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To: Board Members **Date:** April 20, 2018

From: Todd Kerrin **Telephone:** (916) 575-7170
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Subject: **Agenda Item 9 – Update and Possible Action on 2017-18 Legislation Impacting the Practice of Optometry, Healing Arts Boards and Department Wide Programs**

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 12, 2018.

A. Optometry

1. [AB 1802](#) (Salas) Optometry: scope of practice

Summary: This bill would correct an erroneous cross-reference in the provision relating to the authority of an optometrist certified to use therapeutic pharmaceutical agents to administer immunizations, and would make other non-substantive changes.

Status: In Assembly, referred to Committee on Business and Professions.

Staff Comments: As written on April 12, the Board may want to consider supporting the bill, since it's correcting erroneous information. However, it is highly likely this will be amended impacting the scope of practice. The California Optometric Association anticipates at least another month before language is added to the bill. Depending on legislative deadlines, the Board may need to have a Special Meeting in the near future to discuss potential positions.

2. [AB 2444](#) (Burke) Pupil health: eye and vision health

Summary: This bill would require the State Department of Education to adopt regulations that require pupil vision appraisals, training requirements, and a method of testing for near vision. This is the Board-sponsored children's vision bill that is replacing AB 1110. It includes requirements for the development of informational material regarding pediatric vision, as well as creates a pilot program that will perform follow-up comprehensive eye exams for children in select participating school districts.

Status: In Assembly, referred to Health and Education Committees

Staff Comments: This bill will not proceed this session. The Children's Vision Workgroup will provide additional information during the Board meeting.

3. AB [3184](#) (Rubio) California State Board of Optometry

Summary: This bill would rename the State Optometry Board the California State Board of Optometry.

Status: In Assembly, referred to Business and Professions Committee

Staff Comments: This was a spot bill for the industry and separate from the amendments proposed in the omnibus bill. However, the California Optometric Association notified the LRC that they no longer plan to use it as a spot bill and see it through the process, as it addresses a request the Board had previously made from the legislature.

4. SB [1386](#) (McGuire) Professions and vocations

Summary: This bill would repeal the branch office license provisions (BPC § 3077) and removes the exemption provided to a licensed optometrist who holds a branch office license from the requirement to obtain a statement of licensure to practice at that branch office. In addition, this bill would require a licensee to provide professional optometric services, defined to include all of the acts described above, within a standard of care consistent with industry standards.

The bill would require a licensee with an ownership interest in an optometric practice of 15% or more to ensure that the standard of care provided to patients within his or her practice meets a standard of care consistent with industry standards and to report to the board within 15 days of a termination or adverse action taken against an optometrist within the practice for care that did not meet that standard of care, as specified. The bill would provide failure to comply with this requirement is unprofessional conduct.

This bill would provide that “directly or indirectly assisting in or abetting a violation” under these provisions includes any licensee who has more than a 15% ownership interest in an optometric practice who individually, or jointly with the other owners, knew or should have known of the violation of the act which constituted unprofessional conduct.

This bill would prohibit a person or entity from employing or contracting with an optometrist in any setting in which the optometrist is subject to interference in the exercise of his or her professional judgment in treating a patient and would specify that a violation of this provision shall be considered an unfair trade practice, punishable as specified.

Status: In Senate, referred to Senate Rules Committee.

Staff Comments: This bill was gutted and amended on April 12 to address the Board’s request to repeal the Branch Office Law (BPC § 3077) and the COA’s concerns raised in conversations with the author’s office, a representative from Senate Business and Professions, and the Board’s EO and Vice President.

This bill holds owners accountable for the standard of care provided to patients in their offices, and requires owners to notify the Board if they terminate employment (or take other adverse action) against an optometrist for substandard care within 15 days of the action. This bill also adds an enforcement mechanism through BPC § 3110 (unprofessional conduct) that enables the Board to take action against the owners for substandard care provided from their offices.

While this is not a straight repeal as the Board requested, staff believes adding the accountability to owners incentivizes involvement and responsibility in their offices. This approach is also more enforceable than requiring a physical presence in each office.

At the Board’s invitation, COA’s leadership agreed to participate in discussions regarding the Branch Office License at the April meeting. Although April is an extremely busy time for COA, they agreed to attend and engage the Board in thoughtful, collaborative discussions.

B. Healing Arts Boards

1. AB. [1659](#) (Low) Healing arts boards: inactive licenses

Summary: This bill would prohibit a licensee with an inactive license from representing that he or she has an active license. This bill would also authorize a healing arts board to establish a lower renewal fee for an inactive license. Finally, this bill would reorganize existing provisions of law without substantive change.

Status: In Senate, referred to Committee on Rules for assignment.

Analysis: [01/05/18- Assembly Business and Professions](#)
[01/12/18- Assembly Appropriations](#)

2. AB [2078](#) (Daly) Sex offenses: professional services

Summary: This bill would expand the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body and who touches an intimate part of that person's body while performing those services. This bill would also expand the definitions of the crimes of rape, sodomy, oral copulation, and sexual penetration to include any of those crimes performed against a victim's will by a professional whose services entail having access to the victim's body.

Status: In Assembly, Set first hearing. Referred to Appropriations suspense file.

Analysis: [03/19/18- Assembly Public Safety](#)
[04/02/18- Assembly Appropriations](#)

3. AB [2193](#) (Maienschein) Maternal mental health

Summary: This bill would require a licensed health care practitioner who treats or attends a mother or child, or both, to screen the mother for maternal mental health conditions at least once during pregnancy and once during the postpartum period, and to report the findings of the screening to the mother's primary care physician.

Status: In Assembly, referred to Committee on Health.

4. AB [2461](#) (Flora and Obernolte)

Summary: This bill requires the Department of Justice to provide subsequent arrest notifications to Boards whose licensees are fingerprinted as a condition of licensure.

Status: In Assembly, referred to Public Safety Committee.

Analysis: [03/19/18- Assembly Public Safety](#)
[04/02/18- Assembly Appropriations](#)

Staff Comments: Currently, the DOJ already provides the Board with subsequent arrest reports for applicants and licensees. However, the DOJ does not participate in the FBI's "Rap Back" program, so the Board does not receive any subsequent arrest notifications when those arrests occur in other states.

Part of the Board's Strategic Plan is to determine what is necessary to participate in the FBI "Rap Back" program and has sought assistance from the DCA to work with the DOJ. However, little progress has been made. In a statement submitted to DCA's Legal Affairs Office, an Assistant Director provided the following response to DCA's request:

The passage of Assembly Bill [2342](#) in September 2012 expanded the scope of the subsequent arrest and disposition information to include federal arrest and dispositions to any entity authorized to receive the information under state or federal statutory law. The codification of the bill made it permissible for the California Department of Justice (DOJ) to participate in the Federal Bureau of Investigations' (FBI) Next Generation Identification "Rap Back Program."

At the time, however, the FBI had not yet finalized their implementation plan, the cost, or details surrounding the service. There was agreement with the California legislature that the DOJ would convene a group of the largest applicant agency stakeholders to examine the financial aspects of participation in the program and would invite statewide public opinion on the program via the Attorney General's website. In addition, because participation in the federal program means the dissemination of more criminal history, the DOJ also agreed to engage with privacy and social justice advocates.

The DOJ is committed to evaluating the State's participation in the federal program and is evaluating the resource requirements needed to determine the procedural and fiscal feasibility of the State's participation in the program. In addition to engaging with all stakeholders and examining the financial impact of implementing the service, e.g., determination of State administrative fees, differences in State and federal policies and procedures must be considered and DOJ systems must be enhanced to support the inflow and distribution of subsequent federal notifications. The DOJ anticipates there will be a need for a Budget Change Proposal, as well as a variety of procurement activities, and has identified a resource to begin the development of an actionable project plan.

However, AB 2342 appears to be unrelated to the FBI Rap Back Program, and there seems to be little to no movement on this issue. Staff is concerned something so crucial for consumer protection is not a priority for the DOJ.

Initially, staff recommend the Board take a Support if Amended position – to include amendments requiring the DOJ to participate in the FBI's Rap Back Program. Given the high cost from Appropriations, however, it is unlikely the Board's concerns can be addressed in this legislation.

5. [SB 762](#) (Hernandez) Healing arts licensee: license activation fee: waiver

Summary: This bill would require healing arts boards to waive the reactivation fee for inactive license holders who certify that the restoration of their license is for the sole purpose of providing voluntary, unpaid service. Specifically, this service must be provided to a public agency, not-for-profit agency, institution or corporation that provides medical services in medically underserved or critical-need population areas of the state.

Status: In Assembly, referred to Committee on Business & Professions

Analysis: [04/20/17- Senate Business, Professions And Economic Development](#)
[05/15/17- Senate Appropriations](#)
[05/27/17- Senate Floor Analyses](#)

C. Department Wide:

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

Summary: This bill would create within the Governor's Office of Business and Economic Development, or its successor, a business license center to develop and administer an online master business license system to simplify the process of engaging in business in this state.

Status: In Senate, referred to Business, Professions and Economic Development

Analysis: [04/23/17- Assembly Jobs, Economic Development, And The Economy](#)
[01/12/18- Assembly Appropriations](#)
[01/24/18- Assembly Floor Analysis](#)

Staff Comments: The DCA estimated a fiscal impact of \$18.7 million in administrative and system modifications and an on-going cost of \$240,000 annually. These costs would be distributed to all DCA programs through pro-rata. BreEZe already provides a simplified process for issuing multiple licenses online quickly.

Creating another separate and costly system seems redundant and potentially confusing to applicants, licensees, and registrants. In addition, users will be charged an additional fee to use the GO-Biz system – on top of the regular application fees; thus, it is more cost effective for users to just use BreEZe.

Depending on how this bill progresses and legislative deadlines, the Board may want to consider potential positions during an off-calendar teleconferenced Board meeting – either 10-day notice or Special Meeting.

2. **AB [2138](#) (Chiu) Licensing boards: denial of application: criminal conviction**

Summary: This bill authorizes a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding 5 years, except for violent felonies, and would require the crime to be directly and adversely related to the qualifications, functions, or duties of the business or profession.

The bill would prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has made a showing of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.

The bill would require the board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Status: In Assembly, referred to Business and Professions

Staff Comments: This bill was recently amended on April 2 and makes significant changes to how Boards handle disciplinary actions related to criminal convictions. There is no legislative analysis; staff is currently analyzing this bill and will update the Board on any potential concerns.

3. **AB [2264](#) (Brough) Professions and vocations: fees**

Summary: This bill would authorize the Department of Consumer Affairs and boards to charge a fee of not more than \$2 for a certificate and delete the requirement that late fees would not be less than \$25.

Status: In Assembly, referred to Business and Professions

4. **AB [2409](#) (Kiley) Professions and vocations: occupational regulations**

Summary: This bill would establish that a person has a right to engage in a lawful profession or vocation without being subject to an occupational regulation, as defined, that imposes a substantial burden on that right, and would require each occupational regulation to be limited to what is demonstrably necessary and narrowly tailored to fulfill a legitimate public health, safety, or welfare objective. The bill would include within this the right of a person with a criminal record to obtain a license and not to have a board use the person's criminal record as an automatic or mandatory permanent bar to engaging in a lawful profession or vocation. The bill would also include the right of a person who is behind on his or her taxes or student loans to petition a board not to use these factors against that person, as prescribed.

The bill would authorize a person who is denied a license to file a petition and appeal to the board. The bill would prescribe procedures and legal standards by which a board may determine that a person's criminal record disqualifies that person. The bill would also permit a person, following the response to an administrative petition, to file an appeal to a court for a declaratory judgment or injunctive or other equitable relief, in accordance with certain legal procedures and criteria. The bill would include related definitions and declare the intent of the Legislature in this regard.

Status: In Assembly, Re-Referred to Committee on Business and Professions

Staff Comments: This bill was significantly amended on March 23 and requires additional analysis. Preliminary review suggests potential impacts on how criminal convictions are handled within the Board. Staff will provide updates at the April meeting.

5. **AB [2483](#) (Voepel) Department of Consumer Affairs: Office of Supervision of Occupational Boards**

Staff Comments: This bill was gutted and amended on April 9, 2018 and now titled "Indemnification of public officers and employees: antitrust awards." It contains amendments related to the North Carolina State Board of Dental Examiners v. Federal Trade Commission case. This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board. The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the act.

6. **AB [3183](#) (Carrillo) Consumers**

Summary: This bill would make non-substantive changes to Section 301 of the Business and Professions Code, which states the Legislature's intent to promote, protect, and advance the interests of the people as consumers.

Status: In Assembly, pending referral

Staff Comments:

7. **SB [244](#) (Lara) Privacy: agencies: personal information**

Summary: This bill would exempt from the Public Records Act all personal information provided to the Department of Consumer Affairs (Department) or its boards for the purposes of obtaining a professional license. This bill would also prohibit disclosure of that information except as required to administer the licensing program or as otherwise required by law or court order.

Status: In Assembly, ordered to Inactive File

Analysis: [09/08/17- Assembly Floor Analysis](#)

Staff Comments: This bill could potentially lead to the need for a limited term employee to help with the redacting of personal information that could potentially be included as part of a licensee's currently public information. It's estimated this would cost \$83,000 initially, and \$75,000 per year for as long as it took to redact the information for the last decade of public actions.

8. SB [984](#) (Skinner) State boards and commissions: representation: women

Summary: This bill would require all state boards and commissions to be comprised of at least 50% women. This bill would also require the Secretary of State to disclose the gender composition of every state board and commission on its website.

Status: In Senate, Committee on Judiciary

Analysis: [04/06/18- Senate Governmental Organization](#)

Staff Comments: Seven women currently sit on the Board (63%); however, only 40% (2 of 5) of the Dispensing Optician Committee are women. As members may recall, recruiting and appointing DOC members was extremely challenging. Requiring 50% to be women may have delayed this process even more. In addition, there is no exception for member vacancies. Staff is concerned with potential unintended consequences this requirement may have on boards and commissions who are charged with carrying out vital public services.

9. SB [1137](#) (Vidak) Veterans: professional licensing benefits

Summary: This bill would require the Department of Veterans Affairs and the Department of Consumer Affairs to consult with each other in order to take appropriate steps to increase awareness and notification for veterans regarding professional licensing benefits.

Status: In Senate, Business, Professions, & Economic Development

Analysis: [04/06/18- Senate Veterans Affairs](#)

10. SB [1465](#) (Hill) Professions and vocations: examinations

Summary: This bill would prevent any board from appointing commissioners on examinations.

Status: In Senate, referred to Senate Business, Professions and Economic Development