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To: Board Members **Date:** August 4, 2017

From: Jessica Sieferman **Telephone:** (916) 575-7170
Executive Officer

**Subject: Agenda Item 21 – Update and Possible Action on 2017 Legislation Impacting
Healing Arts Boards and the Practice of Optometry**

The following bills, as currently written, impact the Board's functions and the practice of optometry. Legislation versions and status change frequently. For this reason, staff does not print or attach specific bill language. To view the most current bill version, status and corresponding analysis, please click on the applicable hyperlinks below. The information below is current as of July 27, 2017.

A. [AB 443](#) (Salas) Healing Arts: Optometry: Required Examination: Notice

Summary: As currently written, this bill would revise the optometry scope of the practice of by, among other things, providing that the practice of optometry includes the provision of habilitative optometric services.

The bill would additionally authorize an optometrist who is certified to use therapeutic pharmaceutical agents to, among other things, perform skin testing to diagnose ocular allergies and to treat and diagnose hypotrichosis and blepharitis. The bill would authorize an optometrist certified to use therapeutic pharmaceutical agents to administer immunizations if the optometrist meets certain requirements, including that the optometrist is certified in basic life support.

Existing law requires an optometrist to consult with and refer a patient to an ophthalmologist or a physician and surgeon in certain circumstances, including if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

This bill would instead require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider when a situation or condition occurs that is beyond the optometrist's scope of practice. The bill would require all consultations, referrals, and notifications be documented in the patient record. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law requires all moneys collected pursuant to the act, except fine and penalty money, to be deposited in the Optometry Fund and continuously appropriated to the board to carry out the act.

This bill would require an applicant for a certificate to administer immunizations to pay a fee not to exceed \$50.

Status: Senate Appropriations Hearing Set for August 21, 2017

Recent Analysis: [07/07/17- Senate Business, Professions And Economic Development](#)

Support:

California Optometric Association
Numerous Individuals
VSP Vision Care

Arguments in Support (as stated in the recent analysis):

The California Optometric Association writes, “This bill as amended reflects the agreement of stakeholders based on discussions with the California Medical Association and California Academy of Eye Physicians and Surgeons that are still ongoing. After months of productive negotiations, the only outstanding issue is the question of what additional clinical training should be required before optometrists can use lasers and perform “minor procedures” described in last year’s SB 622. All stakeholders have worked hard and negotiated in good faith to craft a bill that will eliminate arbitrary limits on the optometric profession that will help patients get the timely health care access and preventative care they deserve.”

Oppose:

National Vaccine Information Center
Voice for Choice Advocacy
Numerous individuals.

Arguments in Opposition (as stated in the recent analysis)

The National Vaccine Information Center writes to “request that all language allowing optometrists to administer vaccines in AB 443 be stricken. Optometrists are not doctors and vaccines have nothing to do with eyes. People can obtain vaccines from their regular medical providers or at most neighborhood pharmacies. There is no need for vaccine administration to be included in this bill. Additionally, vaccines are medical injections that come with the risk of injury and death as evidenced by the language in AB 443 requiring optometrists to be certified in basic life support.”

**B. [AB 1708](#) (Committee on Business and Professions)
(BOARD SUNSET BILL)**

Summary: This bill would extend the operation of the board and the authority to appoint an executive officer to January 1, 2022. In addition, this bill would redefine the term “advertise” to also include the use of the Internet.

This bill would also authorize the board or its designated agent, at any time, to inspect any premise in which optometric services, as defined, are provided or reasonably suspected of being provided and any premise in which the services of dispensing, adjusting, or fitting of contact lenses or spectacle lenses are provided or reasonably suspected of being provided.

Existing law makes it unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained an optometrist license from the board.

This bill would instead make it unlawful for a person to advertise, offer, or provide specified services that are included under the practice of optometry unless the person meets specified criteria. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law authorizes the board to issue a license to practice optometry to a person who meets certain requirements, including that an applicant for licensure has never had his or her license to practice optometry revoked or suspended in any state where he or she holds a license.

This bill would make this requirement inoperative on July 1, 2018.

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

This bill would repeal that provision.

This bill would require the board to develop an interface with the National Practitioner Data Bank for the purpose of conducting inquiries on applicants for licensure, applicants for renewal of licensure, and current licensees, as specified. The bill, on and after July 1, 2018, would require the board, in addition to any other fees, to charge an applicant for licensure \$2 and an applicant for renewal of licensure \$4 for this purpose. By requiring applicants to pay a fee that is deposited into a continuously appropriated fund, this bill would make an appropriation.

Status: Senate Appropriations Hearing Set for August 21, 2017

Recent Analysis: [07/07/17- Senate Business, Professions And Economic Development](#)

Staff Comments: As part of the Board's Response to the Joint Oversight Hearing [issue paper](#), the Board provided the Joint Oversight Committee legislative proposals to be included in the Sunset Bill. All proposals were included in this bill except for the RDO expiration dates. The Committee staff believes the RDO expiration dates are going to be included in the Medical Board of California Sunset bill.

Stakeholder Concerns

Corporate stakeholders have raised concerns regarding the following BPC § 3040 amendments:

SEC. 5.

Section 3040 of the Business and Professions Code is amended to read:

3040.

(a) It is unlawful for a person to advertise, offer, or provide any service set forth in Section 3041 ~~without possessing a valid, unrevoked California optometrist license.~~ *unless the person meets one of the following:*

(1) Possesses a license issued under this chapter.

(2) Is authorized to do so under Section 655.

(3) Is authorized to do so by a license issued under this division.

(b) In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

Current law prohibits unlicensed individuals (non-ODs) to advertise optometry services set forth in BPC § 3041:

3040.

It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained an optometrist license from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

As discussed at prior Board meetings, the Board proposed adding "offer" and other clarifying technical amendments.

The concerns raised relate to companies providing advertisement services for optometric services. As part of AB 684, BPC § 655 was repealed and replaced with language allowing RDO/Optomery landlord/tenant relationships provided specific requirements were met. Some of those requirements included specific advertising parameters. Language was also added to provide stronger enforcement mechanisms for violations.

However, BPC § 655 does not apply to ophthalmologists. Therefore, if RDOs form business relationships with ophthalmologists and/or medical corporations and those ophthalmologists and/or medical corporations then employ optometrists to provide services within the RDO, BPC § 655 may not apply.

Staff assumed this was an unintended “loophole” for RDOs and/or unlicensed individuals to get around BPC § 655 requirements and its added enforcement mechanisms. However, some stakeholders recently informed staff that the current structure was intentionally written this way and that it was agreed upon early on in AB 684 discussions.

Since these stakeholders believed the current language was intentional, they have concerns that the current BPC § 3040 amendments in AB 1708 “unravels” significant AB 684 negotiations. Some have requested language clarifying that those allowed to advertise in 1, 2, and 3 may contract with third parties to advertise on their behalf. As a result, the following amendment was proposed in blue:

3040. (a) It is unlawful for a person to advertise, offer, or provide any service set forth in Section 3041 unless the person meets one of the following:

- (1) Possesses a license issued under this chapter.
- (2) Is authorized to do so under Section 655.
- (3) Is authorized to do so by a license issued under this division.
- (4) Is an advertiser providing advertising services for a person meeting the requirements of this subdivision. This paragraph shall not be construed to authorize the advertiser to offer or provide the services.*

Thus, an RDO (or any other unlicensed entity) could act as the “advertiser” for optometrists with this amendment.

Additional Staff Comments:

Staff initially proposed amending BPC § 3040 to further clarify unlicensed individuals cannot advertise, offer or provide optometric services (except as provided by BPC § 655). Since some RDOs are currently advertising eye examinations without BPC § 655 being triggered, staff proposed the initial amendments to address the unlicensed advertising. In addition, staff has concerns the current statutory structure provides a significant way around BPC § 655 and the enforcement mechanisms intended for consumer protection.

Stakeholders and Committee staff were invited to provide their input during the public comment period.

Action Requested:

Please discuss the proposed AB 1708 amendments and concerns raised and provide feedback to Committee staff.

In addition, staff recommends a formal motion to support AB 1708.