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To: Board Members **Date:** April 21, 2017

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

Subject: Agenda Item 8 – Update, Discussion 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 April 6, 2017.

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

Summary: As currently written, this bill would require the board, if it exercises its authority to require an applicant to take the regular examination, to notify the applicant of the timeframe to take and pass the examination and to provide the applicant with a minimum 30 days' notice before an available examination that the applicant is required to take the examination.

Status: Referred to the Assembly Committee on Business and Professions.

Recent Analysis: N/A

Staff Comments:

This bill is intended to expand the scope of practice of optometry. The California Optometric Association and author are negotiating specific bill provisions. The bill will be heard in its first committee on April 18 or April 25. Additional updates will be provided at the Board Meeting.

B. [AB 767](#) (Quirk-Silva) Master Business License Act

Summary: As introduced, this bill will create a business license center to develop and administer a computerized master business license system to simplify the process of engaging in business in this state. This bill will also authorize a person that applies for 2 or more business licenses that have been incorporated into the master business license system to submit a master application to the office requesting the issuance of the licenses.

In addition this bill will require the office to develop and adopt an Internet-based platform that allows the business to electronically submit the master application to the office, as well as the payment of every fee required to obtain each requested license and a master application fee. This bill will also

require the office to establish a reasonable fee for each master license application and to collect those fees.

Status: Referred to the Assembly Committee on Jobs, Economic Development and the Economy

Recent Analysis: N/A

Staff Comments: If passed, the Board total IT cost would be distributed amongst all DCA Boards, Bureaus, and other Programs. As currently written, the DCA projects the IT cost would be \$4,974,000 due to the workload associated with this bill and existing maintenance and operations cannot be redirected for this level of effort. It is important to not that, due to vague language, multiple presumptions were made in order to determine potential fiscal impact.

While staff has concerns with the bill, AB 767 is expected to change over the next several months. At this point, staff recommends the Board watch the bill. If no amendments are made at the August meeting, the Board may want to discuss this bill in more depth and decide to take a position.

**C. [AB 1110](#) (Burke) Pupil Health: Eye and Vision Examinations
(BOARD SPONSORED/SUPPORTED)**

Summary: This bill encourages elementary school children to have their eyes and vision examined by a physician, optometrist or ophthalmologist upon first enrollment or entry in elementary school. The examination is completely voluntary, and a parent may waive the examination for any reason.

The bill would encourage a school to notify parents and guardians of the examination and waiver option. By imposing additional duties on schools, the bill would impose a state-mandated local program. 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 eye and vision examination. The bill would require the department to adopt regulations, rather than guidelines, to implement these provisions.

Status: Passed Assembly Committee on Education 4/5/17; Referred to Appropriations

Recent Analysis: [4/3/17 Assembly Education](#)

Staff Comments: The author held a successful press conference before the hearing on April 5. The Children's Vision Workgroup attended the event, and Ms. Rachel Michelin served as the emcee. Several Board staff and their children also participated. Various television, newspaper, and radio outlets covered the event and press releases continue to be published.

The Children's Vision Workgroup will provide additional updates on this important Board-Sponsored legislation at the Board Meeting.

**D. [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.

Status: Referred to Committee on Business and Professions on 3/16/17

Recent Analysis: N/A

Staff Comments: As part of the Board's Response (Attachment 1) to the Joint Oversight Hearing [issue paper](#), the Board provided the Joint Oversight Committee legislative proposals to be included

in the Sunset Bill. Staff anticipates the proposed amendments being accepted. Staff will continue to monitor this bill closely and provide updates as they are available.

E. [SB 572](#) (Stone) Healing Arts Licensees: Violations: Grace Period

Summary: Existing law provides for the licensure and regulation of various healing arts professions by various boards, as defined, within the Department of Consumer Affairs. Existing law imposes certain fines and other penalties for, and authorizes these boards to take disciplinary action against licensees for, violations of the provisions governing those professions.

This bill would prohibit the boards from taking disciplinary action against, or otherwise penalizing, healing arts licensees who violate those provisions but correct the violations within 15 days, and who are not currently on probation at the time of the violations, if the violations did not cause irreparable harm and will not result in irreparable harm if left uncorrected for 15 days.

Status: Sen Business, Professions and Economic Development; Set for hearing April 17, 2017

Recent Analysis: N/A

Staff Comments: Staff is monitoring this bill closely. Staff has a concerns that this essentially provides a “green light” to licensees to violate the law as long as there is no “irreparable harm,” they aren’t on probation, and they correct the violation within 15 days.

Currently, the Board (through its Executive Officer) has discretion to consider each violation on a case by case basis and determine the appropriate action. The Board does not “penalize” as the language suggests. The Board obtains and maintains compliance at the lowest appropriate level. For minor violations, this often results in an educational letter to the licensee after compliance is obtained. If the same or similar violation occurs again, the Board may issue a citation based on factors set forth in California Code of Regulations § [1578](#). As currently written, however, staff is concerned the Board would not be able to take appropriate action for reoccurring violations as long as the licensee continues to correct within 15 days.

In addition, the Board’s Enforcement Unit is, for the most part, complaint driven. That means the Board investigates alleged violations once it receives a complaint from consumers, licensees, or other sources. Assuming the 15-day-clock starts the day the Board notifies the licensee of the alleged violation, this allows a licensee to break the law until the Board is notified of (or internally discovers) the potential violation.

Further, staff believes each statute governing healing arts professions were created for consumer protection. Staff is concerned this bill completely undermines the Board’s mandate by allowing numerous consumer protection statutes to be violated.

F. [SB 641](#) (Lara) Controlled Substance Utilization Review and Evaluation System: Privacy

Summary: Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires the operation of CURES to comply with all applicable federal and state privacy and security laws and regulations. Under existing law, data obtained from CURES may only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the department, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Existing law allows data obtained from CURES to be provided to public or private entities for statistical or research purposes, as approved by the department.

This bill would prohibit the release of data obtained from CURES to a law enforcement agency except pursuant to a valid court order, as specified.

[Status](#): Senate Standing Committee on Public Safety; Set for hearing 4/18/17

Recent Analysis: N/A

Staff Comments: Staff had concerns when the bill was introduced. However, the bill was significantly amended on March 28, 2017 – mitigating those concerns. Staff will continue to monitor this bill as it progresses and provide any available updates at the Board Meeting.

Attachment

1. Board Responses to the Joint Oversight Hearing Background Paper