health plan's providers, including any optometrists or registered dispensing opticians that provide professional services, in compliance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(8) A health plan that advertises its products and services in accordance with paragraph (7) shall not advertise the optometrist's fees for products and services that are not included in the health plan's contract with the optometrist.

(9) The optometrist shall not be precluded from collecting fees for services that are not included in a health plan's products and services, subject to any patient disclosure requirements contained in the health plan's provider agreement with the optometrist or that are not otherwise prohibited by the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(10) The term of the lease shall be no less than one year and shall not require the optometrist to contract exclusively with a health plan. The optometrist may terminate the lease according to the terms of the lease. The landlord may terminate the lease for the following reasons:

(A) The optometrist's failure to maintain a license to practice optometry or the imposition of restrictions, suspension or revocation of the optometrist's 91 Ch. 405 — 6 — license or if the optometrist or the optometrist's employee is or becomes ineligible to participate in state or federal government-funded programs.

(B) Termination of any underlying lease where the optometrist has subleased space, or the optometrist's failure to comply with the underlying lease provisions that are made applicable to the optometrist.

(C) If the health plan is the landlord, the termination of the provider agreement between the health plan and the optometrist, in accordance with the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(D) Other reasons pursuant to the terms of the lease or permitted under the Civil Code.

(11) The landlord shall act in good faith in terminating the lease and in no case shall the landlord terminate the lease for reasons that constitute interference with the practice of optometry.

(12) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, patient referrals or the sale or promotion of the products of a registered dispensing optician or an optical company.

(13) The landlord shall not terminate the lease solely because of a report, complaint, or allegation filed by the optometrist against the landlord, a registered dispensing optician or a health plan, to the State Board of Optometry or the Department of Managed Health Care or any law enforcement or regulatory agency.

(14) The landlord shall provide the optometrist with written notice of the scheduled expiration date of a lease at least 60 days prior to the scheduled expiration date. This notice obligation shall not affect the ability of either party to terminate the lease pursuant to this section. The landlord may not interfere with an outgoing optometrist's efforts to inform the optometrist's patients, in accordance with customary practice and professional obligations, of the relocation of the optometrist's practice.

(15) The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for lease agreements within 30 days of receiving the request constitutes unprofessional conduct and is grounds for disciplinary action by the appropriate regulatory agency. ~~Only personal information as defined in Section 1798.3 of the Civil Code may be redacted prior to submission of the lease or agreement.~~ This section shall not affect the Department of Managed Health Care's authority to inspect all books and records of a health plan pursuant to Section 1381 of the Health and Safety Code. Any financial information contained in the lease submitted to a

regulatory entity, pursuant to this paragraph, shall be considered confidential trade secret information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). 91 — 7 — Ch. 405

(16) This subdivision shall not be applicable to the relationship between any optometrist employee and the employer medical group, or the relationship between a medical group exclusively contracted with a health plan regulated by the Department of Managed Health Care and that health plan.

(e) No registered dispensing optician may have any membership, proprietary interest, coownership, or profit sharing arrangement either by stock ownership, interlocking directors, trusteeship, mortgage, or trust deed, with an optometrist, except as permitted under this section.

(f) Nothing in this section shall prohibit a person licensed under Chapter 5 (commencing with Section 2000) or its professional corporation from contracting with or employing optometrists, ophthalmologists, or optometric assistants and entering into a contract or landlord tenant relationship with a health plan, an optical company, or a registered dispensing optician, in accordance with Sections 650 and 654 of this code.

(g) Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.

(h) Notwithstanding any other provision of law, the board may issue a citation and order of abatement to an optical company, an optometrist or a registered dispensing optician and that entity shall be subject to a fine not to exceed fifty thousand dollars (\$50,000), for a violation of this section.

Proposed Amendments to Business and Professions Code Section 2556.1 (January 1, 2016)

All licensed optometrists and registered dispensing opticians who are in a co-located setting ~~in a setting with a registered dispensing optician~~ shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

Proposed Amendments to Business and Professions Code Section 2556.2 (January 1, 2016)

(a) Notwithstanding any other law, subsequent to the effective date of this section and until January 1, 2019, any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity, shall not be subject to any action for engaging in conduct prohibited by Section 2556 or Section 655 as those sections existed prior to the effective date of this bill, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest that a person registered under this chapter is in violation of or in compliance with the law.

(c) This section shall not apply to any business relationships prohibited by Section 2556 commencing registration or operations on or after the effective date of this section.

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

(e) This section does not apply to any administrative action pending, litigation pending, cause for discipline, or cause of action accruing prior to September 1, 2015.

(f) Any [registered dispensing optician who owns a health plan that employs optometrists](#), ~~as defined in Section 655~~, subject to this section shall report to the State Board of Optometry in writing that (1) 15 percent of its locations no longer employ an optometrist by January 1, 2017, (2) 45 percent of its locations no longer employ an optometrist by August 1, 2017, and (3) 100 percent of its locations no longer employ an optometrist by January 1, 2019. The board shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code. [A registered dispensing optician who fails to report pursuant to this subdivision shall be subject to a citation and fine not to exceed two thousand dollars, as determined by the board.](#)

Business and Professions Code Section 3011

Members of the board, except the public members and the registered dispensing optician member, shall be appointed only from persons who are registered optometrists of the State of California and actually engaged in the practice of optometry at the time of appointment or who are members of the faculty of a school of optometry. The public members shall not be a licentiate of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600. No person except the registered dispensing optician member, including the public members, shall be eligible to membership in the board who is a stockholder in or owner of or a member of the board of trustees of any school of optometry or who shall be financially interested, directly or indirectly, in any concern manufacturing or dealing in optical supplies at wholesale. No person shall serve as a member of the board for more than two consecutive terms. A member of the faculty of a school of optometry may be appointed to the board; however, no more than two faculty members of schools of optometry may be on the board at any one time. Faculty members of the board shall not serve as public members.

Business and Professions Code Section 3020

(a) There shall be established under the State Board of Optometry a dispensing optician committee to advise and make recommendations to the board regarding the regulation of a dispensing opticians pursuant to Chapter 5.5 (commencing with Section 2550). The committee shall consist of five members, two of whom shall be registered dispensing opticians, two of whom shall be public members, and one of whom shall be a member of the board. Initial appointments to the committee shall be made by the board. The board shall stagger the terms of the initial members appointed. The filling of vacancies on the committee shall be made by the board upon recommendations by the committee.

(b) The committee shall be responsible for:

- (1) Recommending registration standards and criteria for the registration of dispensing opticians.
- (2) Reviewing of the disciplinary guidelines relating to registered dispensing opticians.
- (3) Recommending to the board changes or additions to regulations adopted pursuant to Chapter 5.5 (commencing with Section 2550).
- (4) Carrying out and implementing all responsibilities and duties imposed upon it pursuant to this chapter or as delegated to it by the board.

(c) The committee shall meet at least twice a year and as needed in order to conduct its business.

(d) Recommendations by the committee regarding scope of practice or regulatory changes or additions shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the 91 Ch. 405 — 12 — recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(e) After the initial appointments by the board pursuant to subdivision (a), the Governor shall appoint the registered dispensing optician members and the public members. The committee shall submit a recommendation to the board regarding which board member should be appointed to serve on the committee, and the board shall appoint the member to serve. Committee members shall serve a term of four years except for the initial staggered terms. A member may be reappointed, but no person shall serve as a member of the committee for more than two consecutive terms

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To: Committee Members **Date:** November 12, 2014
From: Jessica Siefertman **Telephone:** (916) 575-7184
Executive Officer
**Subject: Agenda Item 4 - Discussion and Consideration of Regulatory Proposals
Related to AB 684 Implementation; Recommendations to Full Board**

Background:

During the October 16, 2015 Board meeting, the Board directed the Legislation and Regulation Committee to discuss and consider regulatory amendments to implement portions of AB 684. Please provide any suggested amendments and direct staff to bring committee recommendations back to the full Board during the November 20, 2015 Board meeting.

A. Proposed Addition to California Code of Regulations (CCR) for BPC § 2556.1: Co-Location Reporting Requirement

Once effective, BPC Section 2256.1 requires optometrists who are in co-located settings with registered dispensing opticians to report that business relationship to the Board. The attached proposed regulatory addition and related form defines the process for which optometrists will report that business relationship to the Board (Attachments 1 and 2).

Please review, consider, and provide feedback on the proposed regulatory addition and form.

B. Proposed Addition to CCRs for BPC § 655: Implement Inspection Program

Once effective, BPC Section 655(d)(15) grants the Board the authority to inspect individual lease agreements, and BPC Section 2556.1 grants the Board inspection authority to inspect co-locations for the purposes of determining compliance with BPC Section 655 (Attachment 3).

Prior to drafting regulations to implement the inspection program, the following factors should be considered:

- **Frequency:** Some inspection programs under DCA have regulations that mandate locations are inspected once every five years and some mandate three times per year. Other programs may only inspect once they receive a complaint.

In order to determine the frequency adequate enough to protect consumers from BPC Section 655 violations, the committee should consider the limited inspection authority and the potential for violation frequency. For example, the Board of Barbering and Cosmetology has a higher inspection frequency, but they have a greater inspection scope and the potential for a much higher violation frequency.

Since the Board's inspection scope is limited to 655 violations in co-located settings and lease terms, a lower inspection frequency may be more appropriate while still protecting consumers.

Assuming leases are signed for the allowed minimum of one year (BPC Section 655(d)(10) and the majority of leases are not terminated early, inspecting those premises once per year may be adequate. However, if a lease is for three years, once every three years may be adequate. The draft regulations should allow for repeat inspections if violations are found.

Volume and geographical location should also be a determining factor when considering frequency, as the frequency should be realistically enforceable given resource constraints. Assuming the inspector is based at the Board, the inspector may be able to visit five Sacramento locations in a day, but the inspector may only be able to visit one location in a day if that location is four hours away.

- **Volume/Geographical Location:** The Board does not currently have data to identify volume of the RDO co-locations in California. In addition, there is a high potential for sudden and significant business/license population expansion in California, as several companies have waited years until the market uncertainties were addressed. The Board also has no data to identify the geographical locations.
- **Inspection Scope/Process/Inspector Classification:** The inspection scope drives the specific inspection process, which in turn determines what inspector classification and number of inspectors the Board will need. Inspection programs that require medical record review and/or specialized expertise may have an inspector and a licensed professional conduct the inspection. Other programs where inspectors may enter potentially dangerous environments may require a sworn investigator to perform the inspection. If there are multiple stations/licensees in one location and there is a higher risk of subjects quickly covering up violations, multiple inspectors may be needed for one inspection to preserve evidence.

Due to the Board's limited inspection scope and the fact that medical record review and/or specialized expertise is not required, staff recommends an inspection report/checklist be created/adopted to enable a lower classification inspector to complete the inspection process. Once an inspection is complete, the licensee/registrant should receive a copy of the inspection results and reasonable time to correct any violations.

C. Proposed Amendment to CCR § 1399.260 RDO Fees, § 139.261 Contact Lens Dispenser Fees, § 1399.263 Spectacle Lens Dispenser Fees

During the October 16, 2015 Board Meeting, the DCA Budget Office recommended the Board proceed with raising all current RDO Program fees to their statutory fee caps. Three out of the four registration types will need to be raised. The Non-Resident Contact Lens Dispenser fees are set in statute. Please consider the attached proposed amendments (Attachment 4).

Attachments:

1. Proposed Addition to CCRs for BPC Section 2556.1
2. Proposed Co-Location Form
3. BPC Sections 655 (d)(15) and 2556.1
4. Proposed Amendments to CCR Section 1399.260, 139.261, and 1399.263

Business and Professions Code Section 2556.1:

All licensed optometrists in a setting with a registered dispensing optician shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

Proposed Regulation:

[1514.1. A licensed optometrist providing optometric services in a setting with a registered dispensing optician shall report the business relationship on a form \(O-RDO, Rev. 1/16\), hereby incorporated by reference. The form shall be filed with the board within 30 days of the optometrist entering into the business relationship.](#)



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Optometrist/Registered Dispensing Optician Co-Location Form

All licensed optometrists in a setting with a registered dispensing optician (RDO) shall report the business relationship to the Board within 30 days of entering into said business relationship. (Business and Professions Code §2556.1, California Code of Regulations §1514.1).

Optometrist Information

License Number: Business Name:
 First Name: Last Name: Middle Initial:

Address of Record

Street Address: City: State: Zip:
 Phone Number: Email Address:

RDO Information

Registration Number: Registered Business Name:

Address of Record

Street Address: City: State: Zip:
 Phone Number: Email Address:

Lease Information

Execution Date: Duration and/or Termination Date:

I certify, under penalty of perjury under the laws of the State of California that the forgoing information is true and correct.

Signature: _____ Date: _____

Relevant Statutes

Business and Professions Code Section 655 (d)(15): Lease Inspection Authority

The State Board of Optometry may inspect, upon request, an individual lease agreement pursuant to its investigational authority, and if such a request is made, the landlord or tenant, as applicable, shall promptly comply with the request. Failure or refusal to comply with the request for lease agreements within 30 days of receiving the request constitutes unprofessional conduct and is grounds for disciplinary action by the appropriate regulatory agency. Only personal information as defined in Section 1798.3 of the Civil Code may be redacted prior to submission of the lease or agreement. This section shall not affect the Department of Managed Health Care's authority to inspect all books and records of a health plan pursuant to Section 1381 of the Health and Safety Code. Any financial information contained in the lease submitted to a regulatory entity, pursuant to this paragraph, shall be considered confidential trade secret information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

Business and Professions Code Section 2556.1: Premises Inspection Authority

All licensed optometrists in a setting with a registered dispensing optician shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is co-located with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

§ 1399.260. Registered Dispensing Optician Fees.

- (a) The initial registration fee shall be ~~\$75~~100.00.
- (b) The renewal fee shall be ~~\$75~~100.00.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2565, Business and Professions Code.

§ 1399.261. Contact Lens Dispenser Fees.

- (a) The initial registration fee shall be ~~\$75~~100.00.
- (b) The biennial renewal fee shall be ~~\$75~~100.00.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566, Business and Professions Code.

§ 1399.263. Spectacle Lens Dispenser Fees.

- (a) The initial registration fee shall be ~~\$75~~100.00.
- (b) The renewal fee shall be ~~\$75~~100.00.

Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566.1, Business and Professions Code.

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www.optometry.ca.gov

To: Committee Members **Date:** November 12, 2014
From: Jessica Siefertman **Telephone:** (916) 575-7184
Executive Officer
Subject: Agenda Item 5 – Review and Discussion of Legislation; Recommendations to Full Board

Background:

Last legislative session, the Board sponsored four bills, three of which were turned into two year bills: SB 402, SB 496, and SB 349. The Board also took a Support if Amended position on SB 622. During the August 28, 2015 Board meeting, the Board voted to maintain their current positions and sponsorship of the pending legislation. In order for the Board-sponsored bills to continue through next legislative session, significant research and work with the opposition should be completed.

However, with AB 684 effective January 1, 2016, implementing current law will take resource priority. Therefore, staff is concerned that the Board will not have the dedicated resources these bills deserve for this legislative session. In addition, while the Board currently supports SB 622, if passed and depending on its contents, there may be additional resource constraints for implementation.

Action Requested:

After reviewing and discussing the following bills, please make recommendations to the full Board on whether or not to continue sponsoring/supporting them through the next legislative session.

A. SB 402 (Mitchell) Pupil health: vision examinations

Status: Senate Appropriations

Board Position: Board Sponsored - Support

This bill requires a pupil's vision to be examined by a physician, optometrist, or ophthalmologist, as specified, and requires the pupil's parent or guardian to provide the results of the examination to the pupil's school. This bill prohibits a school from denying admission to a pupil or taking any other adverse action against a pupil if his or her parent or guardian fails to provide the results of the examination. If the results of the examination are not provided to the school, this bill requires a pupil's vision to instead be appraised pursuant to existing law, as specified (Attachment 1).

Due to the fiscal impact, this bill met the criteria for referral to the Suspense File. It was determined by the Appropriations Committee that this bill would increase costs to Medi-Cal, as students would be required to have their vision appraised by a physician, optometrist, or ophthalmologist instead of a school nurse or authorized person. In addition, it would incur administrative costs to the general fund in order to adopt regulations governing the requirements included in the bill. Further, school tracking of those who have received a comprehensive exam and those in need of a screening would result in a reimbursable state mandate.

The Board delegated authority to Board Members Rachel Michelin and Glen Kawaguchi, OD, to participate in meetings with legislative staff and stakeholders to assist with this bill. Both members are willing to continue their work with legislative staff, stakeholders and the opposition to ensure the success of this bill. SB 402 is also in line with the Board's January 2015 Resolution in Support of Comprehensive Eye Examinations for all School Aged Children.

The California Optometric Association, in strong support of SB 402, has also offered to help any work and outreach on this bill.

B. [SB 496](#) (Nguyen) Optometry: graduates of a foreign university: examinations and licensure
Status: Senate Business, Professions and Economic Development

Board Position: Board Sponsored - Support

This bill creates a pathway for foreign graduates to become licensed in California (Attachment 2). Current law allows the foreign graduates to receive Board sponsorship to sit for the National Board of Examiners in Optometry (NBEO) examination, but there is no law that allows those sponsored graduates to become licensed as an optometrist in California.

During the last legislative session, this bill was made into a two year bill in order to collaboratively work through the strong concerns raised by Dr. Stanley Woo, Dean of the Southern California College of Optometry, the California Optometric Association (Attachment 3), and other stakeholders.

C. [SB 349](#) (Bates) Optometry: mobile optometric facilities
Status: Senate Business, Professions and Economic Development

Board Position: Board Sponsored – Support

Current law only allows mobile optometric facilities to function as part of a school teaching program as approved by the Board (CCR Section 1507). This bill established requirements to allow a nonprofit or charitable organization, a governmental agency or a school to own and operate mobile optometric facilities in California (Attachment 4).

During the last legislative session, concerns were raised regarding the Board's decision to limit who can own the mobile facilities. In addition, concerns were raised that this bill did not adequately protect consumers. COA raised concerns with "how to ensure the standard of care and quality care is being provided in mobile facilities." They are also concerned that "patients will not be able to access the doctor afterwards to obtain their medical records, prescription, or follow-up care due to the clinic being mobile."¹

In order to ensure all concerns are addressed and the public is adequately protected, this bill will require significant staff time and resources. If passed, this bill requires the Board to promulgate regulations to establish and implement a mobile optometric facility registry by January 1, 2017. Staff does not believe the Board will have adequate resources to devote to this bill this legislative session.

D. [SB 622](#) (Hernandez): Optometry
Status: Assembly Business and Professions

Board Position: Support if Amended

This bill expands the scope of practice for optometrists in California and adds Board certifications in specified laser procedures, minor surgical procedures, and vaccinations (Attachment 5).

The Board, in general, supported the bill, specifically the utilization of the extensive training and education of optometrists to expand access to health care for millions of Californians. The Board did propose some technical amendments and the inclusion of inspection authority. Thus, the Board took a Support if Amended position.

¹ Kara Corches, COA External Relations Manager

This bill was made into a two year bill in order to allow more time to work through the concerns raised. If passed, the bill will become effective January 1, 2017 and the colleges will have to develop two certification courses. Depending on how long it will take to develop those courses, it may be closer to 2018 before any optometrists become certified.

While staff believes SB 622, in its current form, would have a minor Board resource impact for implementation, AB 684 implementation still takes priority. Amendments to SB 622 are anticipated, but until those amendments are made, it's too early to make any impact assessments. This bill will need to be monitored closely by the staff, the committee, and the Board in order to ensure the Board can adequately implement SB 622, if passed, while still protecting consumers.

Attachments:

1. SB 402
2. SB 496
3. SCCO Opposition Letter
4. SB 349
5. SB 622

AMENDED IN SENATE MAY 4, 2015
AMENDED IN SENATE APRIL 22, 2015

SENATE BILL

No. 402

Introduced by Senator Mitchell

February 25, 2015

An act to amend Section 49455 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as amended, Mitchell. Pupil health: vision examinations.

Existing law requires a pupil's vision to be appraised by a school nurse or other authorized person in the pupil's kindergarten year or upon first enrollment in elementary school, and in grades 2, 5, and 8, unless the appraisal is waived by the pupil's parents upon presentation of a certificate from a physician and surgeon, a physician assistant, or an optometrist. Existing law requires the State Department of Education to adopt guidelines to implement those provisions.

This bill would require a pupil's vision to be appraised in accordance with the above specified provisions only if the pupil's parent or guardian fails to provide the results of a vision examination conducted by a physician, optometrist, or ophthalmologist in accordance with specified provisions. The bill would prohibit a school from denying admission to, or taking adverse action against, a pupil if his or her parent or guardian fails to provide the results of the vision examination. The bill would require the department to adopt regulations, rather than guidelines, to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49455 of the Education Code is amended
2 to read:

3 49455. (a) During the kindergarten year or upon first
4 enrollment or entry in a California school district of a pupil at an
5 elementary school, and at least every second year thereafter until
6 the pupil has completed grade 8, the pupil's vision shall be
7 examined by a physician, optometrist, or ophthalmologist. This
8 examination shall include tests for ~~visual acuity, binocular function,~~
9 ~~as well as refraction~~ *distance and near visual acuity, eye tracking,*
10 *binocular vision skills, including both eye teaming and*
11 *convergence, accommodation, color vision, depth perception,*
12 *intraocular pressure, pupil evaluation, objective and subjective*
13 *refraction, and eye health evaluations. The parent or guardian of*
14 *the pupil shall provide results of the vision examination to the*
15 *school.*

16 (b) A school shall not deny admission to a pupil or take any
17 other adverse action against a pupil if his or her parent or guardian
18 fails to provide the results of the vision examination to the school.

19 (c) (1) If the results of the vision examination are not provided
20 to the school, then during the kindergarten year or upon first
21 enrollment or entry, and in grades 2, 5, and 8, the pupil's vision
22 shall be appraised by the school nurse or other person authorized
23 under Section 49452.

24 (2) A pupil whose first enrollment or entry occurs in grade 4 or
25 7 shall not be required to be appraised in the year immediately
26 following the pupil's first enrollment or entry.

27 (3) The appraisal shall include tests for visual acuity, including
28 near vision and color vision. However, color vision shall be
29 appraised once and only on male pupils, and the results of the
30 appraisal shall be entered in the health record of the pupil. Color
31 vision appraisal need not begin until the male pupil has reached
32 grade 1.

33 (4) A pupil's vision may be appraised by using an eye chart or
34 any other scientifically validated photoscreening test.
35 Photoscreening tests shall be performed under an agreement with,
36 or the supervision of, an optometrist or ophthalmologist, by the
37 school nurse, or by a trained individual who meets requirements
38 established by the department.

1 (d) Continual and regular observation of the pupil's eyes,
2 appearance, behavior, visual performance, and perception that may
3 indicate vision difficulties shall be done by the school nurse and
4 the classroom teacher.

5 (e) This section shall not apply to a pupil whose parents or
6 guardian file with the principal of the school in which the pupil is
7 enrolling, a statement in writing that they adhere to the faith or
8 teachings of any well-recognized religious sect, denomination, or
9 organization and in accordance with its creed, tenets, or principles
10 depend for healing upon prayer in the practice of their religion.

11 (f) The department shall adopt regulations to implement this
12 section, including training ~~requirements~~ *requirements*, and shall
13 provide participation data.

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AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 496

Introduced by Senator Nguyen

February 26, 2015

An act to amend Section 3057.5 of, *and to add Section 3058 to*, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 496, as amended, Nguyen. Optometry: graduates of a foreign university: ~~examinations~~. *examinations and licensure*.

Existing law, the Optometry Practice Act, creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law provides that the State Board of Optometry is required, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice. Existing law requires an applicant for licensure to submit an application that is provided under oath and to pay a prescribed fee. All fees are deposited in the Optometry Fund, which is continuously appropriated to the board to administer the act. Any violation of the act is a crime.

Existing law authorizes the board to permit a graduate of a foreign university who meets specified requirements to take the examinations for an optometrist license.

This bill would revise the license examination requirements for a graduate of a foreign university to, among other things, require submission of an application and payment of a prescribed fee. *This bill would also authorize the board to issue a license to a graduate of a foreign university who meets specified requirements, including requirements that the applicant have permission to take the examinations*

SB 496

— 2 —

for an optometrist license, submit an application on a form approved by the board, and pay a prescribed fee for an application for licensure. By increasing the amount of moneys deposited into a continuously appropriated fund, this bill would make an appropriation. Because the application would be required to be provided under oath, this bill would expand the scope of an existing crime and create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3057.5 of the Business and Professions
- 2 Code is amended to read:
- 3 3057.5. (a) Notwithstanding any other provision of this chapter,
- 4 the board shall permit a graduate of a foreign university who meets
- 5 all of the following requirements to take the examinations for an
- 6 optometrist license:
- 7 (1) Is over 18 years of age.
- 8 (2) Is not subject to denial of a license under Section 480.
- 9 (3) Has obtained any of the following:
- 10 (A) A degree as a doctor of optometry issued by a university
- 11 located outside of the United States.
- 12 (B) A degree from a school of optometry program located
- 13 outside of the United States that has a minimum of a four year or
- 14 equivalent curriculum leading to an optometry license in the
- 15 country where the program is located.
- 16 (C) A degree from a school of medicine located outside of the
- 17 United States and completed the necessary requirements to practice
- 18 in the field of ophthalmology in the country where the school of
- 19 medicine is located.
- 20 (4) Submits an application to obtain a letter of sponsorship on
- 21 a form approved by the board.
- 22 (5) Pays to the board the fee for an application for licensure
- 23 prescribed in subdivision (a) of Section 3152.

1 (b) (1) A graduate of a foreign university shall provide to the
 2 board any supporting documents requested by the board to establish
 3 that the requirement of paragraph (3) of subdivision (a) has been
 4 met. These supporting documents may include, but are not limited
 5 to, a curriculum vitae, official examination score, certificate of
 6 optometric or medical education, official school transcript, certified
 7 copy of optometric or medical diploma, official English translation,
 8 certificate of completion of postgraduate training, and certificate
 9 of clinical training.

10 (2) Every document provided pursuant to this subdivision shall
 11 be in English or translated into English by a certified United States
 12 translation service approved by the board.

13 (c) The board shall require a graduate of a foreign university to
 14 obtain an evaluation of his or her official school transcript by an
 15 education evaluation service approved by the board. The board
 16 shall determine from the evaluation whether the applicant has met
 17 the educational requirements that are reasonable and necessary to
 18 ensure that an optometrist has the knowledge to adequately protect
 19 the public health and safety.

20 (d) Notwithstanding paragraph (3) of subdivision (a), if a
 21 graduate of a foreign university does not meet the educational
 22 requirements that are reasonable and necessary to ensure that an
 23 optometrist has the knowledge to adequately protect the public
 24 health and safety, the board may establish alternative education
 25 requirements for the graduate of a foreign university to meet in
 26 order to ensure this knowledge. A graduate of a foreign university
 27 shall provide any supporting documents requested by the board to
 28 establish that these requirements are met.

29 (e) The board shall issue a letter of sponsorship, or its equivalent,
 30 required by the National Board of Examiners in Optometry, or its
 31 equivalent, to permit a graduate of a foreign university to take all
 32 examinations required for licensure. This letter of sponsorship
 33 shall expire two years from the date of issuance.

34 *SEC. 2. Section 3058 is added to the Business and Professions*
 35 *Code, to read:*

36 *3058. (a) The board may issue a license to practice optometry*
 37 *to a person who meets all of the following requirements:*

38 *(1) Has obtained permission to take the examinations for an*
 39 *optometrist license pursuant to Section 3057.5.*

40 *(2) Has successfully passed the required examinations.*

- 1 (3) *Is not subject to denial of a license under Section 480.*
- 2 (4) *Has met the requirements described in paragraphs (1) to*
- 3 (5), *inclusive, of subdivision (b) of Section 3041.3.*
- 4 (5) *Has provided the board with any other information requested*
- 5 *by the board to the extent necessary to determine that the person*
- 6 *has met the requirements for licensure under this chapter.*
- 7 (6) *Has submitted an application on a form approved by the*
- 8 *board.*
- 9 (7) *Pays the fee for an application for licensure prescribed in*
- 10 *subdivision (a) of Section 3152.*
- 11 (8) *Has no physical or mental impairment related to drugs or*
- 12 *alcohol and has not been found mentally incompetent by a licensed*
- 13 *psychologist or licensed psychiatrist so that the person is unable*
- 14 *to undertake the practice of optometry in a manner consistent with*
- 15 *the safety of a patient or the public.*
- 16 (b) *A license issued pursuant to this section shall expire as*
- 17 *provided in Section 3146 and may be renewed as provided in this*
- 18 *chapter, subject to the same conditions as other licenses issued*
- 19 *under this chapter.*

20 ~~SEC. 2.~~

21 SEC. 3. No reimbursement is required by this act pursuant to
 22 Section 6 of Article XIII B of the California Constitution because
 23 the only costs that may be incurred by a local agency or school
 24 district will be incurred because this act creates a new crime or
 25 infraction, eliminates a crime or infraction, or changes the penalty
 26 for a crime or infraction, within the meaning of Section 17556 of
 27 the Government Code, or changes the definition of a crime within
 28 the meaning of Section 6 of Article XIII B of the California
 29 Constitution.

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Marshall B.
KETCHUM UNIVERSITY

Southern California College of Optometry

Office of the Dean

March 26, 2015

Ms. Mona Maggio
Executive Officer
California State Board of Optometry
2450 Del Paso Rd, Suite 105
Sacramento, CA 95834

RE: SB 496 Pathway to Optometry Licensing

Dear Ms. Maggio:

We are writing in opposition to SB 496 “Pathway to Optometry Licensing” sponsored by Sen. Janet Nguyen.

While foreign graduates have an understandable desire to practice their profession in California, there already exists a clear pathway that recognizes the appropriate education and training of optometrists and assures the delivery of safe and competent care. The typical pathway includes 1) graduation with a doctorate of optometry degree from a school or college of optometry accredited by the Accreditation Council on Optometric Education (ACOE) and 2) passage of the National Board of Examiners in Optometry 3-part examination.

Both steps should be viewed in aggregate. In other words, passage of an examination alone does not constitute an adequate assessment for the safe and effective practice of optometry. Rather, the examination is an opportunity to support that the student and program learning outcomes were achieved by the accredited program. The critical element for the doctorate of optometry is the **clinical education and training** that prepares graduates to practice to the fullest scope as practiced by U.S. optometrists. The clinical (i.e. patient care) experience from a bachelor’s or master’s degree does not carry the equivalency necessary because the scope of practice is extremely limited in overseas jurisdictions. For example, it is illegal in some countries to do retinoscopy. Passing an exam question on red eyes is different than the experience of treating patients with red eyes. As a result, the proposed pathway may have the unintended consequence of fostering false hope for patient safety in California.

An alternative pathway is already available to foreign graduates. The accelerated pathway for obtaining a doctorate of optometry is available at both the New England College of Optometry and Salus University Pennsylvania College of Optometry. Completion of the degree is possible in 2 years rather than the traditional 4 year post-baccalaureate program.

Several more schools recognize some course work to obtain advanced standing at various stages in their program. Clinical training is a key element addressed in this path, and completion of the program leads to the accredited OD degree.

In summary, we believe that optometrists without a doctorate of optometry from an ACOE accredited school are NOT qualified to practice optometry in the United States. The public health and safety are best assured by optometrists having the appropriate education and clinical education verified by accreditation and examination. An individual's desire to practice still has an available pathway after acquiring needed clinical experience and education.

Reference

1. <http://www.arbo.org/faq.php#licensure> FAQ "I am an internationally educated optometrist – how do I get licensed in the U.S.?"
2. <http://www.aoa.org/about-the-aoa/what-is-a-doctor-of-optometry?sso=y>
3. New England College of Optometry <http://www.neco.edu/academics/international>
4. Salus University PCO http://www.salus.edu/od_international/

Sincerely,

Stanley Woo, O.D., M.S., M.B.A., FAAO
Dean
Southern California College of Optometry

Kevin L. Alexander, O.D., Ph.D.
President
Marshall B. Ketchum University

Cc: Board of Optometry

Alex Arredondo, OD – President; Alexander Kim, MBA; Kenneth Lawenda, OD; Cyd Brandvein; Donna Burke, Secretary; Madhu Chawla, OD – VP; David Turetsky, OD; Glenn Kawaguchi, OD; William H. Kysella, Jr.; Rachel Michelin; Frank Giardina, OD

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AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 349

**Introduced by Senator Bates
(Coauthors: Senators Berryhill and Nguyen)**

February 24, 2015

An act to add Section 3070.2 to the Business and Professions Code, relating to ~~optometry~~; *optometry, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 349, as amended, Bates. Optometry: mobile optometric facilities.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and makes a violation of the act a crime. The act requires each licensed optometrist, before engaging in the practice of optometry, to notify the board in writing of the address or addresses where he or she is to engage in the practice of optometry and of any changes in his or her place of practice. *Under existing law, all moneys collected pursuant to the act, except where otherwise provided, are deposited in the Optometry Fund and continuously appropriated to the board to carry out the act.*

~~This bill would authorize an optometrist to engage in the practice of mobile optometry with a mobile optometric facility, as defined, if the optometrist meets certain requirements, including, but not limited to, that the optometrist maintain a primary business office separate from the mobile optometric facility, as specified. The bill would also require an optometrist to certify that any information included on a printed copy of an original document to a patient is true, accurate, and complete. The bill would require that the mobile optometric facility, among other things, has a vehicle identification number. The bill would exempt~~

SB 349

— 2 —

~~mobile optometric facilities that are part of an extended optometric clinical facility, as defined, from these requirements.~~

This bill would define “mobile optometric facility” as mobile optometric equipment, including, but not limited to, a trailer or van that may be moved. The bill would limit ownership of a mobile optometric facility to a nonprofit or charitable organization, a governmental agency, or a school, as specified. The bill would require a mobile optometric facility, while providing services, to have access to, among other things, sufficient lighting around the perimeter of the work site from which the mobile optometric facility provides those services. The bill would require an owner of a mobile optometric facility to be responsible for certain things, including, but not limited to, maintaining the mobile optometric facility in good repair and in a clean and sanitary manner. The bill would also require the optometrist or owner of a mobile optometric facility to maintain and disclose patient records as specified. The bill would make these provisions operative on January 1, 2017.

This bill would require the board, by January 1, 2017, to promulgate regulations establishing a registry for mobile optometric facilities and shall set a registration fee at an amount not to exceed the costs of administration. Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.

Because a violation of the act is a crime, this bill would expand the scope of an existing crime and would therefore impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares the necessity*
- 2 *of establishing regulations for mobile optometric facilities in order*
- 3 *to help secure the availability of quality vision care services for*
- 4 *patients who receive care in remote or underserved areas and for*
- 5 *patients who need specialized types of cost-effective health care.*

1 SECTION 1.

2 SEC. 2. Section 3070.2 is added to the Business and Professions
3 Code, to read:

4 3070.2. (a) For purposes of this section, “mobile optometric
5 facility” means ~~a self-contained unit housing~~ *mobile optometric*
6 equipment, which may include a trailer or van, that may be moved,
7 towed, or transported from one location to another in which the
8 practice of optometry is performed as defined in Section 3041.
9 ~~Mobile optometric facilities are limited to nonprofit, charitable~~
10 ~~organizations with federal tax-exempt status as described in Section~~
11 ~~501(e)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(e)(3))~~
12 ~~or a mobile unit that is operated by a governmental agency.~~
13 *“Mobile optometric facility” does not include an extended*
14 *optometric clinical facility, as defined in Section 1507 of Title 16*
15 *of the California Code of Regulations.*

16 ~~(b) The purpose of this section is to provide requirements for~~
17 ~~mobile optometric facilities to provide optometric services as~~
18 ~~authorized in Section 3041, in order to help secure the availability~~
19 ~~of quality vision care services for patients who receive care in~~
20 ~~remote or underserved areas and for patients who need specialized~~
21 ~~types of cost-effective health care.~~

22 ~~(c) An optometrist may engage in the practice of mobile~~
23 ~~optometry provided that all of the following requirements are met:~~

24 ~~(1) The optometrist maintains a primary business office, separate~~
25 ~~from the mobile optometric facility, that meets all of the following~~
26 ~~requirements:~~

27 ~~(A) Is open to the public during normal business hours by~~
28 ~~telephone and for purposes of billing services or access to patient~~
29 ~~records.~~

30 ~~(B) Is licensed to the optometrist or the employer of the~~
31 ~~optometrist as a local business with the city or county in which~~
32 ~~the primary business office is located.~~

33 ~~(C) Is registered by the optometrist with the board.~~

34 ~~(D) Is owned or leased by the optometrist or by the employer~~
35 ~~of the optometrist.~~

36 ~~(E) Is not located in or connected with a residential dwelling.~~

37 ~~(b) The ownership of a mobile optometric facility shall be limited~~
38 ~~to a nonprofit or charitable organization, a governmental agency,~~
39 ~~or a school as provided in subdivision (e) of Section 1507 of Title~~
40 ~~16 of the California Code of Regulations.~~

1 (c) The board shall promulgate regulations establishing a
 2 registry for mobile optometric facilities and shall set a registration
 3 fee at an amount not to exceed the costs of administration by
 4 January 1, 2017.

5 ~~(2)~~

6 (d) The optometrist ~~maintains and discloses~~ or owner shall
 7 maintain and disclose patient records in the following manner:

8 ~~(A)~~

9 (1) Records are maintained and made available to the patient
 10 in such a way that the type and extent of services provided to the
 11 patient are conspicuously disclosed. ~~The disclosure of records shall~~
 12 ~~be made at or near the time services are rendered and shall be~~
 13 ~~maintained at the primary business office specified in paragraph~~
 14 ~~(1).~~ The optometrist shall notify the patient where his or her
 15 records are stored and how the patient may access them.

16 ~~(B)~~

17 (2) The optometrist individual maintaining the records complies
 18 with all federal and state laws and regulations regarding the
 19 maintenance and protection of medical records, including, but not
 20 limited to, the federal Health Insurance Portability and
 21 Accountability Act of 1996 (Public Law 104-191).

22 ~~(C) The optometrist keeps all necessary records for a minimum~~
 23 ~~of seven years from the date of service in order to disclose fully~~
 24 ~~the extent of services furnished to a patient, pursuant to Section~~
 25 ~~3007. Any information included on a printed copy of an original~~
 26 ~~document to a patient shall be certified by the optometrist as being~~
 27 ~~true, accurate, and complete.~~

28 ~~(D)~~

29 (3) If a prescription is issued to a patient, records shall be
 30 maintained for each prescription as part of the patient's record,
 31 including all of the following ~~information about the prescribing~~
 32 ~~optometrist:~~ information.

33 (i) ~~Name.~~

34 (ii) ~~License number.~~

35 (iii) ~~The place of practice and the primary business office.~~

36 (A) ~~The optometrist's name, license number, and contact~~
 37 ~~information~~

38 (B) ~~The mobile facility's owner, registration, and contact~~
 39 ~~information.~~

40 (C) ~~The location at which optometric services were provided.~~

- 1 ~~(iv)~~
- 2 (D) Description of the goods and services for which the patient
- 3 is charged and the amount charged.
- 4 ~~(E)~~
- 5 (4) For services provided at a schoolsite, a copy of consent by
- 6 the parent, guardian, or legal representative and referral or order
- 7 requesting optometric services from personnel in a school district
- 8 or county office of education, as defined in Section 49452 of the
- 9 Education Code and Section 591 of Title 5 of the California Code
- 10 of Regulations, shall be kept in the patient’s medical record.
- 11 ~~(3) The optometrist possesses and appropriately uses the~~
- 12 ~~instruments and equipment required for all optometric services~~
- 13 ~~and procedures performed within the mobile optometric facility.~~
- 14 ~~(4) For mobile optometric facilities, the optometrist informs~~
- 15 ~~patients in writing of any condition that requires follow-up care~~
- 16 ~~or treatment.~~
- 17 ~~(5) Mobile optometric facilities shall comply with all consumer~~
- 18 ~~notice requirements of the board.~~
- 19 ~~(6) There is a written procedure for follow-up care of patients~~
- 20 ~~treated in a mobile optometric facility and that such procedure~~
- 21 ~~includes arrangements for treatment by a local health care~~
- 22 ~~professional.~~
- 23 ~~(7) The mobile optometric facility shall arrange for emergency~~
- 24 ~~medical care when indicated.~~
- 25 ~~(8) The mobile optometric facility shall do all of the following:~~
- 26 ~~(A) Have an access ramp or lift if services are provided to~~
- 27 ~~disabled persons.~~
- 28 ~~(B) Have adequate~~
- 29 ~~(e) A mobile optometric facility shall comply with applicable~~
- 30 ~~federal and state laws governing access for disabled individuals.~~
- 31 ~~(f) When providing services, a mobile optometric facility shall~~
- 32 ~~have access to all of the following:~~
- 33 ~~(1) Adequate equipment and supplies for cleaning, disinfection,~~
- 34 ~~and sterilization.~~
- 35 ~~(C) Have access to an~~
- 36 ~~(2) Adequate instruments and equipment required for all~~
- 37 ~~optometric services and procedures performed within the mobile~~
- 38 ~~optometric facility.~~
- 39 ~~(3) An adequate supply of clean clean, running water, including~~
- 40 ~~hot and cold water.~~

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- 1 ~~(D) Have ready access to toilet~~
 2 (4) Toilet facilities.
 3 ~~(E) Have a~~
 4 (5) A covered, galvanized stainless steel or other noncorrosive
 5 metal container for deposit of refuse and waste materials.
 6 ~~(F) Comply~~
 7 (6) Sufficient lighting around the perimeter of the work site from
 8 which the mobile optometric facility provides any services.
 9 (g) An owner of an optometric facility shall be responsible for
 10 all of the following:
 11 (1) Compliance with the applicable requirements of the Vehicle
 12 Code, and shall have a vehicle identification number for the mobile
 13 optometric facility. Code.
 14 ~~(G) Maintain~~
 15 (2) Maintaining the mobile optometric facility in good repair
 16 and in a clean and sanitary manner.
 17 ~~(H) Have a written policy~~
 18 (3) Establishing written policies and procedures that include,
 19 but are not limited to, all of the following:
 20 (i)
 21 (A) Scope of services.
 22 (ii)
 23 (B) Procedures for the performance of the services provided.
 24 ~~(iii)~~
 25 (C) Quality assurance.
 26 ~~(iv)~~
 27 (D) Infection control.
 28 ~~(v)~~
 29 (E) Medical record documentation of services provided, as
 30 appropriate. provided.
 31 ~~(vi) Transport for patients, including, but not limited to, a~~
 32 ~~method of transportation, special equipment, necessary personnel,~~
 33 ~~and protection from inclement weather.~~
 34 ~~(vii)~~
 35 (F) Emergency response and evacuation plan for the mobile
 36 unit.
 37 ~~(I) Maintain~~
 38 (G) Arrangements for treatment by a local health care
 39 professional.
 40 (H) Patient emergency medical care.

- 1 (I) Written notification for patients of any condition that requires
 2 follow-up care or treatment.
- 3 (4) Maintaining a mobile unit services log that shall include,
 4 but is not limited to, all of the following:
- 5 (i)
 6 (A) Patient record or identification number.
- 7 (ii)
 8 (B) Name, age, and sex of patient.
- 9 (iii)
 10 (C) Site, date, time, and as appropriate, duration of exam.
- 11 (iv)
 12 (D) Printed optometrist name and license number.
- 13 (v)
 14 (E) Signature or electronic signature, or the equivalent.
- 15 (d)
 16 (h) An optometrist who satisfies all of the requirements in this
 17 section for the practice of optometry in a mobile optometric facility
 18 shall not be required to comply with ~~Section~~ Sections 3070 and
 19 3077 in regard to providing notification to the board of each
 20 location at which he or she practices.
- 21 ~~(e) Mobile optometric facilities that are part of an extended~~
 22 ~~optometric clinical facility, as defined in Section 1507 of Title 16~~
 23 ~~of the California Code of Regulations, are exempt from the~~
 24 ~~requirements of this section.~~
- 25 ~~(f) The licensed primary business office shall be responsible~~
 26 ~~for obtaining approval for parking of the mobile optometric facility~~
 27 ~~as required by the local planning, zoning, and fire authorities. The~~
 28 ~~mobile unit shall be situated for safe and comfortable patient~~
 29 ~~access. The mobile unit shall comply with all local parking laws.~~
 30 ~~Any parking restrictions developed by a primary business office~~
 31 ~~or clinic for mobile units shall be strictly enforced by the primary~~
 32 ~~business office or clinic. The primary business office or clinic shall~~
 33 ~~ensure that there is sufficient lighting around the perimeter of the~~
 34 ~~site from which the mobile unit provides any services.~~
- 35 (i) This section shall become operative on January 1, 2017.
- 36 ~~SEC. 2.~~
- 37 SEC. 3. No reimbursement is required by this act pursuant to
 38 Section 6 of Article XIII B of the California Constitution because
 39 the only costs that may be incurred by a local agency or school
 40 district will be incurred because this act creates a new crime or

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1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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AMENDED IN SENATE MAY 4, 2015
AMENDED IN SENATE APRIL 9, 2015

SENATE BILL

No. 622

Introduced by Senator Hernandez

February 27, 2015

An act to amend ~~Section~~ *Sections 3041 and 3110* of, to add Sections 3041.4, 3041.5, 3041.6, 3041.7, and 3041.8 to, and to repeal and add Sections 3041.1, 3041.2, and 3041.3 of, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as amended, Hernandez. Optometry.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. The act requires optometrists treating or diagnosing eye disease, as specified, to be held to the same standard of care to which physicians and surgeons and osteopathic physician and surgeons are held. *The act requires an optometrist, in certain circumstances, to refer a patient to an ophthalmologist or a physician and surgeon,*

including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis. The act makes a violation of any of its provisions a crime. All moneys collected pursuant to the act, except where otherwise provided, are deposited in the Optometry Fund and continuously appropriated to the board to carry out the act.

This bill would revise and recast those provisions. *The bill would delete certain requirements that an optometrist refer a patient to an ophthalmologist or a physician and surgeon, including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis.* The bill would additionally define the practice of optometry as the provision of habilitative optometric services, and would authorize the board to allow optometrists to use nonsurgical technology to treat any authorized condition under the act. The bill would *additionally* authorize an optometrist ~~certified to use diagnostic therapeutic pharmaceutical agents, as specified, including, but not limited to, oral and topical diagnostic pharmaceutical agents that are not controlled substances.~~ *agents to collect a blood specimen by finger prick method, to perform skin tests, as specified, to diagnose ocular allergies, and to use mechanical lipid extraction of meibomian glands and nonsurgical techniques.* The bill would ~~authorize an optometrist to independently initiate and administer vaccines, as specified, for a person 3 years of age and older, if the optometrist meets certain requirements, including, but not limited to, require the board to grant an optometrist certified to treat glaucoma a certificate for the use of specified immunizations if certain conditions are met, including, among others, that he or she the optometrist is certified in basic life support for health care professionals.~~ *support.* The bill would additionally authorize an optometrist certified to use therapeutic pharmaceutical agents to, among other things, be certified to use anterior segment lasers, as specified, and to be certified to perform specified minor procedures, as specified, if certain requirements are met.

The bill would require the board to charge a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use anterior segment ~~lasers.~~ *lasers, a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use minor procedures, and a fee of not more than \$100 to cover the reasonable regulatory cost of certifying an optometrist to use*

immunizations. Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.

Existing law establishes the Office of Statewide Health Planning and Development, which is vested with all the duties, powers, responsibilities, and jurisdiction of the State Department of Public Health relating to health planning and research development.

This bill would declare the intent of the Legislature that the Office of Statewide Health Planning designate a pilot project to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes mellitus, hypertension, and hypercholesterolemia.

Because a violation of the act is a crime, this bill would expand the scope of an existing crime and would, therefore, result in a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3041 of the Business and Professions
- 2 Code is amended to read:
- 3 3041. (a) The practice of optometry includes the prevention
- 4 and diagnosis of disorders and dysfunctions of the visual system,
- 5 and the treatment and management of certain disorders and
- 6 dysfunctions of the visual system, as well as the provision of
- 7 habilitative or rehabilitative optometric services, and is the doing
- 8 of any or all of the following:
- 9 (1) The examination of the human eye or eyes, or its or their
- 10 appendages, and the analysis of the human vision system, either
- 11 subjectively or objectively.
- 12 (2) The determination of the powers or range of human vision
- 13 and the accommodative and refractive states of the human eye or
- 14 eyes, including the scope of its or their functions and general
- 15 condition.

1 (3) The prescribing or directing the use of, or using, any optical
 2 device in connection with ocular exercises, visual training, vision
 3 training, or orthoptics.

4 (4) The prescribing of contact and spectacle lenses for, or the
 5 fitting or adaptation of contact and spectacle lenses to, the human
 6 eye, including lenses that may be classified as drugs or devices by
 7 any law of the United States or of this state.

8 (5) The use of topical pharmaceutical agents for the purpose of
 9 the examination of the human eye or eyes for any disease or
 10 pathological condition.

11 (b) The State Board of Optometry shall, by regulation, establish
 12 educational and examination requirements for licensure to ensure
 13 the competence of optometrists to practice pursuant to this ~~chapter.~~
 14 *chapter, except as specified in Section 3041.3 related to the use*
 15 *of anterior segment lasers and in Section 3041.4 related to minor*
 16 *procedures.* Satisfactory completion of the required educational
 17 and examination requirements shall be a condition for the issuance
 18 of an original optometrist license or required certifications pursuant
 19 to this chapter.

20 (c) The board may ~~authorize~~ *promulgate regulations authorizing*
 21 *optometrists to use noninvasive, nonsurgical technology to treat a*
 22 *condition authorized by this chapter. The board shall require a*
 23 *licensee to take a minimum of four hours of education courses on*
 24 *the new technology and perform an appropriate number of*
 25 *complete clinical procedures on live human patients to qualify to*
 26 *use each new technology authorized by the board pursuant to this*
 27 *subdivision.*

28 SEC. 2. Section 3041.1 of the Business and Professions Code
 29 is repealed.

30 SEC. 3. Section 3041.1 is added to the Business and Professions
 31 Code, to read:

32 3041.1. (a) (1) An optometrist who is certified to use
 33 therapeutic pharmaceutical agents pursuant to this section may
 34 also diagnose and treat the human eye or eyes, or any of its or their
 35 appendages, for all of the following conditions:

36 (A) Through medical treatment, infections of the anterior
 37 segment and adnexa.

38 (B) Ocular allergies of the anterior segment and adnexa.

39 ~~(C) Ocular inflammation that is nonsurgical in cause, except~~
 40 ~~when comanaged with the treating physician and surgeon.~~

1 (C) Ocular inflammation, nonsurgical in cause except when
 2 comanaged with the treating physician and surgeon, limited to
 3 inflammation resulting from traumatic iritis, peripheral corneal
 4 inflammatory keratitis, episcleritis, and unilateral nonrecurrent
 5 nongranulomatous idiopathic iritis in patients over 18 years of
 6 age.

7 (D) Traumatic or recurrent conjunctival or corneal abrasions
 8 and erosions.

9 (E) Corneal and conjunctival surface disease and dry eyes
 10 disease.

11 (F) Ocular pain that is nonsurgical in cause, except when
 12 comanaged with the treating physician and surgeon.

13 (G) ~~Eyelid disorders, including, but not limited to, hypotrichosis~~
 14 ~~and blepharitis. Hypotrichosis and blepharitis.~~

15 (2) For purposes of this section, “treat” means the use of
 16 therapeutic pharmaceutical agents, as described in subdivision (b),
 17 and the procedures described in subdivision (c).

18 (3) For purposes of this chapter, “adnexa” means ocular adnexa.

19 (b) In diagnosing and treating the conditions listed in subdivision
 20 (a), an optometrist certified to use therapeutic pharmaceutical
 21 agents pursuant to this section may use all of the following
 22 ~~diagnostic and therapeutic pharmaceutical agents:~~

23 ~~(1) Oral and topical diagnostic and therapeutic pharmaceutical~~
 24 ~~agents that are not controlled substances. The use of pharmaceutical~~
 25 ~~agents shall be limited to the use for which the drug has been~~
 26 ~~approved for marketing by the federal Food and Drug~~
 27 ~~Administration (FDA).~~

28 ~~(2) Notwithstanding paragraph (1), an optometrist certified to~~
 29 ~~use therapeutic pharmaceutical agents may use a drug in a way for~~
 30 ~~which the drug has not been approved for marketing by the FDA~~
 31 ~~if all of the following requirements are met:~~

32 ~~(A) The drug is approved by the FDA.~~

33 ~~(B) The drug has been recognized for treatment of the condition~~
 34 ~~by either of the following:~~

35 ~~(i) The American Hospital Formulary Service’s Drug~~
 36 ~~Information.~~

37 ~~(ii) Two articles from major peer-reviewed medical journals~~
 38 ~~that present data supporting the proposed off-label use or uses as~~
 39 ~~generally safe and effective, unless there is clear and convincing~~

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1 ~~contradictory evidence presented in a major peer reviewed medical~~
 2 ~~journal.~~

3 ~~(3) Notwithstanding paragraph (1), codeine with compounds~~
 4 ~~and hydrocodone with compounds as listed in the California~~
 5 ~~Uniform Controlled Substances Act (Division 10 (commencing~~
 6 ~~with Section 11000) of the Health and Safety Code) and the federal~~
 7 ~~Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) may be~~
 8 ~~used. The use of these controlled substances shall be limited to~~
 9 ~~five days.~~

10 *(1) Topical pharmaceutical agents for the purpose of the*
 11 *examination of the human eye or eyes for any disease or*
 12 *pathological condition, including, but not limited to, topical*
 13 *miotics.*

14 *(2) Topical lubricants.*

15 *(3) Antiallergy agents. In using topical steroid medication for*
 16 *the treatment of ocular allergies, an optometrist shall consult with*
 17 *an ophthalmologist if the patient's condition worsens 21 days after*
 18 *diagnosis.*

19 *(4) Topical and oral anti-inflammatories.*

20 *(5) Topical antibiotic agents.*

21 *(6) Topical hyperosmotics.*

22 *(7) Topical and oral antiglaucoma agents pursuant to the*
 23 *certification process defined in Section 3041.2.*

24 *(8) Nonprescription medications used for the rational treatment*
 25 *of an ocular disorder.*

26 *(9) Oral antihistamines.*

27 *(10) Prescription oral nonsteroidal anti-inflammatory agents.*

28 *(11) Oral antibiotics for medical treatment of ocular disease.*

29 *(12) Topical and oral antiviral medication for the medical*
 30 *treatment of herpes simplex viral keratitis, herpes simplex viral*
 31 *conjunctivitis, periocular herpes simplex viral dermatitis, varicella*
 32 *zoster viral keratitis, varicella zoster viral conjunctivitis, and*
 33 *periocular varicella zoster viral dermatitis.*

34 *(13) Oral analgesics that are not controlled substances.*

35 *(14) Codeine with compounds and hydrocodone with compounds*
 36 *as listed in the California Uniform Controlled Substances Act*
 37 *(Division 10 (commencing with Section 11000) of the Health and*
 38 *Safety Code) and the United States Uniform Controlled Substances*
 39 *Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be*

1 *limited to five days, with a referral to an ophthalmologist if the*
 2 *pain persists.*

3 (c) An optometrist who is certified to use therapeutic
 4 pharmaceutical agents pursuant to this section may also perform
 5 all of the following:

6 (1) Corneal scraping with cultures.

7 (2) Debridement of corneal epithelia.

8 (3) Mechanical epilation.

9 (4) Collection of a blood specimen by finger prick method or
 10 venipuncture for testing patients suspected of having diabetes.

11 (5) Suture removal, with prior consultation with the treating
 12 health care provider.

13 (6) Treatment or removal of sebaceous cysts by expression.

14 (7) Administration of oral fluorescein to patients suspected as
 15 having diabetic retinopathy.

16 (8) Use of an auto-injector to counter anaphylaxis.

17 ~~(9) Ordering of clinical laboratory and imaging tests related to~~
 18 ~~the practice of optometry.~~

19 ~~(10) A clinical laboratory test or examination classified as~~
 20 ~~waived under CLIA and related to the practice of optometry.~~

21 (9) *Ordering of smears, cultures, sensitivities, complete blood*
 22 *count, mycobacterial culture, acid fast stain, urinalysis, tear fluid*
 23 *analysis, and X-rays necessary for the diagnosis of conditions or*
 24 *diseases of the eye or adnexa. An optometrist may order other*
 25 *types of images subject to prior consultation with the appropriate*
 26 *physician and surgeon.*

27 (10) *A clinical laboratory test or examination classified as*
 28 *waived under the Clinical Laboratory Improvement Amendments*
 29 *of 1988 (CLIA)(42 U.S.C. Sec. 263a; Public Law 100-578) or any*
 30 *regulations adopted pursuant to CLIA, and that are necessary for*
 31 *the diagnosis of conditions and diseases of the eye or adnexa, or*
 32 *if otherwise specifically authorized by this chapter.*

33 (11) Skin test to diagnose ocular allergies. Skin tests shall be
 34 limited to the superficial layer of the skin.

35 (12) Punctal occlusion by plugs, excluding laser, diathermy,
 36 cryotherapy, or other means constituting surgery as defined in this
 37 chapter.

38 (13) The prescription of therapeutic contact lenses, diagnostic
 39 contact lenses, or biological or technological corneal devices.

1 *devices that diagnose or treat a condition authorized under this*
 2 *chapter.*

3 (14) Removal of foreign bodies from the cornea, eyelid, and
 4 conjunctiva with any appropriate instrument other than a ~~scalpel~~
 5 ~~or needle~~. *scalpel*. Corneal foreign bodies shall be nonperforating,
 6 be no deeper than the midstroma, and require no surgical repair
 7 upon removal.

8 (15) For patients over 12 years of age, lacrimal irrigation and
 9 dilation, excluding probing of the nasal lacrimal tract. The board
 10 shall certify any optometrist who graduated from an accredited
 11 school of optometry before May 1, 2000, to perform this procedure
 12 after submitting proof of satisfactory completion and confirmation
 13 of 10 procedures under the supervision of an ophthalmologist or
 14 optometrist who is certified in lacrimal irrigation and dilation. Any
 15 optometrist who graduated from an accredited school of optometry
 16 on or after May 1, 2000, shall be exempt from the certification
 17 requirement contained in this paragraph.

18 (16) Use of mechanical lipid extraction of meibomian glands
 19 and nonsurgical techniques.

20 ~~(17) Notwithstanding subdivision (b), administration of~~
 21 ~~injections for the diagnoses or treatment of conditions of the eye~~
 22 ~~and adnexa, excluding intraorbital injections and injections~~
 23 ~~administered for cosmetic effect, provided that the optometrist has~~
 24 ~~satisfactorily received four hours of continuing education on~~
 25 ~~performing all injections authorized by this paragraph.~~

26 (d) In order to be certified to use therapeutic pharmaceutical
 27 agents and authorized to diagnose and treat the conditions listed
 28 in this section, an optometrist shall apply for a certificate from the
 29 board and meet all requirements imposed by the board.

30 (e) The board shall grant a certificate to use therapeutic
 31 pharmaceutical agents to any applicant who graduated from a
 32 California accredited school of optometry prior to January 1, 1996,
 33 is licensed as an optometrist in California, and meets all of the
 34 following requirements:

35 (1) Satisfactorily completes a didactic course of no less than 80
 36 classroom hours in the diagnosis, pharmacological, and other
 37 treatment and management of ocular disease provided by either
 38 an accredited school of optometry in California or a recognized
 39 residency review committee in ophthalmology in California.

1 (2) Completes a preceptorship of no less than 65 hours, during
2 a period of not less than two months nor more than one year, in
3 either an ophthalmologist's office or an optometric clinic. The
4 training received during the preceptorship shall be on the diagnosis,
5 treatment, and management of ocular, systemic disease. The
6 preceptor shall certify completion of the preceptorship.
7 Authorization for the ophthalmologist to serve as a preceptor shall
8 be provided by an accredited school of optometry in California,
9 or by a recognized residency review committee in ophthalmology,
10 and the preceptor shall be licensed as an ophthalmologist in
11 California, board certified in ophthalmology, and in good standing
12 with the Medical Board of California. The individual serving as
13 the preceptor shall schedule no more than three optometrist
14 applicants for each of the required 65 hours of the preceptorship
15 program. This paragraph shall not be construed to limit the total
16 number of optometrist applicants for whom an individual may
17 serve as a preceptor, and is intended only to ensure the quality of
18 the preceptorship by requiring that the ophthalmologist preceptor
19 schedule the training so that each applicant optometrist completes
20 each of the 65 hours of the preceptorship while scheduled with no
21 more than two other optometrist applicants.

22 (3) Successfully completes a minimum of 20 hours of
23 self-directed education.

24 (4) Passes the National Board of Examiners in Optometry's
25 "Treatment and Management of Ocular Disease" examination or,
26 in the event this examination is no longer offered, its equivalent,
27 as determined by the State Board of Optometry.

28 (5) Passes the examination issued upon completion of the
29 80-hour didactic course required under paragraph (1) and provided
30 by the accredited school of optometry or residency program in
31 ophthalmology.

32 (6) When any or all of the requirements contained in paragraph
33 (1), (4), or (5) have been satisfied on or after July 1, 1992, and
34 before January 1, 1996, an optometrist shall not be required to
35 fulfill the satisfied requirements in order to obtain certification to
36 use therapeutic pharmaceutical agents. In order for this paragraph
37 to apply to the requirement contained in paragraph (5), the didactic
38 examination that the applicant successfully completed shall meet
39 equivalency standards, as determined by the board.

1 (7) Any optometrist who graduated from an accredited school
2 of optometry on or after January 1, 1992, and before January 1,
3 1996, shall not be required to fulfill the requirements contained in
4 paragraphs (1), (4), and (5).

5 (f) The board shall grant a certificate to use therapeutic
6 pharmaceutical agents to any applicant who graduated from a
7 California accredited school of optometry on or after January 1,
8 1996, who is licensed as an optometrist in California, and who
9 meets all of the following requirements:

10 (1) Passes the National Board of Examiners in Optometry's
11 national board examination, or its equivalent, as determined by
12 the State Board of Optometry.

13 (2) Of the total clinical training required by a school of
14 optometry's curriculum, successfully completed at least 65 of those
15 hours on the diagnosis, treatment, and management of ocular,
16 systemic disease.

17 (3) Is certified by an accredited school of optometry as
18 competent in the diagnosis, treatment, and management of ocular,
19 systemic disease to the extent authorized by this section.

20 (4) Is certified by an accredited school of optometry as having
21 completed at least 10 hours of experience with a board-certified
22 ophthalmologist.

23 (g) The board shall grant a certificate to use therapeutic
24 pharmaceutical agents to any applicant who is an optometrist who
25 obtained his or her license outside of California if he or she meets
26 all of the requirements for an optometrist licensed in California to
27 be certified to use therapeutic pharmaceutical agents.

28 (1) In order to obtain a certificate to use therapeutic
29 pharmaceutical agents, any optometrist who obtained his or her
30 license outside of California and graduated from an accredited
31 school of optometry prior to January 1, 1996, shall be required to
32 fulfill the requirements set forth in subdivision (e). In order for the
33 applicant to be eligible for the certificate to use therapeutic
34 pharmaceutical agents, the education he or she received at the
35 accredited out-of-state school of optometry shall be equivalent to
36 the education provided by any accredited school of optometry in
37 California for persons who graduated before January 1, 1996. For
38 those out-of-state applicants who request that any of the
39 requirements contained in subdivision (e) be waived based on
40 fulfillment of the requirement in another state, if the board

1 determines that the completed requirement was equivalent to that
2 required in California, the requirement shall be waived.

3 (2) In order to obtain a certificate to use therapeutic
4 pharmaceutical agents, any optometrist who obtained his or her
5 license outside of California and who graduated from an accredited
6 school of optometry on or after January 1, 1996, shall be required
7 to fulfill the requirements set forth in subdivision (f). In order for
8 the applicant to be eligible for the certificate to use therapeutic
9 pharmaceutical agents, the education he or she received by the
10 accredited out-of-state school of optometry shall be equivalent to
11 the education provided by any accredited school of optometry for
12 persons who graduated on or after January 1, 1996. For those
13 out-of-state applicants who request that any of the requirements
14 contained in subdivision (f) be waived based on fulfillment of the
15 requirement in another state, if the board determines that the
16 completed requirement was equivalent to that required in
17 California, the requirement shall be waived.

18 (3) The State Board of Optometry shall decide all issues relating
19 to the equivalency of an optometrist's education or training under
20 this subdivision.

21 (h) Other than for prescription ophthalmic devices described in
22 subdivision (b) of Section 2541, any dispensing of a therapeutic
23 pharmaceutical agent by an optometrist shall be without charge.

24 (i) Except as authorized by this chapter, the practice of
25 optometry does not include performing surgery. "Surgery" means
26 any procedure in which human tissue is cut, altered, or otherwise
27 infiltrated by mechanical or laser means. "Surgery" does not
28 include those procedures specified in subdivision (c). This section
29 does not limit an optometrist's authority to utilize diagnostic laser
30 and ultrasound technology within his or her scope of practice.

31 (j) In an emergency, an optometrist shall stabilize, if possible,
32 and immediately refer any patient who has an acute attack of angle
33 closure to an ophthalmologist.

34 SEC. 4. Section 3041.2 of the Business and Professions Code
35 is repealed.

36 SEC. 5. Section 3041.2 is added to the Business and Professions
37 Code, to read:

38 3041.2. (a) For purposes of this chapter, "glaucoma" means
39 any of the following:

40 (1) All primary open-angle glaucoma.

1 (2) Exfoliation and pigmentary glaucoma.

2 (3) Increase in intraocular pressure caused by steroid ~~medication.~~
3 *medication prescribed by the optometrist.*

4 (4) *Increase in intraocular pressure caused by steroid*
5 *medication not prescribed by the optometrist, after consultation*
6 *and treatment approval by the prescribing physician.*

7 (b) An optometrist certified pursuant to Section 3041.1 shall be
8 certified for the treatment of glaucoma, as described in subdivision
9 (a), in patients over 18 years of age after the optometrist meets the
10 following applicable requirements:

11 (1) For licensees who graduated from an accredited school of
12 optometry on or after May 1, 2008, submission of proof of
13 graduation from that institution.

14 (2) For licensees who were certified to treat glaucoma under
15 this section prior to January 1, 2009, submission of proof of
16 completion of that certification program.

17 (3) For licensees who completed a didactic course of not less
18 than 24 hours in the diagnosis, pharmacological, and other
19 treatment and management of glaucoma, submission of proof of
20 satisfactory completion of the case management requirements for
21 certification established by the board.

22 (4) For licensees who graduated from an accredited school of
23 optometry on or before May 1, 2008, and are not described in
24 paragraph (2) or (3), submission of proof of satisfactory completion
25 of the requirements for certification established by the board.

26 SEC. 6. Section 3041.3 of the Business and Professions Code
27 is repealed.

28 SEC. 7. Section 3041.3 is added to the Business and Professions
29 Code, to read:

30 3041.3. (a) For the purposes of this chapter, “anterior segment
31 laser” means any of the following:

32 (1) Therapeutic lasers appropriate for treatment of glaucoma.

33 (2) Notwithstanding subdivision (a) of Section 3041.2,
34 peripheral iridotomy for the prophylactic treatment of angle closure
35 glaucoma.

36 (3) Therapeutic lasers used for posterior capsulotomy secondary
37 to cataract surgery.

38 (b) An optometrist certified to treat glaucoma pursuant to
39 Section 3041.2 shall be additionally certified for the use of anterior
40 segment lasers after submitting proof of satisfactory completion

1 of a course that is approved by the board, provided by an accredited
 2 school of optometry, and developed in consultation with an
 3 ophthalmologist who has experience educating optometric students.
 4 *The board shall issue a certificate pursuant to this section only to*
 5 *an optometrist that has graduated from an approved school of*
 6 *optometry.*

7 (1) The board-approved course shall be ~~a minimum of 16~~ *at*
 8 *least 25 hours in length, and include a test for competency of the*
 9 *following:*

- 10 (A) Laser physics, hazards, and safety.
- 11 (B) Biophysics of laser.
- 12 (C) Laser application in clinical optometry.
- 13 (D) Laser tissue interactions.
- 14 (E) Laser indications, contraindications, and potential
- 15 complications.
- 16 (F) Gonioscopy.
- 17 (G) Laser therapy for open-angle glaucoma.
- 18 (H) Laser therapy for angle closure glaucoma.
- 19 (I) Posterior capsulotomy.
- 20 (J) Common complications of the lids, lashes, and lacrimal
- 21 system.
- 22 (K) Medicolegal aspects of anterior segment procedures.
- 23 (L) Peripheral iridotomy.
- 24 (M) Laser trabeculoplasty.

25 (2) The school of optometry shall require each applicant for
 26 certification to perform a sufficient number of *complete* anterior
 27 segment laser procedures to verify that the applicant has
 28 demonstrated competency to practice independently. At a
 29 minimum, each applicant shall complete ~~14~~ *24* anterior segment
 30 laser procedures on live ~~humans~~; *humans as follows:*

- 31 (A) *Eight YAG capsulotomy procedures.*
- 32 (B) *Eight laser trabeculoplasty procedures.*
- 33 (C) *Eight peripheral iridotomy procedures.*
- 34 (c) The board, by regulation, shall set the fee for issuance and
- 35 renewal of a certificate authorizing the use of anterior segment
- 36 lasers at an amount no higher than the reasonable cost of regulating
- 37 anterior segment laser certified optometrists pursuant to this
- 38 section. The fee shall not exceed one hundred fifty dollars (\$150).
- 39 (d) *An optometrist certified to use anterior segment lasers*
 40 *pursuant to this section shall complete four hours of continuing*

1 *education on anterior segment lasers as part of the required 50*
 2 *hours of continuing education required to be completed every two*
 3 *years on the diagnosis, treatment, and management of glaucoma.*

4 SEC. 8. Section 3041.4 is added to the Business and Professions
 5 Code, to read:

6 3041.4. (a) For the purposes of this chapter, “minor procedure”
 7 means either of the following:

8 (1) Removal, destruction, or drainage of lesions of the eyelid
 9 and adnexa clinically evaluated by the optometrist to be
 10 noncancerous, not involving the eyelid margin, lacrimal supply or
 11 drainage systems, no deeper than the orbicularis muscle, and
 12 smaller than five millimeters in diameter.

13 (2) Closure of a wound resulting from a procedure described in
 14 paragraph (1).

15 (3) *Administration of injections for the diagnoses or treatment*
 16 *of conditions of the eye and adnexa authorized by this chapter,*
 17 *excluding intraorbital injections and injections administered for*
 18 *cosmetic effect.*

19 (4) *“Minor procedures” does not include blepharoplasty or*
 20 *other cosmetic surgery procedures that reshape normal structures*
 21 *of the body in order to improve appearance and self-esteem.*

22 (b) An optometrist certified to treat glaucoma pursuant to
 23 Section 3041.2 shall be additionally certified to perform minor
 24 procedures after submitting proof of satisfactory completion of a
 25 course that is approved by the board, provided by an accredited
 26 school of optometry, and developed in consultation with an
 27 ophthalmologist who has experience teaching optometric students.
 28 *The board shall issue a certificate pursuant to this section only to*
 29 *an optometrist that has graduated from an approved school of*
 30 *optometry.*

31 (1) The board-approved course shall be ~~a minimum of 32 hours~~
 32 *at least 25 hours* in length and include a test for competency of
 33 the following:

34 (A) Minor surgical procedures.

35 (B) Overview of surgical instruments, asepsis, and the state and
 36 federal Occupational Safety and Health Administrations.

37 (C) Surgical anatomy of the eyelids.

38 (D) Emergency surgical procedures.

39 (E) Chalazion management.

40 (F) Epiluminescence microscopy.

- 1 (G) Suture techniques.
 2 (H) Local anesthesia techniques and complications.
 3 (I) Anaphylaxis and other office emergencies.
 4 (J) Radiofrequency surgery.
 5 (K) Postoperative wound care.
 6 (L) *Injection techniques.*
 7 (2) The school of optometry shall require each applicant for
 8 certification to perform a sufficient number of minor procedures
 9 to verify that the applicant has demonstrated competency to
 10 practice independently. At a minimum, each applicant shall *perform*
 11 *32 complete-five* minor procedures on live humans.
 12 (c) *The board, by regulation, shall set the fee for issuance and*
 13 *renewal of a certificate authorizing the use of minor procedures*
 14 *at an amount no greater than the reasonable cost of regulating*
 15 *minor procedure certified optometrists pursuant to this section.*
 16 *The fee shall not exceed one hundred fifty dollars (\$150).*
 17 (d) *An optometrist certified to perform minor procedures*
 18 *pursuant to Section 3041.1 shall complete five hours of continuing*
 19 *education on the diagnosis, treatment, and management of lesions*
 20 *of the eyelid and adnexa as part of the 50 hours of continuing*
 21 *education required every two years in Section 3059.*
 22 ~~SEC. 9. Section 3041.5 is added to the Business and Professions~~
 23 ~~Code, to read:~~
 24 ~~3041.5. (a) An optometrist may independently initiate and~~
 25 ~~administer vaccines listed on the routine immunization schedules~~
 26 ~~recommended by the federal Advisory Committee on Immunization~~
 27 ~~Practices (ACIP), in compliance with individual ACIP vaccine~~
 28 ~~recommendations, and published by the federal Centers for Disease~~
 29 ~~Control and Prevention (CDC) for persons three years of age and~~
 30 ~~older.~~
 31 (b) ~~In order to initiate and administer an immunization described~~
 32 ~~in subdivision (a), an optometrist shall do all of the following:~~
 33 (1) ~~Complete an immunization training program endorsed by~~
 34 ~~the CDC or the Accreditation Council for Pharmacy Education~~
 35 ~~that, at a minimum, includes hands-on injection technique, clinical~~
 36 ~~evaluation of indications and contraindications of vaccines, and~~
 37 ~~the recognition and treatment of emergency reactions to vaccines,~~
 38 ~~and shall maintain that training.~~
 39 (2) ~~Be certified in basic life support for health care professionals.~~

1 ~~(3) Comply with all state and federal recordkeeping and~~
 2 ~~reporting requirements, including providing documentation to the~~
 3 ~~patient's primary care provider and entering information in the~~
 4 ~~appropriate immunization registry designated by the immunization~~
 5 ~~branch of the State Department of Public Health.~~

6 *SEC. 9. Section 3041.5 is added to the Business and Professions*
 7 *Code, to read:*

8 *3041.5. (a) The board shall grant to an optometrist a*
 9 *certificate for the use of immunizations described in subdivision*
 10 *(b), if the optometrist is certified pursuant to Section 3041.2 and*
 11 *after the optometrist meets all of the following requirements:*

12 *(1) Completes an immunization training program endorsed by*
 13 *the federal Centers for Disease Control (CDC) that, at a minimum,*
 14 *includes hands-on injection technique, clinical evaluation of*
 15 *indications and contraindications of vaccines, and the recognition*
 16 *and treatment of emergency reactions to vaccines, and maintains*
 17 *that training.*

18 *(2) Is certified in basic life support.*

19 *(3) Complies with all state and federal recordkeeping and*
 20 *reporting requirements, including providing documentation to the*
 21 *patient's primary care provider and entering information in the*
 22 *appropriate immunization registry designated by the immunization*
 23 *branch of the State Department of Public Health.*

24 *(b) For the purposes of this section, "immunization" means the*
 25 *administration of immunizations for influenza, herpes zoster virus,*
 26 *and pneumococcus in compliance with individual Advisory*
 27 *Committee on Immunization Practices (ACIP) vaccine*
 28 *recommendations published by the CDC for persons 18 years of*
 29 *age or older.*

30 *(c) The board, by regulation, shall set the fee for issuance and*
 31 *renewal of a certificate for the use of immunizations at the*
 32 *reasonable cost of regulating immunization certified optometrists*
 33 *pursuant to this section. The fee shall not exceed one hundred*
 34 *dollars (\$100).*

35 *SEC. 10. Section 3041.6 is added to the Business and*
 36 *Professions Code, to read:*

37 *3041.6. An optometrist licensed under this chapter is subject*
 38 *to the provisions of Section 2290.5 for purposes of practicing*
 39 *telehealth.*

1 SEC. 11. Section 3041.7 is added to the Business and
2 Professions Code, to read:

3 3041.7. Optometrists diagnosing or treating eye disease shall
4 be held to the same standard of care to which physicians and
5 surgeons and osteopathic physicians and surgeons are held. An
6 optometrist shall consult with and, if necessary, refer to a physician
7 and surgeon or other appropriate health care provider when a
8 situation or condition occurs that is beyond the optometrist's scope
9 of practice.

10 SEC. 12. Section 3041.8 is added to the Business and
11 Professions Code, to read:

12 3041.8. It is the intent of the Legislature that the Office of
13 Statewide Health Planning and Development, under the Health
14 Workforce Pilot Projects Program, designate a pilot project to test,
15 demonstrate, and evaluate expanded roles for optometrists in the
16 performance of management and treatment of diabetes mellitus,
17 hypertension, and hypercholesterolemia.

18 *SEC. 13. Section 3110 of the Business and Professions Code*
19 *is amended to read:*

20 3110. The board may take action against any licensee who is
21 charged with unprofessional conduct, and may deny an application
22 for a license if the applicant has committed unprofessional conduct.
23 In addition to other provisions of this article, unprofessional
24 conduct includes, but is not limited to, the following:

25 (a) Violating or attempting to violate, directly or indirectly
26 assisting in or abetting the violation of, or conspiring to violate
27 any provision of this chapter or any of the rules and regulations
28 adopted by the board pursuant to this chapter.

29 (b) Gross negligence.

30 (c) Repeated negligent acts. To be repeated, there must be two
31 or more negligent acts or omissions.

32 (d) Incompetence.

33 (e) The commission of fraud, misrepresentation, or any act
34 involving dishonesty or corruption, that is substantially related to
35 the qualifications, functions, or duties of an optometrist.

36 (f) Any action or conduct that would have warranted the denial
37 of a license.

38 (g) The use of advertising relating to optometry that violates
39 Section 651 or 17500.

1 (h) Denial of licensure, revocation, suspension, restriction, or
2 any other disciplinary action against a health care professional
3 license by another state or territory of the United States, by any
4 other governmental agency, or by another California health care
5 professional licensing board. A certified copy of the decision or
6 judgment shall be conclusive evidence of that action.

7 (i) Procuring his or her license by fraud, misrepresentation, or
8 mistake.

9 (j) Making or giving any false statement or information in
10 connection with the application for issuance of a license.

11 (k) Conviction of a felony or of any offense substantially related
12 to the qualifications, functions, and duties of an optometrist, in
13 which event the record of the conviction shall be conclusive
14 evidence thereof.

15 (l) Administering to himself or herself any controlled substance
16 or using any of the dangerous drugs specified in Section 4022, or
17 using alcoholic beverages to the extent, or in a manner, as to be
18 dangerous or injurious to the person applying for a license or
19 holding a license under this chapter, or to any other person, or to
20 the public, or, to the extent that the use impairs the ability of the
21 person applying for or holding a license to conduct with safety to
22 the public the practice authorized by the license, or the conviction
23 of a misdemeanor or felony involving the use, consumption, or
24 self-administration of any of the substances referred to in this
25 subdivision, or any combination thereof.

26 (m) (1) Committing or soliciting an act punishable as a sexually
27 related crime, if that act or solicitation is substantially related to
28 the qualifications, functions, or duties of an optometrist.

29 (2) Committing any act of sexual abuse, misconduct, or relations
30 with a patient. The commission of and conviction for any act of
31 sexual abuse, sexual misconduct, or attempted sexual misconduct,
32 whether or not with a patient, shall be considered a crime
33 substantially related to the qualifications, functions, or duties of a
34 licensee. This paragraph shall not apply to sexual contact between
35 any person licensed under this chapter and his or her spouse or
36 person in an equivalent domestic relationship when that licensee
37 provides optometry treatment to his or her spouse or person in an
38 equivalent domestic relationship.

39 (3) Conviction of a crime that requires the person to register as
40 a sex offender pursuant to Chapter 5.5 (commencing with Section

1 290) of Title 9 of Part 1 of the Penal Code. A conviction within
2 the meaning of this paragraph means a plea or verdict of guilty or
3 a conviction following a plea of nolo contendere. A conviction
4 described in this paragraph shall be considered a crime substantially
5 related to the qualifications, functions, or duties of a licensee.

6 (n) Repeated acts of excessive prescribing, furnishing, or
7 administering of controlled substances or dangerous drugs specified
8 in Section 4022, or repeated acts of excessive treatment.

9 (o) Repeated acts of excessive use of diagnostic or therapeutic
10 procedures, or repeated acts of excessive use of diagnostic or
11 treatment facilities.

12 (p) The prescribing, furnishing, or administering of controlled
13 substances or drugs specified in Section 4022, or treatment without
14 a good faith prior examination of the patient and optometric reason.

15 (q) The failure to maintain adequate and accurate records
16 relating to the provision of services to his or her patients.

17 (r) Performing, or holding oneself out as being able to perform,
18 or offering to perform, any professional services beyond the scope
19 of the license authorized by this chapter.

20 (s) The practice of optometry without a valid, unrevoked,
21 unexpired license.

22 (t) The employing, directly or indirectly, of any suspended or
23 unlicensed optometrist to perform any work for which an optometry
24 license is required.

25 (u) Permitting another person to use the licensee's optometry
26 license for any purpose.

27 (v) Altering with fraudulent intent a license issued by the board,
28 or using a fraudulently altered license, permit certification or any
29 registration issued by the board.

30 (w) Except for good cause, the knowing failure to protect
31 patients by failing to follow infection control guidelines of the
32 board, thereby risking transmission of bloodborne infectious
33 diseases from optometrist to patient, from patient to patient, or
34 from patient to optometrist. In administering this subdivision, the
35 board shall consider the standards, regulations, and guidelines of
36 the State Department of Public Health developed pursuant to
37 Section 1250.11 of the Health and Safety Code and the standards,
38 guidelines, and regulations pursuant to the California Occupational
39 Safety and Health Act of 1973 (Part 1 (commencing with Section
40 6300) of Division 5 of the Labor Code) for preventing the

1 transmission of HIV, hepatitis B, and other bloodborne pathogens
 2 in health care settings. As necessary, the board may consult with
 3 the Medical Board of California, the Board of Podiatric Medicine,
 4 the Board of Registered Nursing, and the Board of Vocational
 5 Nursing and Psychiatric Technicians, to encourage appropriate
 6 consistency in the implementation of this subdivision.

7 (x) Failure or refusal to comply with a request for the clinical
 8 records of a patient, that is accompanied by that patient’s written
 9 authorization for release of records to the board, within 15 days
 10 of receiving the request and authorization, unless the licensee is
 11 unable to provide the documents within this time period for good
 12 cause.

13 (y) Failure to refer a patient to an appropriate physician in either
 14 of the following circumstances:

15 (1) ~~Where~~ *physician* if an examination of the eyes indicates a
 16 substantial likelihood of any pathology that requires the attention
 17 of that physician.

18 (2) ~~As required by subdivision (e) of Section 3041.~~

19 ~~SEC. 13.~~

20 *SEC. 14.* No reimbursement is required by this act pursuant to
 21 Section 6 of Article XIII B of the California Constitution because
 22 the only costs that may be incurred by a local agency or school
 23 district will be incurred because this act creates a new crime or
 24 infraction, eliminates a crime or infraction, or changes the penalty
 25 for a crime or infraction, within the meaning of Section 17556 of
 26 the Government Code, or changes the definition of a crime within
 27 the meaning of Section 6 of Article XIII B of the California
 28 Constitution.

O

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To: Committee Members

Date: November 12, 2015

From: Jessica Sieferman
Executive Officer

Telephone: (916) 575-7184

Subject: Agenda Item 6 – Adjournment
