



ISSUE MEMORANDUM

DATE	April 23, 2020
TO	Legislation and Regulation Committee
FROM	Marc Johnson, Policy Analyst
SUBJECT	Agenda Item #5: Discussion and Possible Action on Legislation Affecting the Practice of Optometry and Opticianry; Possible Recommendations to Full Board

The 2021 Legislative session resumed on January 4, 2021. Upcoming Legislative deadlines of note:

- April 30 – Last day for policy committees to meet and pass fiscal bills introduced in their house
- May 21 – Last day for fiscal committees to meet and report to the floor bills introduced in their house
- July 14 – Last day for policy committees to meet and report bills
- September 7 – Last day to amend bills on the floor

Most bills are in preliminary form and will not be in final form until later in the Legislative session in the summer. Some may become “two-year” bills since this is year one of a two-year legislative cycle.

The information below is current as of April 19, 2021. Text and analysis of a bill may change rapidly; links to the bill text and committee analyses are provided in the meeting packet rather than possibly outdated hard copies. Staff comments and positions, where applicable, are included.

Staff requests discussion on each bill and position recommendations to the Board for the May 21, 2021, public meeting.

Bills directly pertaining to the practice of Optometry or Board operations:

[1. Assembly Bill 29 \(Cooper\) State bodies: meetings](#)

Text as introduced 12/7/20.

In Assembly Appropriations Committee. Hearing date not set.

Staff Recommended Position: Oppose, unless Amend

Summary: This bill would require that notice to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require those writings or materials to be made available on the state body’s internet website,

and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier. The bill would prohibit a state body from discussing those writings or materials, or from taking action on an item to which those writings or materials pertain, at a meeting of the state body unless the state body has complied with these provisions.

Comments: Staff always complies with notice requirements and generally posts its meeting materials between 10 days and 72 hours before its public meetings. However, there are some exceptions concerning materials that are provided to the Board such as public comments or legislative updates too close to the date of the meeting. In addition, the Board relies on DCA's Internet Team for posting and they request documents be provided ten days in advance of posting. This puts staff in a bind with a burdensome production deadline resulting in documents posted the same day the materials are disseminated to the Board members. Staff suggests amending the text to include an exemption for legislative materials which are already listed on a posted agenda and any closed session materials.

[2. Assembly Bill 407 \(Salas and Low\) Optometry: scope of practice](#)

Text as introduced 2/3/21.

Set for hearing in the Assembly Business and Professions Committee on 4/27/21.

Staff Recommended Position: Watch

Summary: This bill additionally would authorize an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat acquired blepharoptosis. The bill would further authorize such an optometrist to use and prescribe, including for rational off-label purposes, therapeutic pharmaceutical agents for the treatment of acquired blepharoptosis in diagnosing and treating the above-described list of conditions.

Comments: This bill is sponsored by the California Optometric Association (COA). The Board does not have enforcement data in opposition to this expansion of scope. As authority would be granted under the current licensing scheme, staff projects little to no change in the processing of licensing applications. In the crafting of implementing regulations, the Board may consider the inclusion of continuing education material specific to this area of treatment.

[3. Assembly Bill 691 \(Chau\) Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations.](#)

Text as amended 4/5/21.

Set for hearing on the Assembly Committee on Business and Professions on 4/20/21.

Staff Recommended Position: Support with Amendments

Summary: (Urgency bill) This bill would expand 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 immunization for SARS-CoV-2. The bill would establish an application fee for the immunization certification.

Comments: This bill has four practical effects:

- It would place the Board's AB 443 regulatory package, which just completed the 45-day comment period, into law effective upon signing. Licensees still would need to complete an immunization course, complete a form and fulfill other requirements.
- It would allow optometrists to order tests for COVID-19 and allow a vaccine to be administered.
- It would transfer the responsibility from CDPH to the Board for registration of the COVID-19 vaccination.
- Other details, such as vaccine distribution, storage and follow up care issues, are not addressed by the Bill.

Staff projects approximately 700 current licensees may register. The bill would establish 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 likely take advantage. With 300 new applicants a year, the Board would see \$15,000 a year in potential revenue ongoing. However, staff anticipates a significant increase in license processing workload. Each application (current and new optometry graduates) would take approximately 45 minutes to review and approve by an Associate Governmental Program Analyst. Currently, the licensing unit only has one AGPA on staff who already carries a full workload with initial and renewal optometry applications. Based on the projected new and renewal applications, staff projects a .50 FTE AGPA would be needed to assist with the workload generated by this bill. The Board's licensing

[4. Assembly Bill 1236 \(Ting\) Healing arts: licensee: data collection](#)

Text as amended 4/15/21.

In Assembly Business and Profession Committee. Hearing date not set.

Staff Recommended Position: Watch

Summary: Existing law requires specific boards under DCA to collect and report certain demographic information of their licensees. This bill would repeal those provisions and would, instead, require all boards that oversee healing arts licensees to request at the time of electronic application for a license and license renewal, or at least biennially, specified demographic information from its licensees and, if designated by the board, its registrants and to post the information on the internet websites that they each maintain. The bill would specify that licensees and registrants shall not be required to provide the requested information. Effective July 1, 2022, this bill would require each board, or the DCA on its behalf, to provide the information annually in aggregate form to the Office of Statewide Health Planning and Development.

Staff Comments: As the information requested is optional for each Board, implementation details have not been determined, but Board impact is expected to be

low with information being collected in BreEZe and annual reporting facilitated by DCA. Additionally, having this kind of demographic information for each profession may, over time, highlight trends and provide more of an understanding of each Board license and registration, assisting with the state's efforts in workforce development.

[5. Assembly Bill 1534 \(Committee on Business and Professions\) Optometry: mobile optometric clinics: regulations.](#)

Text as introduced 2/19/21

Set for hearing on the Assembly Committee on Business and Professions on 4/27/21.

Staff Recommended Position: Support

Summary: Existing law requires the board, by January 1, 2022, to adopt regulations establishing a registry for mobile optometric clinics and to set a registration fee at an amount not to exceed the costs of administration. This bill would require the board to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development when it has completed the adoption of those regulations.

Staff Comments: This is likely the Board's Sunset Bill for 2021.

[6. Senate Bill 509 \(Wilk\) Optometry: COVID-19 pandemic: temporary licenses](#)

Text as introduced 2/17/21

Heard in the Senate Business, Professions and Economic Development Committee on 4/19/21.

Staff Recommended Position: No recommendation (see comments)

Author Fact Sheet and Committee Analysis Attached.

Summary: 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 examinations for licensure under the act. The bill would establish an application fee. The bill would require the applicant to satisfy prescribed additional conditions for issuance of a temporary license. The bill would require that a temporary licensee practice under the supervision of a supervising optometrist, as described. The bill would define terms for these purposes. Under the bill, a temporary license would expire upon the date that the temporary licensee completes all of the requirements for licensure or one year from the date of issuance, whichever comes first, unless extended by the board. The bill would require the board to enforce and administer its enforcement provisions against holders of a temporary license.

Comments: Staff does not recommend a position at this time, and the committee may wish to defer this to the full Board until amendments are in print. This bill is sponsored by the California Optometric Association. Staff has been working with Sen. Wilk's staff, the sponsors and the Senate Business and Professions Committee on this bill. As currently written, this bill allows for temporary practice without completion of NBEO Part III and the California jurisprudence exam. In the April 19, 2021, Legislative Analysis, the committee raised a series of concerns, including applicability to the COVID-19 pandemic; clarity for exam requirements; limitations on practice and other technical

concerns. Staff also is concerned about the ability of new graduates to practice without taking any required exams and the CLRE; the broad nature of someone “who is unable to immediately take the required examinations” as criteria for temporary license and the ability for a temporary licensee to open multiple locations and be subject to the other rights afforded to a person holding a valid license. The author’s office indicates the sponsor will be offering amendments to fully address the concerns.

The bill would also have a significant impact on the Board’s workload. Staff believes the proposed \$100 fee is insufficient to cover the processing of temporary license and maintenance of application files while the exams are being completed. Currently, the licensing unit only has one AGPA on staff who already carries a full workload with initial and renewal optometry applications. The Board receives approximately 300 applications for licensure each calendar year. Each one takes approximately six hours of an AGPA’s time to review from start to finish.

If a temporary license was an option, staff estimates half might take advantage, 150 persons per year. Each application would require additional processing and review of approximately four hours to determine if they meet the requirements as set out in the bill such as insurance and supervisory requirements This would add about 600 hours of staff time per year to implement. Additionally, staff would need additional time to implement BreEZe requirements and respond to applicant inquiries. Therefore, staff estimates the need for a .50 FTE AGPA position to implement. If this bill would become law, the current 6-8 week processing times would dramatically increase without additional staff. Additionally, enforcement workload would likely increase due to a rise in complaints and more in-depth investigations may be needed for the temporary license type.

ANTELOPE VALLEY DISTRICT OFFICE
848 W. LANCASTER BLVD., SUITE 101
LANCASTER, CA 93534
TEL (661) 729-6232
FAX (661) 729-1683

VICTOR VALLEY DISTRICT OFFICE
14343 CIVIC DRIVE, FIRST FLOOR
VICTORVILLE, CA 92392
TEL (760) 843-8414
FAX (760) 843-8348

SANTA CLARITA DISTRICT OFFICE
23920 VALENCIA BLVD., SUITE 250
SANTA CLARITA, CA 91355
TEL (661) 286-1471
FAX (661) 286-2543

California State Senate

SENATOR

SCOTT WILK

SENATE REPUBLICAN LEADER

TWENTY-FIRST SENATE DISTRICT

COMMITTEES
GOVERNMENTAL
ORGANIZATION
TRANSPORTATION



SB 509 (WILK) FACT SHEET

ISSUE

Optometry students are required to travel to North Carolina during a pandemic to take Part III of the National Board of Examiners in Optometry (NBEO) to become licensed in California. Part III is an in-person national board exam to test clinical skills taken during the final year of optometry college. The NBEO is the only national board recognized in optometry and it is unwilling to open a west coast location or provide testing at a California school site.

Additionally, optometry students are required to travel to other states with high numbers of COVID-19 cases because NBEO has failed to provide enough testing timeslots in California for Part I (applied basic science) and Part II (patient assessment and management) of the NBEO. Part I and II are computerized exams taken at a Pearson VUE testing site in California.

BACKGROUND

The California Optometric Association and the three colleges of optometry in California are extremely concerned that optometry students are being forced to travel by air to take their national board tests during the COVID-19 pandemic. The California State Board of Optometry (SBO) met in September and concluded they need the Legislature to act to protect students from risking their health and their lives.

Students that graduate from optometry school are clearly competent to practice optometry under supervision. Optometry students currently treat patients during their entire fourth year of college under the supervision of another optometrist at college clinics. Additionally, Students undergo extensive testing done by the schools and colleges of optometry that is valid, reliable, and appropriate indicators of competency to enter into the practice of optometry.

The colleges provide longitudinal testing and evaluation with multiple data points over the course of 4 years. In addition to written evaluations of specific competencies in technical skills, clinical thinking, knowledge base, case analysis, and patient management, students are also graded and assessed with verbal feedback on every single patient encounter, resulting in between 1,000 - 2,000 additional assessments. When determining competency, longitudinal data with multiple measures vastly out-weighs single measurements made at one single occasion at one point in

time. Students do not move forward in the program unless they are determined by the colleges to be competent. At the SBO hearing last fall, the California Department of Consumer Affairs' Office of Professional Examination Services (OPES) testified that the high NBEO passage rate may indicate that the NBEO is not necessary. OPES also said that having only one test location for NBEO Part III could be considered an unnecessary barrier to entry into the profession. This virus could be with us for a long time. The 1918 flu lasted for two years in four waves. We need a long-term solution for this virus and any future, more deadly viruses that may occur.

In the year 2021, in the most technologically advanced state in the nation, sending people into harm's way to take a test makes no sense. This bill allows optometry graduates to practice optometry while ensuring public and student safety.

BILL SUMMARY/SOLUTION

This legislation would create a provisional license that allows an optometry school graduate who has not taken the NBEO to temporarily practice optometry under the supervision of another optometrist. This will at least allow students to begin to practice and pay on their student loans if they are unable to travel to take the NBEO test.

FOR MORE INFORMATION

Staff Contact: Nathaniel Thompson
Phone: 916-396-2843
State Capitol Room: 305
Email: Nathaniel.Thompson@Sen.Ca.Gov

Coauthors: Assemblymember Bonta & Senator Glazer

Sponsor: California Optometric Association

- 7) Requires the Board, by regulation, to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice, as specified in under the Optometry Practice Act (Act). (BPC § 3041.2)
- 8) Authorizes the Board to take action against all persons guilty of violating the Act or any of the regulations adopted by the Board, and requires the Board to enforce and administer actions to license holders including those who hold a retired license, a retired volunteer designation, or an inactive license, as specified. (BPC § 3090)

This bill:

- 1) Requires the Board to issue a temporary license to practice optometry to any person who applies for and is eligible for licensure, as specified, but who is unable to immediately take the required examinations for licensure.
- 2) Requires that in addition to meeting the specified requirements for licensure, the individual seeking a temporary license must also satisfy the following conditions:
 - a) The person has never been previously licensed to practice optometry in any state in the United States;
 - b) The person pays to the Board, the applicable fee of \$100 or a fee in amount determined by the Board, not to exceed the reasonable cost of administering the license;
 - c) The person has received approval from their accredited school of optometry that the person meets the educational requirements to practice optometry; and,
 - d) The person satisfies all other conditions to licensure under the optometry Act.
- 3) Subjects a person holding a temporary license to the same rights and restrictions that are afforded to a person holding a valid, unrevoked California optometrist license, except where specifically limited by statute or the Board.
- 4) Defines “temporary licensee” for purposes of the Act to mean a person holding a temporary license.
- 5) Requires a temporary licensee to practice under the supervision of a supervising optometrist.
- 6) Defines a “supervising optometrist” to mean a California-licensed optometrist that has been licensed for a minimum of five years.
- 7) States that a temporary licensee may perform services authorized under the Act if the following requirements are met:
 - a) The temporary licensee renders the services under the supervision of a supervising optometrist who is not subject to disciplinary condition imposed by the Board prohibiting that supervision or prohibiting the employment of a

temporary licensee.

- b) The temporary licensee is competent to perform the services; and,
 - c) The temporary licensee's education, training, and experience have prepared the temporary licensee to render the services.
- 8) Defines "supervision", for purposes of this bill, to mean that a supervising optometrist oversees the activities of, and accepts responsibility for, the services rendered by a temporary licensee.
 - 9) Specifies that "supervision" as defined does not require the physical presence of the optometrist, but does require the supervising optometrist to be available by telephone or other electronic communication method at the time the temporary licensee examines the patient.
 - 10) Requires the supervising optometrist to have a formal written procedure in place by which patients are informed that a doctor with a temporary license will be performing the examination. Additionally, the patient is to be informed that an optometrist is supervising the temporary licensee and that optometrist must be identified to the patient.
 - 11) Requires a temporary licensee to obtain the patient's informed consent to this process prior to performing services authorized by the Act.
 - 12) States that a temporary license expires upon completion of all requirements for licensure, or one year from the date of issuance, whichever comes first, or unless extended by the Board.
 - 13) Permits the Board to take enforcement action against temporary licensees, as specified.
 - 14) Declares this bill as an urgency measure necessary for the immediate preservation of the public peace, health, or safety, as specified, and the facts constituting the necessity are: in order to protect public health and preserve the future health care workforce by ensuring that qualified optometry graduates are permitted to practice during the COVID-19 pandemic and other states of emergency as soon as possible, it is necessary that this act take effect immediately.
 - 15) Makes findings and declarations about the impact of the COVID-19 pandemic on the closure of the National Board of Examiners in Optometry (NBEO) test center leading to the inability of students from being licensed; about the knowledge and experience of these students; and states legislative intent that the provisions of this bill be used for the purpose of progressing optometry students who are prevented from taking the NBEO and state jurisprudence examination for licensure due to the COVID-19 pandemic and resulting state of emergency and any future similar situation.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

1. **Purpose.** The California Optometric Association is the sponsor of this bill. According to the author, “The NBEO consists of three parts: Part I: Applied Basic Science; Part II: Patient Assessment and Management; Part III: Clinical Skills. Parts I and II are computerized exams taken at a Pearson VUE testing site in California. Part III is an in-person examination to test clinical skills, and is taken at the NBEO testing center in North Carolina. The pandemic has made taken the test hazardous. The NBEO has failed to provide enough testing timeslots in California for Part I (applied basic science) and Part II (patient assessment and management) of the NBEO, causing students to travel to states with high numbers of COVID-19 cases in order to fulfill these requirements.

Further, since Part III is an in-person examination, there are no west coast locations to take this test, and the NBEO is unwilling to open up any such locations, license applicants must fly across the country during the global pandemic to take the test, putting themselves and their community at increased risk of exposure. This bill addresses this issue by creating a temporary, provisional license, with additional requirements, that allows an optometry school graduate who has not taken the NBEO to temporarily practice optometry under the supervision of another optometrist. This temporary license will be useful now, during the pandemic, and in the future (for future pandemics or other states of emergency that prevent optometry students from fulfilling the testing requirement).”

2. **Background.**

Optometrists and the Board of Optometry. The Board regulates the largest population of optometrists and dispensers in the United States with over 20,000 licenses, registrations, certificates and permits. The Board is also responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma.

The practice of optometry is specified in BPC § 3041 and includes 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 any or all of the acts further specified in BPC § 3041.

To obtain an optometry license in California, an individual must have a degree of optometry issued by an accredited school or college of optometry, successfully pass the examinations developed by the NBEO, the California Laws and Regulations Examination (CLRE), and not have been convicted of a crime, or disciplined for acts substantially related to the profession. There are currently three accredited schools of optometry located in California: 1) University of California, Berkeley, School of Optometry, 2) Marshall B. Ketchum University, Fullerton, and 3) Western University of Health Sciences, College of Optometry, Pomona. As currently drafted, this bill would permit the Board to issue a temporary license to practice optometry without taking and passing any of the required examinations.

Examinations. As noted by the Board, the primary purpose of the required examinations is “to help ensure public health and safety by assessing the candidate’s ability to safely practice optometry at a minimum entry level within California’s laws and regulations. The NBEO examinations test the candidate’s optometric education and training. The California Laws and Regulation’s supplemental examination identifies candidates who are qualified to safely practice optometry in the State of California.”

The CLRE is a jurisprudence examination that tests an applicant's knowledge and understanding of laws and regulations specifically applicable to the practice of optometry in California. The Board develops the CLRE in consultation with the Office of Professional Examination Services (OPES) within the Department of Consumer Affairs (DCA). The CLRE is computer-based and is available at numerous PSI testing centers throughout the state nearly every day of the year. Applicants who fail the CLRE must wait 180 days to retake it.

The NBEO develops national examinations. The Board has required passage of NBEO Parts I, II, and III examinations for licensure since 2001. Parts I and II of the NBEO examination are offered to students while still in optometry school and are computer-based tests offered at Pearson VUE testing centers. There are approximately 30-available testing centers around the California region. However, the administration of Part III of the NBEO is conducted in person, with a testing site exclusively located in North Carolina. Currently, all 50 states, the District of Columbia, and Puerto Rico all use the NBEO examination for licensure. In 2020, the Board conducted a regular assessment of the NBEO examination in partnership with the OPES and found that the examination meets the prevailing standards for validation and use of licensure examination in California.

Without a testing site closer to California, applicants educated on the West Coast must travel to North Carolina to complete their examination requirements.

The COVID-19 Pandemic, Testing Access & Emergency Declarations. Without a testing site closer to California, licensure applicants have had to travel to North Carolina to complete their examination requirements. This issue became particularly challenging during the COVID-19 pandemic as air travel was strongly discouraged, flight schedules and hotel availability was limited, and in certain areas restricted by health officials. However, applicants for licensure were still required to travel across the country to take part III of the NBEO, as there are no testing alternatives available. Further compounding this issue, the NBEO testing center in North Carolina closed for a brief period. However, the testing center reopened in May of 2020.

According to information on the NBEO’s website, Part III of the examination is a clinical skills examination ...”requiring fundamental skills that reflect actual practice. Our state-of-the-art testing facility exam rooms simulate real-life optometric examination rooms and allow NBEO to provide the safety, security, and standardization necessary to ensure fairness and validity in a high-stake testing environment.”

In response to the current COVID-19 crisis, the Governor has taken a number of actions and issued numerous executive orders in an effort to address the immediate crisis, including impacts on the state's healthcare workforce stemming from the virus. On March 4, 2020, the Governor issued a State of Emergency Declaration to "make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19." Further, the Governor issued Executive Order N-33-20, which required California residents to stay at home unless specifically authorized to continue as essential operations. On March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive licensure requirements relating to healing arts during the duration of the COVID-19 pandemic – including rules relating to examination, education, experience, and training.

Concerns about optometry applicants in California not being able to travel to North Carolina to complete the skills examinations were brought to the Board's attention during the Governor's current declared state of emergency. However, without statutory authority or a waiver issued by the Governor, there was not a pathway for the Board to issue an optometry license to an applicant who has not completed part III of the NBEO. To date, there has been no waiver issued to expressly authorize the Board to suspend Part III of the examination. In addition, the Board does not have a state-of-emergency statute and does not have the authority to waive provisions of the Optometry Practice Act during an emergency; and, therefore the Board is limited in terms of its ability to address the problem without a statutory change. This bill is likely in response to the Board's limited ability to address this issue.

Currently, all 50 states, the District of Columbia, and Puerto Rico all use the NBEO examination for licensure, so an elimination of the requirement would significantly affect license portability options for California optometrists.

Temporary Optometric License. In order to create a pathway for applicants who are unable to complete the required examinations necessary for licensure, this bill would permit the Board to issue a temporary license to practice under the supervision of a licensed optometrist, to anyone who may otherwise be eligible for licensure, but is unable to *immediately* take the required examinations for licensure. As currently drafted, it is unclear how the Board would determine whether a candidate is unable to *immediately* take the required examination, because this bill does not specify that an individual's inability to take the examinations is due to a testing center closure, or related to any type of declared state of emergency, specifically, the current state of emergency declaration related to the current COVID-19 pandemic.

As currently drafted, the Board would be required to issue a temporary license to an individual who has not taken or passed any of the required examinations for licensure, including the CLRE and all three parts of the NBEO.

Supervision. 3rd and 4th year optometric students participate in clinical work and are supervised by licensed optometrists. Supervision of students occurs at the same location, where the supervising optometrist is present. As currently drafted in this bill, the supervising optometrist and the temporary license holder must have a “written agreement” in place and the temporary licensee must obtain informed consent from a patient prior to performing the services. However, the supervision does not require the physical presence of the supervising optometrist, as long as they are available by telephone or other electronic communication at the time the temporary license holder provides the service.

This bill states that a person holding a temporary license is subject to the same rights and restrictions that are afforded to a person holding a valid, unrevoked, optometrist license, except where limited by the Board or statute, to which there are no current restrictions on a temporary license. This bill would not limit or restrict the types of services that temporary license holder would be able to provide, as long as the supervising optometrist permits it through a written procedure with the temporary license holder. Additionally, this bill permits the Board to extend the temporary license beyond a year, and take enforcement actions against a temporary license holder.

The Governor has the authority to issue emergency declarations for state of emergencies and state of war emergencies. The local governing body of a city, county or city and county declares local emergencies. Under current law, emergencies may be declared for multiple reasons, including fires, floods, earthquakes, and storms or riots, among others. Although not explicitly stated, it seems the impetus for this bill is the most recent COVID-19 Pandemic declared state of emergency, which the state is currently still operating under; however, this bill does not restrict the issuance of a temporary license to any emergency declaration.

Other States. According to information from the sponsors, examples of other states that permit some type of waiver of examinations or issuance of temporary licenses during states of emergency or under other considerations include:

- Arizona can waive the NBEO on a case-by-case basis for 2020 graduates.
- Alabama allows for a temporary license for three months, but Optometrists cannot use TPAs.
- Colorado allows for a temporary license that lasts 120 days and allows Optometrists to practice under the direct supervision of an optometrist.
- Louisiana can waive the NBEO for 90 days.
- Michigan waived the NBEO requirement during the state of emergency while the testing site was closed.

- Missouri waived the NBEO requirement during the state of emergency while the testing site was closed.
- North Carolina allows for a temporary license on a case-by-case basis of a new graduate or out of state optometrists, under the supervision of a licensed optometrist or physician.
- The Oklahoma Board can issue a license to applicants that have not completed any parts of the NBEO in 2020 due to the pandemic.
- Utah offers a temporary license while exams are not available.
- Vermont may issue a temporary license to a graduate if the examination is not reasonably available during a State of Emergency until March 31, 2021.
- West Virginia can issue a temporary permit for up to 90 days if the applicant has taken parts I and II of the NBEO.

3. **Arguments in Support.** The California Optometric Association writes in support, “When the pandemic hit, the only testing agency recognized for optometry was forced to close and students were told they may not be able to be licensed on time. When the testing site opened back up, students were forced to travel across the country and put themselves and their families at great risk, just to take a test. This is unacceptable.”

Vision Service Plan writes in support, “During this pandemic optometry students are still required to travel to North Carolina to take Part III of the NBEO exam. Optometry students go through rigorous training at schools of optometry and are deemed competent before being able to sit for the NBEO exam. This bill will ensure optometry students can temporarily practice while also ensuring public safety and the safety of students.”

4. **Current Related Legislation.** AB 691 (Chau of 2021) is an urgency measure that 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 immunization for SARS-CoV-2. (Status: *This bill is currently pending in Assembly Committee on Business and Professions*).

AB 407 (Salas and Low of 2021) authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat acquired blepharoptosis, and further authorizes such an optometrist to use and prescribe, including for rational off-label purposes, therapeutic pharmaceutical agents for the treatment of acquired blepharoptosis in diagnosing and treating the above-described list of conditions. (Status: *This bill is currently pending in Assembly Committee on*

Business and Professions).

5. **Prior Related Legislation.** AB 2288 (Low, Chapter, Statutes of 2020) was an urgency measure which authorizes the director of an approved nursing program to obtain approval from the Board of Registered Nursing (BRN) to utilize alternatives in order to meet BRN requirements for students to earn direct patient care clinical experience and authorizes the use of preceptorships without having to maintain specified written policies during a declared state of emergency, if the approved nursing program meets specified requirements, until the end of academic year 2020-2021.

6. **Policy Comments, Questions, and Suggested Amendments.**

- a) *Is this about the COVID-19 pandemic or does this create a new pathway for licensure?* The impetus for this bill includes various issues brought forth in the midst of the global pandemic that shuttered businesses, ordered individuals to stay at home, and altered instruction at academic institutions across the country. However, as currently drafted this bill is overly broad and permits the issuance of a temporary license regardless of any state of emergency order or declaration, indefinitely.

The pandemic and subsequent stay at home orders impacted testing centers throughout California and the country. The CLRE, administered at PSI testing centers, and NBEO parts I and II, offered at Pearson VUE testing centers, were inaccessible for a period in 2020, as both testing centers ceased operations between March and April of last year. In addition, the NBEO part III also closed for a period, and the test site reopened in May of last year. Those closures were the result of emergency declarations and the effects of the pandemic; however, this bill would create a temporary license for optometric practice regardless of any emergency declaration.

Given that the intent of this bill, as stated in the findings and declarations, legislative intent, the justification for an urgency clause, and the Author's statement is to address the specific challenges related to accessing the NBEO testing center during the COVID-19 pandemic, the bill should be amended to narrowly authorize temporary licensure, for a limited period of time concurrent with the state of emergency, for individuals specifically impacted by the inability to take Part III of the examination as a result of the pandemic.

- b) *Lack of clarity in determining ability to take the exam.* This bill would require the Board to issue a temporary license to practice optometry to any person who applies for, and is eligible for licensure but who is unable, to immediately take, the required examinations. There is no definition or clarification as to what constitutes "immediately unavailable". Without a proper definition of what constitutes *immediate unavailability*, this bill is open to Broad interpretation.

The bill should be amended to specify that an applicant is immediately unavailable to take part III of the NBEO due to the COVID-19 emergency declaration.

- c) *Limitations on Practice.* As currently drafted, this bill does not restrict any optometric practices of a temporary license holder. A temporary license holder would be permitted to open an optometric practice, obtain certification to use therapeutic pharmaceutical agents, and authorizes the individuals to diagnose and treat specified conditions included in BPC § 3041(b)(d).

The bill should be amended to limit a temporary licensee holder's practice in order to promote patient safety by prohibiting a temporary licensee from opening an optometric practice.

- d) *Does the language in the bill creating a supervision model adequately promote consumer protection, given that a temporary license holder has not met all of the current requirements for licensure?* As currently drafted, this bill establishes a new supervision program for optometrists. Currently, optometrists supervise students in academic programs but there is no supervision standard for optometrists outlined in the Act designed to limit a person's practice to supervision by a current licensee. There are a number of health care professionals authorized to practice only according to specified protocols outlined in a supervision agreement with a current licensee. Protocols are a part of standardized procedures and designed to describe the steps of care for certain patients and certain situations. For many licensees, supervision does not have to be direct and in-person; however, the individuals being "supervised" have met the requirements for their own license type, including passing exams and demonstrating competency. The supervision requirements outlined in this bill allow an individual holding a temporary license to practice if the supervising optometrist "oversees the activities of, and accepts responsibility for, the services rendered by a temporary licensee". The individual is not required to be physically present or directly supervising, nor is there mention of the supervising optometrist's acceptance of liability for the practice of the temporary license holder.

The bill should be amended to specify that the supervision must be direct and in the same office or facility as the temporary license holder and, the supervising optometrist accepts all responsibility and liability for the temporary license holder's practice.

In addition, this bill authorizes the temporary license holder to practice under supervision if the temporary licensee is competent to perform the services, and the temporary licensee's education, training, and experience has prepared the licensee to render those services. However, the Board is not required to assess any of the above requirements when issuing a temporary license, and instead would require a supervising optometrist to make that determination. It is unclear how supervising optometrists would be able to standardize this assessment.

The bill should be amended to strike this assessment.

- e) *Informed Consent and Technical Corrections.* This bill requires a temporary license holder to obtain informed consent from a consumer prior to performing an optometric service. However, it does not include a requirement that the consent be documented in the patient's record.

The bill should be amended to ensure that the disclosure provided to patients about receiving services from a temporary license holder is retained in a patient record. .

As currently drafted, this bill references an optometrist as a "doctor". While optometrists are Doctors of Optometry, the term optometrist is more frequently referenced throughout the Act. In addition, this bill requires a temporary licensee to ensure that patients are informed that they will be practicing under a temporary license prior to providing an "examination". Since this bill would permit a temporary licensee to practice anything under the Act, the bill should instead reference "services" rather than only "examination".

For consistency purposes, the bill should be amended to replace the reference to "doctor" with "optometrist" and replace reference to "examination" with "services" to ensure consumers are aware of the temporary licensure status regardless of the service received.

SUPPORT AND OPPOSITION:

Support:

California Optometric Association
Vision Service Plan

Opposition:

None received

-- END --