



ISSUE MEMORANDUM

DATE	November 19, 2021
TO	Members, California State Board of Optometry (CSBO)
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #11c: Legislative and Regulatory Update

Legislative Update

The 2020-2021 legislative session concluded on September 10, 2021. Staff has tracked legislation listed below as a result of Board action in 2020. Set out below are summaries of each bill with staff comments and action taken, if any. All tracked bills were passed by the Legislature and signed into law by the Governor.

1. AB-407 (Salas and Low) Optometry: scope of practice. (CSBO – Support)
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB407

Digest: This bill would permit such an assistant to perform nonsubjective autorefraction, to perform preliminary subjective refraction procedures in connection with finalizing subjective refraction procedures performed by an ophthalmologist or optometrist, subject to certain conditions, and to perform A scan and B scan ultrasound testing. This bill would revise what comprises the practice of optometry, including specific practices a certified optometrist may engage in, and would specify exceptions or limitations to that practice. The bill would permit a certified optometrist to use or prescribe topical and oral prescription and nonprescription therapeutic pharmaceutical agents that are not controlled substances and are not antiglaucoma agents or otherwise limited or excluded, as described. The bill would permit a certified optometrist to administer authorized immunizations after meeting the immunization certification requirements.

Status: Signed into law on October 8, 2021, Chapter 652, Statutes of 2021. Effective January 1, 2022.

Comments: Sponsored by COA. Several provisions coincide with AB 691, also signed into law. This bill makes additions to the scope of practice for an optometrist, such as expanded pharmaceutical treatments and diagnostic tests and procedures. Further, assistants under the direct supervision of a licensee are now able to perform additional refractive tests upon completion of 45 hours of training, as monitored by the optometrist.

Staff is currently reviewing implementation options for the bill, but changes to BreEZe and enforcement process modifications will likely need to take place. Additionally, the deeper scope of practice will allow for additional opportunities for continuing education to be offered in those subject areas.

2. AB-691 (Chau) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations (CSBO- Support)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB691

Digest: This bill expands the authorization for a TPA-certified optometrist to perform procedures to include a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) necessary to detect the presence of SARS-CoV-2. The bill would establish the substance of an application form for the immunization certification and expand the certificate to cover the administration of immunizations for SARS-CoV-2. Under the bill, the form would include required declarations under penalty of perjury, thereby imposing a state-mandated local program by expanding the crime of perjury. The bill would establish an application fee for the immunization certification.

Status: Signed into law on October 8, 2021, Chapter 654, Statutes of 2021. Effective and in law.

Comments: Several provisions coincide with AB 407, also signed into law. Staff projects an increased licensing workload, with approximately 700 current licensees may register under this bill. The bill establishes a \$50 certification fee, which would see \$35,000 in initial revenue for the Board. New optometry school graduates, who already have this training and are applying for licensure, would also take advantage. With 300 new applicants a year, the Board would see \$15,000 a year in potential revenue ongoing.

Staff has begun implementation of the bill. An immunization form, based on the text, is currently being developed and modifications to the BreEZe system are in the design phase.

3. AB-1534 (Committee on Business and Professions) California State Board of Optometry: optometry: opticianry. (CSBO – Support)

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1534

Digest: This bill sets out numerous changes, including the following:

1. Extends the Board's operations until January 1, 2026.
2. Revises the definition of a dispensing optician to mean an individual or entity that is registered with the board as a spectacle lens dispenser, contact lens dispenser, nonresident ophthalmic lens dispenser, or registered dispensing ophthalmic business;
3. Authorizes the board to take action against any registrant who is charged with unprofessional conduct and deny an application for registration if the applicant has committed unprofessional conduct, including, but not limited to, violating these provisions, gross negligence, incompetence, and fraud;
4. Revises and re-casts the Non-Resident Contact Lens Sellers Act to now allow non—resident sellers to now sell spectacle lens;
5. Allows a physician and surgeon, as defined, to execute a lease or other written agreement with an optometrist, according to specified conditions contained in a

written agreement establishing the landlord-tenant relationship, and would specify that an optometrist, a registered dispensing optician, a physician and surgeon, an optical company, or a health plan may also enter into a sublease with an optometrist;

6. Make various changes to licensing for opticianry registrations, including additional timeline and reporting requirements;
7. Creates definitions and scope of practice for opticians;
8. Strengthens the enforcement process for optical businesses, including adding a comprehensive list of actionable violations;
9. Increases fine limits to up to \$35,000 per violation;
10. Requires an owner and operator who has obtained approval from the Board and wishes to operate a mobile optometric office to apply for a permit before beginning operation of each mobile optometric office and would prescribe a permit fee.

Status: Signed into law on October 7, 2021, Chapter 630, Statutes of 2021. Effective January 1, 2022.

Comments: This is the Board's Sunset Bill for 2021. Staff is pursuing additional staff resources for implementation. This bill will require changes to enforcement and licensing processes and may require revision of several pending rulemaking packages, such as the implementation of AB 896. Staff will be meeting with Legal Counsel in the coming months to determine what further changes will need to be made as a result of the bill.

4. SB-509 (Wilk) Optometry: COVID-19 pandemic: temporary licenses (CSBO-Support)

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB509

Digest: This bill would establish provisions for temporary licensure. The bill would require the board to issue a temporary license to practice optometry to any person who applies for and is eligible for licensure under existing law, but who is unable to immediately take the required examination for licensure due to the state of emergency. The bill would require that a temporary licensee practice under the direct supervision of a supervising optometrist, as described. The bill would require the supervising optometrist to submit to the board any violations of the act committed by the temporary licensee within a certain timeframe. The bill would provide that the board is not required to adopt regulations to carry out these provisions. The bill would require the board to enforce and administer its enforcement provisions against holders of a temporary license.

Status: Signed into law September 22, 2021, Chapter 219, Statutes of 2021. Effective and in law.

Comments: Sponsored by COA. Staff estimates this bill will bring significant additional workload to the licensing and enforcement units and is pursuing additional resources to assist. The impact of the bill is still being assessed. Staff has begun implementation of

the bill, including the creation of forms for temporary licensee and supervisor based on the statute, process changes and BreEZe work.

Regulatory Update

Staff is currently working on the below regulatory rulemaking packages. The LRC, at the October 22, 2021 meeting, reviewed the packages and recommended prioritization of them as listed below.

Staff is also planning a presentation on the regulatory process to the full Board at the next Board meeting.

1. Optometry Continuing Education Regulations (Amend §1536)

Approved by the Board at the August 14, 2020 public meeting, and minor updates to the text were made at the August 31, 2021 public meeting.

Subject: This proposal would make a series of changes to §1536, including allowing all 50 continuing education units to be taken online provided the courses meet certain conditions, an increase in self-study hours to 25, a better definition of self-study hours and additional requirements for CE providers. Changes were also made to forms incorporated by reference into the section.

Comment: The initial rulemaking package is complete and is with DCA Legal for review and approval before being sent to OAL for a 45-day public comment period. Legal recommended changes will be reviewed at this meeting as a separate Agenda Item #8.

2. Implementation of AB 896 (Adopt §§1583 – 1586)

Approved by the Board at the May 21, 2021 public meeting.

Subject: This proposal will implement AB 896 (Low, Chapter 121, Statutes of 2020), which would allow nonprofit charitable organizations to provide mobile optometry services to patients and receive reimbursement by Medi-Cal. It requires the Board to develop a registry for mobile optometry offices and a consumer notice to be provided to patients. The current statute requires regulations to be implemented by January 1, 2022.

Comments: Assembly Bill 1534 (Assembly Committee on Business and Professions) – approved by the Governor on October 7, 2021 and effective January 1, 2022, extends the regulatory implementation date to January 1, 2023 and adds authority for the Board to require registration of individual mobile optometric units by each non-profit. Staff is currently revising the previously approved text to incorporate these changes as authorized by statute and will present them to the Board early next year.

3. Implementation of AB 443 (Amend §1524; Adopt §1527)

Approved by the Board at the October 25, 2019 public meeting. The rulemaking package is complete and the 45-day public notice period concluded on April 13, 2021.

Two non-substantive comments were received. This proposal is pending further action by the Board (see below in comments).

Subject: This proposal would implement AB 443, which allows a TPA-licensed optometrist to administer immunizations provided the applicant meets certain conditions and training.

Comments: Assembly Bill 691 (Chau), signed into law on October 8, 2021 and effective January 1, 2022, codifies this rulemaking package into law. As a result, the proposed regulation is no longer needed. The Board will be filing a Notice of Decision Not to Proceed with OAL (Agenda Item #7) and will then discontinue this regulatory action.

4. Implementation of AB 458 (Adopt §1507.5 and Amend §1524)

Approved by the Board at the May 21, 2021 public meeting.

Subject: This proposal will implement AB 458 (Nazarian, Chapter 425, Statutes of 2019), which allows an optometrist to engage in the practice of optometry at a home residence, provided they meet specific requirements and submit an application to the Board and pay specified fees. The optometrist would also be required to provide a consumer notice to a patient.

Comment: The rulemaking package is currently under staff preparation for submission to DCA and Agency for pre-file approval with OAL.

5. Optometry Disciplinary Guidelines (Amend §1575)

The full Board approved the regulatory text and Guidelines incorporated by reference at the October 25, 2019, public meeting.

Subject: 2019 Update of existing Optometry Board Disciplinary Guidelines. The changes include updates to enforcement processes; terminology used, and implementation of changes made by the Substance Abuse Coordination Committee in fall 2019.

Comment: The rulemaking package has not been started.

6. Optician Program Omnibus Regulatory Changes (Amend §§ 1399.200 – 1399.285)

Approved by the Board at the August 14, 2020, public meeting.

Subject: This proposal makes minor changes to the existing optician program regulations, limited to placing current initial registration and renewal forms (used with the BreZze system), aligning current fees with the statute and making other non-substantive changes. These changes would not affect any existing operations or modify any current processes.

Comment: Assembly Bill 1534 (Assembly Committee on Business and Professions) approved by the Governor on October 7, 2021 and effective January 1, 2022, will

necessitate changes to the optician program regulations. The rulemaking package has not been started. Staff will be meeting with Legal Counsel in the coming month to review necessary changes to text that will then need approval from the Board during a public meeting.

7. Dispensing Optician Disciplinary Guidelines (Amend §1399.273)

Approved by the Board at the August 14, 2020, public meeting.

Subject: The Optician Guidelines are used to impose discipline including conditions of probation for licensees that address the violations charged and are modeled after the Optometry Disciplinary Guidelines but are modified to meet the needs of the Optician Program.

Comment: Assembly Bill 1534 (Assembly Committee on Business and Professions) – approved by the Governor on October 7, 2021 and effective January 1, 2022, will likely necessitate changes to the proposed optician disciplinary guidelines. Staff will be meeting with Legal Counsel in the coming months to review possible changes.

8. Requirements for Glaucoma Certification (Amend §1571)

Approved by the Board at the February 26, 2021, public meeting.

Subject: CCR Section 1571 sets out the requirements for Glaucoma certification. Due to COVID-19, optometry schools have been offering the Grand Rounds certification program, authorized by subsection (B), online as a live course. This proposal would remove the in-person patient evaluation requirement from CCR Section 1571 (B).

Comment: The rulemaking package has not been started.