

**MEMBERS OF THE BOARD**

Cyd Brandvein, President  
David Turetsky, OD, Vice President  
Rachel Michelin, Secretary  
Madhu Chawla, OD  
Martha Garcia, CLD, SLD  
Glenn Kawaguchi, OD  
Debra McIntyre, OD  
Mark Morodomi, JD  
Maria Salazar Sperber, JD  
Lillian Wang, OD



**LEGISLATION AND REGULATION COMMITTEE  
TELECONFERENCED MEETING AGENDA**

**Tuesday, May 28, 2019**

**1:30 p.m. until conclusion of business**

**MEMBERS OF THE COMMITTEE**

Rachel Michelin, Chair  
Glenn Kawaguchi, OD  
Maria Salazar-Sperber, JD  
Lillian Wang, OD

**Teleconference Meeting Locations:**

**Department of Consumer  
Affairs, Del Paso Road Location  
2420 Del Paso Road, 1<sup>st</sup> floor,  
Rm. 106 (Redwood Room)  
Sacramento, CA 95834**

**Moraga Library  
1500 St. Mary's Road  
Moraga, CA 94556**

**LensCrafters  
3855 State Street  
Santa Barbara 93105**

**ORDER OF ITEMS SUBJECT TO CHANGE**

1. Call to Order/Roll Call/Establishment of a Quorum
2. Public Comment for Items Not on the Agenda  
*Note: The committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code §11125, §11125.7(a)].*
3. Discussion and Possible Action Regarding Meeting Minutes  
A. March 8, 2019 Legislation and Regulation Committee Meeting
4. Background, Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 458 (Nazarian): Optometrists: home residence certification
5. Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 1467 (Salas): Optometrists: scope of practice: delegation of services agreement
6. Future Agenda Items
7. Adjournment

*The mission of the [California State Board of Optometry](#) is to protect the health and safety of California consumers through licensing, education, and regulation of the practice of Optometry.*

*Meetings of the California State Board of Optometry and its committees are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Committee may take action on any item listed on the agenda, unless listed as*

*informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. Members of the Board who are not members of this committee may be attending the meeting only as observers.*

**NOTICE:** *The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Evan Gage at (916) 575-7185 or sending a written request to that person at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.*

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**LEGISLATION AND REGULATION COMMITTEE  
DRAFT ACTION MEETING MINUTES**

**MEMBERS OF THE COMMITTEE**

Rachel Michelin, Chair  
Glenn Kawaguchi, OD  
Maria Salazar-Sperber, JD  
Lillian Wang, OD

Listen to the Audio  
[March 8, 2019](#)

**Teleconference Meeting  
Locations:**

Department of Consumer  
Affairs  
HQ2 – Pearl Room  
1747 North Market Boulevard  
Sacramento, CA 95834

Nugget Market – 2<sup>nd</sup> Floor  
4500 Post Street  
El Dorado Hills, CA 95762

Moraga Country Club  
2<sup>nd</sup> Floor Cafe  
1600 St Andrews Dr.  
Moraga, CA 94556

LensCrafters  
3301 E. Main Street, Suite 1006  
Ventura, CA 93003

<b>Members Present</b>		<b>Staff Present</b>
Rachel Michelin, Chair		Shara Murphy, Executive Officer
Glenn Kawaguchi, OD		Evan Gage, Assistant Executive Officer
Maria Salazar-Sperber, JD		Marc Johnson, Policy Analyst
Lillian Wang, OD		Mina Hamilton, Legal Counsel
		Jessica Swan, Administrative Analyst
		<b>Guest List</b>
		On File

**1. Call to Order/Roll Call/Establishment of a Quorum**

Rachel Michelin called the meeting to order at 9:10 and took roll. Maria Salazar-Sperber was present at the HQ2 Pearl Room in Sacramento, CA; Lillian Wang was present at the Moraga Country Club in Moraga, CA; Rachel Michelin was present at the Nugget Market in El Dorado Hill, CA; Dr. Glenn Kawaguchi was present at LensCrafters in Ventura, CA. A 4-0 quorum was established.

**2. Public Comment for Items Not on the Agenda**

No public comments were made.

**3. Discussion and Possible Action Regarding Meeting Minutes**

**A. June 29, 2018**

**Lillian Wang moved to approve the June 29, 2018 Meeting Minutes, Glenn Kawaguchi seconded. The Committee voted unanimously (4-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ms. Michelin	X				
Dr. Kawaguchi	X				
Ms. Salazar-Sperber	X				
Dr. Wang	X				

No public comments were made.

**4. Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 896 (Low): Registered Dispensing Opticians: dispensing opticians Fund: Optometry Fund.**

Mr. Johnson presented on the bill and gave a short overview; staff recommended a support position. There were no comments from the members or the public.

**Lillian Wang moved to direct staff to submit a letter of support and deliver it to the Author’s Office. Maria Salazar-Sperber seconded. The Committee voted unanimously (4-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ms. Michelin	X				
Dr. Kawaguchi	X				
Ms. Salazar-Sperber	X				
Dr. Wang	X				

**5. Update, Discussion and Possible Recommendations to Full Board Regarding Children’s Vision Legislation**

Ms. Murphy provided an update on the item. During the last two Board meetings, staff was directed by the Board to find an author for text that resembled SB 402 (Mitchell). There was no interest from Legislators. Ms. Murphy requested more leeway in developing a solution. She believes from her conversations with the California School Nurses Organization (CSNO) and the California Nurses Association (CAN) that an opportunity exists to move a bill forward that will study what is being done currently. The strategy Ms. Murphy hopes to pursue is to use 2019 to educate through a legislative staff briefing and open-up opportunities for potential authors looking to introduce this compromised bill, working with the CSNO and the CTA for a bill in the 2020 year.

Ms. Michelin expressed she her unhappiness that nothing has been done. She added that she feels the CSNO and the CTA are opposition rather than stakeholders. Dr. Kawaguchi stated that he is open to variations of SB 402. He believes it is critical this year to obtain more allies by seeking out stakeholders away from current ones.

Ms. Murphy clarified that Assembly Member Wendy Carrillo, who previously carried the bill, has given indications that she is willing to carry a bill for the Board. Staff shopped aggressively

outside of this one connection but did not receive any uptake or interest in SB 402. Ms. Murphy feels staff has exhausted the interest of those members who have participated before. She feels a need to step back, talk with the opposition to see how they might be brought to the table, and find new authors who might be interested in working with us; gain an understand of how a compromise might work and help us to find a way to move it forward.

Dr. Kawaguchi clarified that what he is asking of staff is to seek out those who may be key stakeholders who will support our efforts to protect the children of California.

Public comment was taken from Kristine Shultz, from California Optometric Associations; stating that the issue is still a high priority with the COA.

Maria Salazar-Sperber recapped that the Committee’s direction and the staff’s next steps are to continue outreach; collaborate with stake holders; look at a possible budget play; and to look at possibly having a legislative hearing on Children’s vision. Ms. Michelin added to engage the workgroup and make certain they are aware of everything taking place.

**6. Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 631 (Low): Professions and vocations: regulatory fees**

Mr. Johnson presented on the item. Staff recommended a support position. There were no comments from the members or the public.

**Rachel Michelin moved to recommend to the Board to take a support position and for it to be agendized on the next Board Meeting. Glenn Kawaguchi seconded. The Committee voted unanimously (4-0) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ms. Michelin	X				
Dr. Kawaguchi	X				
Ms. Salazar-Sperber	X				
Dr. Wang	X				

**7. Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 458 (Nazarian): Homebound Senior Vision Care**

Ms. Murphy presented on the item. A decision was made to hold this item until the next full Board Meeting to take it up. Ms. Hamilton requested to hear of any opposition to the bill and to obtain a full analysis of who has commented thus far. Ms. Michelin agreed and asked staff to reach out to the Author to find out who is in support and in opposition and that the packet will be brought to the full Board.

**8. Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 1467 (Salas): Optometrists: Scope of Practice: Delegation of Services Agreement**

Mr. Johnson presented on the item. Staff is recommending a watch position.

Public comment was made by Ms. Shultz. She noted over the last few years an agreement over the kind of training that would be required has not been agreed upon. AB 1467 is a completely different type of approach. It would allow optometrists to perform the procedures under a physician protocol. Dr. Kawaguchi asked if there would be additional language developed before the Board meeting; Ms. Shultz replied she does not expect the language to be developed by that time.

**Lillian Wang made a motion to support the Bill. Maria Salazar-Sperber seconded. The Committee voted (3-Aye; 1-Abstention) and the motion passed.**

Member	Aye	No	Abstain	Absent	Recusal
Ms. Michelin	X				
Dr. Kawaguchi			X		
Ms. Salazar-Sperber	X				
Dr. Wang	X				

**9. Review, Discussion, and Consideration of Requirements for Board’s Implementation of AB 2138 (Chapter 995, Statutes of 2018, Chiu; Denial of Applications Based Upon Criminal Convictions) and Possible Recommendations to Full Board to Approve Implementing Regulations**

Ms. Hamilton explained that the proposal may look different from what the Deputy Director of Legal has proposed for all the Department of Consumer Affairs Boards. Drs. Wong and Kawaguchi agreed that it is important to provide the Board with both proposals.

**10. Update and Discussion Regarding Strategic Plan Enforcement Objectives and Deliverables**

Ms. Murphy stated that staff has asked for this item to be held until the next meeting. Staff would like to bring back to the next Committee meeting our existing regulatory packages. There are some outside of the disciplinary guidelines and AB 2138 that staff would like to obtain some consideration by the Committee, then the Board, regarding how to prioritize these.

Additionally, Ms. Murphy asked if the President or the full Board would be interested in creating a workgroup to provide some discussion and direction prior to the June meeting. Ms. Michelin stated she feels it is a good idea, to put it on the agenda and have the Board vote on it in April.

**11. Future Agenda Items**

There were no future agenda items requested by the Committee or the public.

**12. Adjournment**

The meeting was adjourned at 9:57 a.m.



## ISSUE MEMORANDUM

<b>DATE</b>	May 28, 2019
<b>TO</b>	Legislation and Regulation Committee (LRC)
<b>FROM</b>	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
<b>SUBJECT</b>	Agenda Item # 4: Background, Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 458 (Nazarian): Optometrists: home residence certification

Summary:

At the request of Board Member Mark Morodomi, the LRC has been asked to further discuss and review Assembly Bill 458 (Nazarian), relating to optometrists: home residence certification. The Board is the sponsor of this bill, which has so far encountered no opposition and is on the consent calendar. As of this writing, the bill has been referred to the Senate Business, Professions and Economic Development committee for hearing potentially in June.

Background:

The Board has been discussing the possibility of a separate certification available for TPA licensed optometrists for in-home practice for several years. On [April 20, 2018](#), the Board approved the following motion:

*“Ms. Michelin moved to accept the proposed statutory language related to expanding optometric care for homebound patients, pending review by Board legal counsel. Dr. Wang seconded. The Board voted 9-0 and the motion passed.”*

Link for 4/20/2018 materials:

[https://www.optometry.ca.gov/meetings/materials/20180420\\_8d.pdf](https://www.optometry.ca.gov/meetings/materials/20180420_8d.pdf)

Link for webcast of 4/20/2018 discussion (beginning at 3:14:00):

[https://www.optometry.ca.gov/meetings/materials/20180420\\_8d.pdf](https://www.optometry.ca.gov/meetings/materials/20180420_8d.pdf)

Based upon this action and subsequent direction and endorsement from the Board, staff reached out to various legislators and stakeholder groups in early 2019 to obtain an author and support for the issue. Assembly Member Adrin Nazarian, chair of the Assembly Aging and Long Term Care Committee, agreed to carry the bill, which was introduced in the legislature on February 11, 2019. The bill was based upon text approved by the Board in April 2018 and refined by Legal Counsel (original approved text attachment A).

Discussion:

The Committee may wish to discuss any further concerns with AB 458 raised by members or other stakeholders.

Attachments:

A – Text for in-home optometric care, as approved by the Board April 20, 2018

B – AB 458 as amended April 10, 2019

C – AB 458 Assembly Business and Profession Committee Analysis April 5, 2019



**3070.1.** (a) For purposes of this section, the following terms have the following meanings:

(1) "Health facility" means a health facility as defined in Section 1250 of the Health and Safety Code, exclusive of a hospital defined in subdivision (a) or (b) of that section.

(2) "Residential care facility" means a residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code, licensed by the State Department of Social Services, including, but not limited to, the following:

(A) Adult residential facilities.

(B) Adult residential facilities for persons with special health care needs.

(C) Residential care facilities for the chronically ill.

(D) Residential care facilities for the elderly.

(E) Continuing care retirement communities.

(F) Social rehabilitation facilities.

(3) "Home residence" means the dwelling of a person who is unable to obtain optometric services outside of their home due to a disabling physical or mental condition.

(b) (1) No optometrist may engage in the practice of optometry at any home residence without a home residence certificate. The Board may, upon application and payment of the fee prescribed in Section 3152, issue a home residence certificate to a California Therapeutic Pharmaceutical Agents certified optometrist. A home residence certified optometrist shall meet and maintain the requirements in paragraphs (1), (2), and (3) of subsection (c).

(2) Home-residence certificates expire with the optometrist license, unless renewed. Home-residence certificates may be renewed upon application and payment of the fee prescribed in Section 3152.

(3) Optometrists engaging in temporary practice as defined in Section 3070 are not required to obtain a home residence certificate.

(b) (c) A ~~Therapeutic Pharmaceutical Agents certified~~ optometrist, ~~and a home residence optometrist certified under subdivision (b) of this section,~~ may engage in the practice of optometry at any health facility, ~~or~~ residential care facility, or home residence provided that all of the following requirements are satisfied:

(1) The optometrist maintains a primary business office, separate from the health facility, ~~or~~ residential care facility, or home residence that meets all of the following requirements:

(A) Is open to the public during normal business hours by telephone and for purposes of billing services or access to patient records.

(B) Is licensed to the optometrist or the employer of the optometrist as a local business with the city or county in which it is located.

(C) Is registered by the optometrist with the Board of Optometry.

(D) Is owned or leased by the optometrist or by the employer of the optometrist.

(E) Is not located in or connected with a residential dwelling.

(2) The optometrist maintains or discloses patient records in the following manner:

(A) Records are maintained and made available to the patient in such a way that the type and extent of services provided to the patient are conspicuously disclosed. The disclosure of records shall be made at or near the time services are rendered and shall be maintained at the primary business office specified in paragraph (1). Records shall be provided to any referring primary care provider.

(B) The optometrist complies with all federal and state laws and regulations regarding the maintenance and protection of medical records, including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(C) Pursuant to Section 3007, the optometrist keeps all necessary records for a minimum of seven years from the date of service in order to disclose fully the extent of services furnished to a patient. Any information included on a printed copy of an original document to a patient shall be certified by the optometrist as being true, accurate, and complete.

(D) If a prescription is issued to a patient, records shall be maintained for each prescription as part of the patient's chart, including all of the following information about the optometrist:

(i) Name.

(ii) Optometrist license number.

(iii) The place of practice and the primary business office.

(iv) Description of the goods and services for which the patient is charged and the amount charged.

(E) A copy of any referral or order requesting optometric services for a patient from the health facility's, ~~home residence,~~ or residential care facility's, or home residence's administrator, director of social services, the attending physician and surgeon, the patient, or a family member shall be kept in the patient's medical record.

(3) The optometrist possesses and appropriately uses the instruments and equipment required for all optometric services and procedures performed within the health facility, ~~or residential care facility,~~ or home residence.

(~~ed~~) An optometrist who satisfies all of the requirements in this section for the practice of optometry at a health facility, ~~or residential care facility,~~ or home residence shall not be required to comply with

Section 3070 with regard to providing notification to the board of each health facility, ~~or~~ residential care facility, or home residence at which he or she practices.

(e) Prior to engaging in the practice of optometry at any health facility, residential care facility, or home residence, an optometrist shall provide each patient and the patient's caregiver, if applicable, a Consumer Notice, approved by the Board, which includes, but is not limited to, an optional authorization releasing the patient's medical information to the Board. This authorization may be used to safeguard patients from substandard optometric care, fraud, and violations of the Optometry Practice Act.

(f) An optometrist engaging in the practice of optometry at any health facility, residential care facility, or home residence is subject to periodic quality assurance reviews by the board to ensure compliance with the Optometry Practice Act.

(Added by Stats. 2010, Ch. 604, Sec. 5. Effective January 1, 2011.)

~~**3097.** An optometrist who solicits or uses a solicitor from house to house or by telephone. The sending of a solicitor from house to house or the soliciting from house to house by the holder of an optometrist license~~ constitutes a cause to revoke or suspend his or her license.

(Added by renumbering Section 3096 by Stats. 2005, Ch. 393, Sec. 10. Effective January 1, 2006)

**3152.** The amounts of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

- (a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars (\$275).
- (b) The fee for renewal of an optometric license shall not exceed five hundred dollars (\$500).
- (c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars (\$75).
- (d) The fee for a branch office license shall not exceed seventy-five dollars (\$75).
- (e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars (\$25).
- (f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars (\$25).
- (g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars (\$50).
- (h) The application fee for a certificate to perform lacrimal irrigation and dilation shall not exceed fifty dollars (\$50).
- (i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars (\$50).
- (j) The fee for approval of a continuing education course shall not exceed one hundred dollars (\$100).
- (k) The fee for issuance of a statement of licensure shall not exceed forty dollars (\$40).
- (l) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars (\$40).
- (m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars (\$20).
- (n) The application fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (o) The renewal fee for a fictitious name permit shall not exceed fifty dollars (\$50).
- (p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars (\$25).
- (q) The fee for a retired license shall not exceed twenty-five dollars (\$25).
- (r) The fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).
- (s) The biennial renewal fee for a retired license with volunteer designation shall not exceed fifty dollars (\$50).

(t) The application fee for a certificate to administer immunizations shall not exceed fifty dollars (\$50).

(u) The application fee for a homebound patient care license shall not exceed fifty dollars (\$50).

(v) The renewal fee for a homebound patient care license shall not exceed fifty dollars (\$50).

(x) The delinquency fee for a homebound patient care license shall not exceed twenty-five dollars (\$25).

## MEMORANDUM

Date: May 22, 2019

To: Board of Optometry  
Legislation and Regulation Committee

From: Mark Morodomi  
Member, Board of Optometry

Re: AB 548 Nazarian Home Residence Certification (Memorandum provided for 28 May 2019 Legislation and Registration Committee Meeting)

### **The Problem**

Since the Board initially sought a sponsor of AB 548 Nazarian there is uncertainty on whether the language of the bill does what the Board wants it to do. I am concerned that the currently proposed text does the opposite of what the Board intended.

The bill states: “An optometrist shall not engage in the practice of optometry at a home residence without a home residence certificate.” (Emphasis added.)

When the Board approved the language, the Board intent was that the bill would make it more permissible for optometrists to provide home visits to seniors and the disabled. This was based on the assumption that current law restricted the ability of optometrists to provide such services. Our assumption was based on the interpretation of the law by then Board staff.

Since the introduction of the bill, I have been concerned that the proposed text of the bill does the opposite of what the Board intended, that it makes it more difficult for optometrists to provide services to seniors and the disabled. For example, the Attorney General’s Office does not see that the existing law prohibits home visits by optometrists. This the opposite from the assumption the Board had in proposing the legislation. At minimum, there is uncertainty that existing law prohibits home visits.

The Legislation and Regulation Committee should give clear direction to Board staff on the intent of the Board in proposing the legislation.

## **Options.**

### **Option 1: Continue with the Current Text of AB 548**

**Pros:** Doesn't require any changes in the currently proposed language.

**Cons:** The result may be the opposite of what the Board intended: making it harder for optometrists to do home visits and subjecting them to additional enforcement.

### **Option 2: Suspend Support of AB 548**

**Pros:** If the law currently allows home visits, then the bill is moot. If the current state of the law is uncertain, the Board needs to better understand what the current law is before it proceeds with the legislation. If the bill does the opposite of what the Board intended, no law is better than a bad law.

**Cons:** May cost the Board political capital with the Legislator's Office. Would delay until next term any legislative solutions.

### **Option 3: Propose New Language**

Work with staff, legal, and the legislator's office to create language consistent with the Board's intent to make it easier for optometrists to provide home visits to seniors and disabled. If the current state of the law is uncertain, then the bill language should be to clarify the current law, not create additional prohibitions. If the legal consensus is that current law permits home visits, then the Board and the Legislator's Office should be informed so that each can determine whether the law is even necessary. (Remember that other health professionals have no restrictions on home visits.) If it is possible that the current law might be interpreted to allow for home visits, then the bill should not erode the Board's ability to so interpret.

Example: An optometrist may engage in the practice of optometry at a home residence with a home residence certificate.

**Pros:** May be a compromise between Option 1 and Option 3.

**Cons:** May be time consuming. Committee should specify who has final decision making over whether the actual language meets its goals if there is a disagreement.

AMENDED IN ASSEMBLY APRIL 10, 2019

AMENDED IN ASSEMBLY APRIL 3, 2019

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 458**

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**Introduced by Assembly Member Nazarian**

February 11, 2019

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An act to amend Sections 3070.1, 3097, and 3152 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 458, as amended, Nazarian. Optometrists: home residence certification.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of the practice of optometry by the State Board of Optometry and makes a violation of the act a misdemeanor. Existing law authorizes an optometrist to practice optometry at a health facility or residential care facility, subject to specified conditions, including that the optometrist maintain and disclose patient records in a specified manner. Existing law requires an optometrist to be certified to use therapeutic pharmaceutical agents in order to diagnose and treat specified conditions.

This bill would prohibit an optometrist from engaging in the practice of optometry at any home residence without a home residence certificate, except for a person engaging in the temporary practice of optometry. The bill would authorize an optometrist who is certified as a therapeutic pharmaceutical agent to obtain a home residence certificate by submitting an application to the board and paying applicable fees, and

would establish a process for the issuance and renewal of home residence certificates, including prescribing application, renewal, and delinquency fees.

The bill would require ~~an optometrist, a certified home residence optometrist, before engaging in the practice of optometry at a health facility, residential care facility, or, in the case of a certified home residence optometrist,~~ home residence, to comply with certain requirements, including providing a patient’s records to the patient’s referring primary care provider and providing the patient with a consumer notice that includes, among other things, an authorization to release the patient’s medical information to the board for specified purposes, including investigating complaints and conducting the board’s enforcement duties. The bill would also require the optometrist to provide a patient’s records to the patient’s referring primary care provider.

Existing law makes an optometrist’s license subject to suspension or revocation if the optometrist solicits or sends a solicitor from house to house.

This bill would also make an optometrist’s license subject to suspension or revocation if the optometrist solicits, or has a solicitor solicit on behalf of the optometrist, optometry services by telephone.

By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 3070.1 of the Business and Professions
- 2 Code is amended to read:
- 3 3070.1. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) “Health facility” means a health facility, as defined in
- 6 Section 1250 of the Health and Safety Code, exclusive of a hospital
- 7 defined in subdivision (a) or (b) of that section.



1 (2) “Residential care facility” means a residential facility, as  
2 defined in paragraph (1) of subdivision (a) of Section 1502 of the  
3 Health and Safety Code, licensed by the State Department of Social  
4 Services, including, but not limited to, the following:

5 (A) Adult residential facilities.

6 (B) Adult residential facilities for persons with special health  
7 care needs.

8 (C) Residential care facilities for the chronically ill.

9 (D) Residential care facilities for the elderly.

10 (E) Continuing care retirement communities.

11 (F) Social rehabilitation facilities.

12 (3) “Home residence” means the dwelling of a person who is  
13 unable to obtain optometric services outside of their home due to  
14 a disabling physical or mental condition.

15 (b) (1) An optometrist shall not engage in the practice of  
16 optometry at a home residence without a home residence certificate.  
17 An optometrist who is certified as a therapeutic pharmaceutical  
18 agent pursuant to Section 3041.3 may, in the form and manner  
19 prescribed by the board, submit an application to the board for a  
20 home residence certificate, and pay all applicable fees prescribed  
21 in Section 3152. The board shall, upon application and payment  
22 of the fee prescribed in Section 3152, issue a home residence  
23 certificate to an optometrist certified as a therapeutic  
24 pharmaceutical agent pursuant to Section 3041.3. A certified home  
25 residence optometrist shall meet the requirements in subdivision  
26 (c).

27 (2) A home residence certificate shall expire on the same date  
28 the licensee’s optometry license expires. A certified home residence  
29 optometrist may renew the certificate by submitting an application,  
30 in the form and manner prescribed by the board, to the board for  
31 renewal, and paying any applicable fees prescribed in Section  
32 3152.

33 (3) A person engaging in the temporary practice of optometry,  
34 as defined in subdivision (b) of Section 3070, is not required to  
35 obtain a home residence certificate in order to engage in the  
36 practice of optometry at a home residence.

37 (c) An optometrist certified as a therapeutic pharmaceutical  
38 agent or a certified home residence optometrist may engage in the  
39 practice of optometry at any health facility or residential care  
40 facility, and an optometrist certified as a home residence

1 optometrist may engage in the practice of optometry at any health  
2 facility, residential care facility, or home residence, provided that  
3 all of the following requirements are satisfied:

4 (1) The optometrist maintains a primary business office, separate  
5 from the health facility, residential care facility, or home residence,  
6 that meets all of the following requirements:

7 (A) Is open to the public during normal business hours by  
8 telephone and for purposes of billing services or access to patient  
9 records.

10 (B) Is licensed to the optometrist or the employer of the  
11 optometrist as a local business with the city or county in which it  
12 is located.

13 (C) Is registered by the optometrist with the Board of Optometry.

14 (D) Is owned or leased by the optometrist or by the employer  
15 of the optometrist.

16 (E) Is not located in or connected with a residential dwelling.

17 (2) The optometrist maintains or discloses patient records in the  
18 following manner:

19 (A) Records are maintained and made available to the patient  
20 in such a way that the type and extent of services provided to the  
21 patient are conspicuously disclosed. The disclosure of records shall  
22 be made at or near the time services are rendered and shall be  
23 maintained at the primary business office specified in paragraph  
24 (1).

25 (B) The optometrist complies with all federal and state laws  
26 and regulations regarding the maintenance and protection of  
27 medical records, including, but not limited to, the federal Health  
28 Insurance Portability and Accountability Act of 1996 (42 U.S.C.  
29 Sec. 300gg).

30 (C) Pursuant to Section 3007, the optometrist keeps all necessary  
31 records for a minimum of seven years from the date of service in  
32 order to disclose fully the extent of services furnished to a patient.  
33 Any information included on a printed copy of an original  
34 document to a patient shall be certified by the optometrist as being  
35 true, accurate, and complete.

36 (D) If a prescription is issued to a patient, records shall be  
37 maintained for each prescription as part of the patient's chart,  
38 including all of the following information about the optometrist:

39 (i) Name.

40 (ii) Optometrist license number.

- 1 (iii) The place of practice and the primary business office.
- 2 (iv) Description of the goods and services for which the patient
- 3 is charged and the amount charged.

4 (E) A copy of any referral or order requesting optometric  
5 services for a patient from the health ~~facility's~~, *facility's* or  
6 residential care ~~facility's~~, or home residence's *facility's*  
7 administrator, director of social services, the attending physician  
8 and surgeon, the patient, or a family member shall be kept in the  
9 patient's medical record.

10 (F) The optometrist provides a patient's records to the patient's  
11 referring primary care provider.

12 (3) The optometrist possesses and appropriately uses the  
13 instruments and equipment required for all optometric services  
14 and procedures performed within the health facility, residential  
15 care facility, or home residence.

16 (d) An optometrist who satisfies all of the requirements in this  
17 section for the practice of optometry at a health facility, residential  
18 care facility, or home residence shall not be required to comply  
19 with Section 3070 with regard to providing notification to the  
20 board of each health facility, residential care facility, or home  
21 residence at which the optometrist practices.

22 (e) (1) Before engaging in the practice of optometry at a ~~health~~  
23 ~~facility, residential care facility, or home residence~~, an optometrist  
24 shall provide each patient and, if applicable, the patient's caregiver,  
25 a consumer notice approved by the board that includes the  
26 following:

27 (A) The name, license number, primary telephone number, and  
28 primary business address of the optometrist.

29 (B) Information for filing a complaint with the board.

30 (C) An authorization to release the patient's medical information  
31 to the board. The authorization shall disclose that the patient's  
32 authorization to release medical information to the board is  
33 voluntary and that the medical information shall be used by the  
34 board only to investigate complaints and to conduct the board's  
35 enforcement duties under the act.

36 (D) Any other information the board deems appropriate to  
37 safeguard the public from substandard optometric care, fraud, and  
38 other violations of the act.

39 (2) The optometrist shall maintain a copy of the signed consumer  
40 notice described in paragraph (1) in the patient's file.

1 (f) The board may promulgate regulations to conduct quality  
2 assurance reviews for optometrists engaging in the practice of  
3 optometry at any health facility, residential care facility, or home  
4 residence.

5 SEC. 2. Section 3097 of the Business and Professions Code is  
6 amended to read:

7 3097. The solicitation of optometry services by an optometrist  
8 directly, or by having a solicitor solicit optometry services on  
9 behalf of the optometrist, house to house or by telephone  
10 constitutes a cause to revoke or suspend the optometrist’s license.  
11 “Solicitation” does not include contacting a patient to schedule an  
12 annual appointment, to remind a patient of an existing appointment,  
13 or to provide other information relevant to patient care.

14 SEC. 3. Section 3152 of the Business and Professions Code is  
15 amended to read:

16 3152. The amounts of fees and penalties prescribed by this  
17 chapter shall be established by the board in amounts not greater  
18 than those specified in the following schedule:

19 (a) The fee for applicants applying for a license shall not exceed  
20 two hundred seventy-five dollars (\$275).

21 (b) The fee for renewal of an optometric license shall not exceed  
22 five hundred dollars (\$500).

23 (c) The annual fee for the renewal of a branch office license  
24 shall not exceed seventy-five dollars (\$75).

25 (d) The fee for a branch office license shall not exceed  
26 seventy-five dollars (\$75).

27 (e) The penalty for failure to pay the annual fee for renewal of  
28 a branch office license shall not exceed twenty-five dollars (\$25).

29 (f) The fee for issuance of a license or upon change of name  
30 authorized by law of a person holding a license under this chapter  
31 shall not exceed twenty-five dollars (\$25).

32 (g) The delinquency fee for renewal of an optometric license  
33 shall not exceed fifty dollars (\$50).

34 (h) The application fee for a certificate to perform lacrimal  
35 irrigation and dilation shall not exceed fifty dollars (\$50).

36 (i) The application fee for a certificate to treat glaucoma shall  
37 not exceed fifty dollars (\$50).

38 (j) The fee for approval of a continuing education course shall  
39 not exceed one hundred dollars (\$100).

- 1 (k) The fee for issuance of a statement of licensure shall not  
2 exceed forty dollars (\$40).
- 3 (l) The fee for biennial renewal of a statement of licensure shall  
4 not exceed forty dollars (\$40).
- 5 (m) The delinquency fee for renewal of a statement of licensure  
6 shall not exceed twenty dollars (\$20).
- 7 (n) The application fee for a fictitious name permit shall not  
8 exceed fifty dollars (\$50).
- 9 (o) The renewal fee for a fictitious name permit shall not exceed  
10 fifty dollars (\$50).
- 11 (p) The delinquency fee for renewal of a fictitious name permit  
12 shall not exceed twenty-five dollars (\$25).
- 13 (q) The fee for a retired license shall not exceed twenty-five  
14 dollars (\$25).
- 15 (r) The fee for a retired license with volunteer designation shall  
16 not exceed fifty dollars (\$50).
- 17 (s) The biennial renewal fee for a retired license with volunteer  
18 designation shall not exceed fifty dollars (\$50).
- 19 (t) The application fee for a certificate to administer  
20 immunizations shall not exceed fifty dollars (\$50).
- 21 (u) The application fee for a home residence certificate shall  
22 not exceed fifty dollars (\$50).
- 23 (v) The renewal fee for a home residence certificate shall not  
24 exceed fifty dollars (\$50).
- 25 (w) The delinquency fee for a home residence certificate shall  
26 not exceed twenty-five dollars (\$25).
- 27 **SEC. 4.** No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.

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Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 458 (Nazarian) – As Amended April 3, 2019

**SUBJECT:** Optometrists: home residence certification.

**SUMMARY:** Allows licensed optometrists to bring vision services and testing into the homes of individuals who are homebound due to physical or mental disability.

**EXISTING LAW:**

- 1) Establishes the State Board of Optometry (Board) within the Department of Consumer Affairs for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) § 3000 *et seq*)
- 2) States that protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC § 3010.1)
- 3) Provides for the certification of optometrists to use therapeutic pharmaceutical agents and the authorization to diagnose and treat 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 habilitative or rehabilitative optometric services, under certain conditions. (BPC § 3041)

**THIS BILL:**

- 4) Prohibits an optometrist from engaging in the practice of optometry at any home residence without a home residence certificate, except for a person engaging in the temporary practice of optometry.
- 5) Authorizes an optometrist who is certified as a therapeutic pharmaceutical agent to obtain a home residence certificate by submitting an application to the board and paying applicable fees, and would establish a process for the issuance and renewal of home residence certificates, including prescribing application, renewal, and delinquency fees.
- 6) Requires an optometrist, before engaging in the practice of optometry at a health facility, residential care facility, or, in the case of a certified home residence optometrist, home residence, to comply with certain requirements, including providing a patient's records to the patient's referring primary care provider and providing the patient with a consumer notice that includes, among other things, an authorization to release the patient's medical information to the board for specified purposes, including investigating complaints and conducting the board's enforcement duties.
- 7) Requires the optometrist to provide a patient's records to the patient's referring primary care provider.

- 8) Makes an optometrist's license subject to suspension or revocation if the optometrist solicits, or has a solicitor solicit on behalf of the optometrist, optometry services by telephone.

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

**COMMENTS:**

**Purpose.** The sponsor of this bill is the *California State Board of Optometry*. According to the sponsor, “[this bill] would allow licensed Optometrists to bring much-needed vision services and testing into the home for homebound individuals. With advancements in treating ocular disease with therapeutics, and the availability of portable instruments and equipment, Optometrists have the ability to provide a more comprehensive eye examination in a home setting than in the past. This change would increase access to Optometric care for a critically underserved population, including but not limited to seniors, and individuals who are mentally or physically disabled, especially in rural and underserved areas. Without these services, these impacted individuals are unable to obtain proper eye care, which reduces their quality of life and decreases their standard of living.”

**Background.** As of 2010, there were more than 38.9 million people aged 65 and older in the United States. Up to 3.6 million of these people were considered housebound and in need of home-based care.

*California State Plan on Aging.* The number of people age 60 and over in California will grow to 13.9 million by 2050, an increase of 128% from 2010. Statistically, more than 1 million of these people will be housebound and in need of home-based care. Additionally, many of those people may not have access to regular health care screenings and services, especially in rural and underserved areas. The Optometry Practice Act, as currently defined in BPC 3070 does not allow Optometry licensees to practice in a home setting and provide these needed services.

*Centers for Disease Control* and the *National Institutes for Health*. Both of these entities have noted the importance of eye health and the role of vision impairment as a serious health concern, especially in older adults. It can lead to a reduction in common activities such as self-care, cooking, reading, watching TV, or using a computer or smart phone. As a result, vision loss can impact the overall health and wellbeing of seniors, increasing depression, causing difficulty in identifying medication, and increasing risk from falls or fractures.

Quality, comprehensive vision care could help ease their suffering and delay their entry into a nursing home or hospital. The American Academy of Ophthalmology also notes the additional health benefits of eye exams, especially for seniors. These exams can uncover symptoms of significant health problems—including carotid artery blockages, hypertension, high cholesterol, and diabetes. If these warning signs are detected, the Optometrist can promptly refer the patient to a primary care provider for diagnosis and treatment.

**ARGUMENTS IN SUPPORT:**

The *California Optometric Association* (COA) supports, if amended, the ability of patients to have access to in-home optometric care, when necessary.

COA requests an amendment to the language that prohibits phone solicitation. As currently written, the bill would actually prohibit an optometrist from soliciting any optometry services by

phone. This probably isn't the intent of the bill since it is common for an optometrist to call patients to schedule an annual appointment. We believe the intent is to prohibit solicitation of in-home optometry services.

**ARGUMENTS IN OPPOSITION:**

None on file.

**AMENDMENTS:**

It is suggested that the terms "health facility" and "residential care facility" be removed from the consumer notice aspects of the bill. The issue is that the consumer notice is intended to apply to only the home residence portion. In addition, the term "home residence" should be removed from the section that refers to a copy of any referral or order requesting optometric services for a patient being kept in the patient's medical record. This will create consistency through the bill.

**REGISTERED SUPPORT:**

California Optometric Association

**REGISTERED OPPOSITION:**

None on file

**Analysis Prepared by:** Danielle Sires / B. & P. / (916) 319-3301





## ISSUE MEMORANDUM

<b>DATE</b>	May 28, 2019
<b>TO</b>	Legislation and Regulation Committee (LRC)
<b>FROM</b>	Shara Murphy, Executive Officer prepared by Marc Johnson, Policy Analyst
<b>SUBJECT</b>	Agenda Item # 5: Update, Discussion and Possible Recommendations to Full Board Regarding Assembly Bill 1467 (Salas): Optometrists: scope of practice: delegation of services agreement

Assembly Bill 1467 (Salas), relating to Optometrists: scope of practice: delegation of services agreement, was introduced on February 22, 2019 in the Legislature. It has not been amended since, and as of this writing is currently on the consent calendar awaiting committee referral in the Senate.

The LRC had previously reviewed Assembly Bill 1467 (Salas) at the March 8, 2019 public meeting and recommended a support position to the full Board. At the April 5, 2019 public meeting, the Board did not take any position on the bill, pending further development of the text. COA indicated at the meeting that discussions on amending the bill are ongoing.

The LRC has been asked to further review the bill and recommend if any action be taken.

Attachments:

- A – AB 1467 (Salas) text, as introduced February 22, 2019
- B – Assembly Business and Professions Committee analysis dated April 19, 2019

**ASSEMBLY BILL**

**No. 1467**

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**Introduced by Assembly Members Salas and Low**

February 22, 2019

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An act to amend Section 3041 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1467, as introduced, Salas. Optometrists: scope of practice: delegation of services agreement.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry in the Department of Consumer Affairs. Existing law provides that the practice of optometry includes various functions relating to the visual system, including performing certain functions under the direction of, or after consultation with, an ophthalmologist. A violation of the act is a misdemeanor.

This bill would authorize an optometrist to provide services set forth in a delegation of services agreement, as defined, between an optometrist and an ophthalmologist. Because the bill would expand the scope of practice of optometry, this bill would revise the definition of a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The intent of the Legislature in enacting this act  
2 is as follows:

3 (a) To authorize ophthalmologists to enter into agreements for  
4 the delegation of services by ophthalmologists to optometrists that  
5 will increase the two professions' collaboration in the treatment  
6 of patients.

7 (b) That delegation of service agreements between  
8 ophthalmologists and optometrists improve access to quality vision  
9 care as well as provide options for screening and early diagnosis  
10 of systemic diseases.

11 SEC. 2. Section 3041 of the Business and Professions Code is  
12 amended to read:

13 3041. (a) The practice of optometry includes the prevention  
14 and diagnosis of disorders and dysfunctions of the visual system,  
15 and the treatment and management of certain disorders and  
16 dysfunctions of the visual system, as well as the provision of  
17 habilitative or rehabilitative optometric services, and is the doing  
18 of any or all of the following:

19 (1) The examination of the human eye or eyes, or its or their  
20 appendages, and the analysis of the human vision system, either  
21 subjectively or objectively.

22 (2) The determination of the powers or range of human vision  
23 and the accommodative and refractive states of the human eye or  
24 eyes, including the scope of its or their functions and general  
25 condition.

26 (3) The prescribing or directing the use of, or using, any optical  
27 device in connection with ocular exercises, visual training, vision  
28 training, or orthoptics.

29 (4) The prescribing of contact and spectacle lenses for, or the  
30 fitting or adaptation of contact and spectacle lenses to, the human  
31 eye, including lenses that may be classified as drugs or devices by  
32 any law of the United States or of this state.

33 (5) The use of topical pharmaceutical agents for the purpose of  
34 the examination of the human eye or eyes for any disease or  
35 pathological condition.

36 (b) (1) An optometrist who is certified to use therapeutic  
37 pharmaceutical agents, pursuant to Section 3041.3, may also

1 diagnose and treat the human eye or eyes, or any of its or their  
2 appendages, for all of the following conditions:

3 (A) Through medical treatment, infections of the anterior  
4 segment and adnexa, excluding the lacrimal gland, the lacrimal  
5 drainage system, and the sclera in patients under 12 years of age.

6 (B) Ocular allergies of the anterior segment and adnexa.

7 (C) Ocular inflammation, nonsurgical in cause except when  
8 comanaged with the treating physician and surgeon, limited to  
9 inflammation resulting from traumatic iritis, peripheral corneal  
10 inflammatory keratitis, episcleritis, and unilateral nonrecurrent  
11 nongranulomatous idiopathic iritis in patients over 18 years of age.

12 (D) Traumatic or recurrent conjunctival or corneal abrasions  
13 and erosions.

14 (E) Nonmalignant ocular surface disease and dry eye disease.

15 (F) Ocular pain, nonsurgical in cause except when comanaged  
16 with the treating physician and surgeon, associated with conditions  
17 optometrists are authorized to treat.

18 (G) Hypotrichosis and blepharitis.

19 (H) Pursuant to subdivision (e), glaucoma in patients over 18  
20 years of age, as described in subdivision (k).

21 (2) For purposes of this section, “treat” means the use of  
22 therapeutic pharmaceutical agents, as described in subdivision (c),  
23 and the procedures described in subdivision (d).

24 (c) In diagnosing and treating the conditions listed in subdivision  
25 (b), an optometrist certified to use therapeutic pharmaceutical  
26 agents pursuant to Section 3041.3 may use or prescribe, including  
27 for rational off-label purposes, all of the following therapeutic  
28 pharmaceutical agents:

29 (1) Topical pharmaceutical agents for the examination of the  
30 human eye or eyes for any disease or pathological condition,  
31 including, but not limited to, topical miotics.

32 (2) Topical lubricants.

33 (3) Antiallergy agents. In using topical steroid medication for  
34 the treatment of ocular allergies, an optometrist shall consult with  
35 an ophthalmologist if the patient’s condition worsens 21 days after  
36 diagnosis.

37 (4) Topical and oral anti-inflammatories.

38 (5) Topical antibiotic agents.

39 (6) Topical hyperosmotics.

- 1 (7) Topical and oral antiglaucoma agents pursuant to the  
2 certification process defined in subdivision (e).
- 3 (8) Nonprescription medications used for the rational treatment  
4 of an ocular disorder.
- 5 (9) Oral antihistamines.
- 6 (10) Prescription oral nonsteroidal anti-inflammatory agents.
- 7 (11) Oral antibiotics for medical treatment of ocular disease.
- 8 (12) Topical and oral antiviral medication for the medical  
9 treatment of herpes simplex viral keratitis, herpes simplex viral  
10 conjunctivitis, periocular herpes simplex viral dermatitis, varicella  
11 zoster viral keratitis, varicella zoster viral conjunctivitis, and  
12 periocular varicella zoster viral dermatitis.
- 13 (13) Oral analgesics that are not controlled substances.
- 14 (14) Codeine with compounds, hydrocodone with compounds,  
15 and tramadol as listed in the California Uniform Controlled  
16 Substances Act (Division 10 (commencing with Section 11000)  
17 of the Health and Safety Code) and the United States Uniform  
18 Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use  
19 of these agents shall be limited to three days, with a referral to an  
20 ophthalmologist if the pain persists.
- 21 (15) Additional therapeutic pharmaceutical agents pursuant to  
22 subdivision (f).
- 23 (d) An optometrist who is certified to use therapeutic  
24 pharmaceutical agents pursuant to Section 3041.3 may also perform  
25 all of the following procedures:
- 26 (1) Corneal scraping with cultures.
- 27 (2) Debridement of corneal epithelia.
- 28 (3) Mechanical epilation.
- 29 (4) Collection of blood by skin puncture or venipuncture for  
30 testing patients suspected of having diabetes.
- 31 (5) Suture removal, with prior consultation with the treating  
32 physician and surgeon.
- 33 (6) Treatment or removal of sebaceous cysts by expression.
- 34 (7) Administration of oral fluorescein to patients suspected as  
35 having diabetic retinopathy.
- 36 (8) Use of an auto-injector to counter anaphylaxis.
- 37 (9) Ordering of smears, cultures, sensitivities, complete blood  
38 count, mycobacterial culture, acid fast stain, urinalysis, tear fluid  
39 analysis, and X-rays necessary for the diagnosis of conditions or  
40 diseases of the eye or adnexa. An optometrist may order other

1 types of images subject to prior consultation with an  
2 ophthalmologist or appropriate physician and surgeon.

3 (10) A clinical laboratory test or examination classified as  
4 waived under the federal Clinical Laboratory Improvement  
5 Amendments of 1988 (CLIA) (42 U.S.C. Sec. 263a; Public Law  
6 100-578) and designated in paragraph (9) necessary for the  
7 diagnosis of conditions and diseases of the eye or adnexa, or if  
8 otherwise specifically authorized by this chapter.

9 (11) Punctal occlusion by plugs, excluding laser, diathermy,  
10 cryotherapy, or other means constituting surgery as defined in this  
11 chapter.

12 (12) The use or prescription of diagnostic or therapeutic contact  
13 lenses, including lenses or devices that incorporate a medication  
14 or therapy the optometrist is certified to prescribe or provide.

15 (13) Removal of foreign bodies from the cornea, eyelid, and  
16 conjunctiva with any appropriate instrument other than a scalpel.  
17 Corneal foreign bodies shall be nonperforating, be no deeper than  
18 the midstroma, and require no surgical repair upon removal.

19 (14) For patients over 12 years of age, lacrimal irrigation and  
20 dilation, excluding probing of the nasal lacrimal tract. The board  
21 shall certify any optometrist who graduated from an accredited  
22 school of optometry before May 1, 2000, to perform this procedure  
23 after submitting proof of satisfactory completion of 10 procedures  
24 under the supervision of an ophthalmologist as confirmed by the  
25 ophthalmologist. Any optometrist who graduated from an  
26 accredited school of optometry on or after May 1, 2000, shall be  
27 exempt from the certification requirement contained in this  
28 paragraph.

29 (15) Intravenous injection for the purpose of performing ocular  
30 angiography at the direction of an ophthalmologist as part of an  
31 active treatment plan in a setting where a physician and surgeon  
32 is immediately available.

33 (16) Skin testing to diagnose ocular allergies, limited to the  
34 superficial layer of the skin.

35 (17) Use of any noninvasive medical device or technology  
36 authorized pursuant to subdivision (f).

37 (e) An optometrist certified pursuant to Section 3041.3 shall be  
38 certified for the treatment of glaucoma, as described in subdivision  
39 (k), in patients over 18 years of age after the optometrist meets the  
40 following applicable requirements:

- 1 (1) For licensees who graduated from an accredited school of  
2 optometry on or after May 1, 2008, submission of proof of  
3 graduation from that institution.
- 4 (2) For licensees who were certified to treat glaucoma under  
5 this section ~~prior to~~ *before* January 1, 2009, submission of proof  
6 of completion of that certification program.
- 7 (3) For licensees who completed a didactic course of not less  
8 than 24 hours in the diagnosis, pharmacological, and other  
9 treatment and management of glaucoma, submission of proof of  
10 satisfactory completion of the case management requirements for  
11 certification established by the board.
- 12 (4) For licensees who graduated from an accredited school of  
13 optometry on or before May 1, 2008, and who are not described  
14 in paragraph (2) or (3), submission of proof of satisfactory  
15 completion of the requirements for certification established by the  
16 board under Chapter 352 of the Statutes of 2008.
- 17 (f) (1) Any topical or oral therapeutic pharmaceutical agent,  
18 which is not a controlled substance, or noninvasive medical device  
19 or technology that is not expressly authorized for use or  
20 prescription by an optometrist certified to use therapeutic  
21 pharmaceutical agents pursuant to Section 3041.3 shall be deemed  
22 to be authorized if it has received a United States Food and Drug  
23 Administration approved indication for the diagnosis or treatment  
24 of a condition authorized by this chapter. A licensee shall  
25 successfully complete any clinical training imposed by a related  
26 manufacturer ~~prior to~~ *before* using any of those therapeutic  
27 pharmaceutical agents or noninvasive medical devices or  
28 technologies.
- 29 (2) Any other topical or oral therapeutic pharmaceutical agent,  
30 which is not a controlled substance, or noninvasive medical device  
31 or technology that is not expressly authorized for use or  
32 prescription by an optometrist certified to use therapeutic  
33 pharmaceutical agents pursuant to Section 3041.3 and does not  
34 meet the requirements in paragraph (1) shall be deemed authorized  
35 if approved by the board through regulation for the rational  
36 treatment of a condition authorized by this chapter. Any regulation  
37 under this paragraph shall require a licensee to successfully  
38 complete an appropriate amount of clinical training to qualify to  
39 use each topical or oral therapeutic pharmaceutical agent or

1 noninvasive medical device or technology approved by the board  
2 pursuant to this paragraph.

3 (3) This subdivision shall not be construed to authorize any of  
4 the following:

5 (A) Any therapeutic pharmaceutical agent, medical device, or  
6 technology involving cutting, altering, or otherwise infiltrating  
7 human tissue by any means.

8 (B) A clinical laboratory test or imaging study not authorized  
9 by paragraphs (1) to (16), inclusive, of subdivision (d).

10 (C) Treatment of any disease or condition that could not be  
11 treated by an optometrist before January 1, 2018.

12 (g) (1) An optometrist certified pursuant to Section 3041.3 shall  
13 be certified for the administration of immunizations after the  
14 optometrist meets all of the following requirements:

15 (A) Completes an immunization training program endorsed by  
16 the federal Centers for Disease Control and Prevention (CDC) or  
17 the Accreditation Council for Pharmacy Education that, at a  
18 minimum, includes hands-on injection technique, clinical  
19 evaluation of indications and contraindications of vaccines, and  
20 the recognition and treatment of emergency reactions to vaccines,  
21 and maintains that training.

22 (B) Is certified in basic life support.

23 (C) Complies with all state and federal recordkeeping and  
24 reporting requirements, including providing documentation to the  
25 patient's primary care provider and entering information in the  
26 appropriate immunization registry designated by the immunization  
27 branch of the State Department of Public Health.

28 (D) Applies for an immunization certificate on a board-approved  
29 form.

30 (2) For the purposes of this section, "immunization" means the  
31 administration of immunizations for influenza, herpes zoster virus,  
32 and pneumococcus in compliance with individual Advisory  
33 Committee on Immunization Practices (ACIP) vaccine  
34 recommendations published by the CDC for persons 18 years of  
35 age or older.

36 (h) Other than for prescription ophthalmic devices described in  
37 subdivision (b) of Section 2541, any dispensing of a therapeutic  
38 pharmaceutical agent by an optometrist shall be without charge.

39 (i) The practice of optometry does not include performing  
40 surgery. "Surgery" means any procedure in which human tissue



1 is cut, altered, or otherwise infiltrated by mechanical or laser  
2 means. “Surgery” does not include those procedures specified in  
3 paragraphs (1) to (15), inclusive, of subdivision (d). This  
4 subdivision does not limit an optometrist’s authority to utilize  
5 diagnostic laser and ultrasound technology within ~~his or her~~ *the*  
6 *optometrist’s* scope of practice.

7 (j) An optometrist licensed under this chapter is subject to the  
8 provisions of Section 2290.5 for purposes of practicing telehealth.

9 (k) For purposes of this chapter, “glaucoma” means either of  
10 the following:

- 11 (1) All primary open-angle glaucoma.
- 12 (2) Exfoliation and pigmentary glaucoma.
- 13 (3) (A) Steroid induced glaucoma.
- 14 (B) If an optometrist treats a patient for steroid induced  
15 ~~glaucoma~~ *glaucoma*, the optometrist shall promptly notify the  
16 prescriber of the steroid medication if the prescriber did not refer  
17 the patient to the optometrist for treatment.

18 (l) For purposes of this chapter, “adnexa” means ocular adnexa.

19 (m) In an emergency, an optometrist shall stabilize, if possible,  
20 and immediately refer any patient who has an acute attack of angle  
21 closure to an ophthalmologist.

22 (n) (1) *In addition to the authority granted pursuant to this*  
23 *section, an optometrist may provide services set forth in a*  
24 *delegation of services agreement between an optometrist and an*  
25 *ophthalmologist.*

26 (2) *For purposes of this subdivision, “delegation of services*  
27 *agreement” means a writing between an ophthalmologist and an*  
28 *optometrist authorizing the optometrist to perform services*  
29 *consistent with this act.*

30 SEC. 3. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.

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Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1467 (Salas) – As Introduced February 22, 2019

**SUBJECT:** Optometrists: scope of practice: delegation of services agreement.

**SUMMARY:** Authorizes an optometrist to provide services set forth in a delegation of services agreement between the optometrist and an ophthalmologist.

**EXISTING LAW:**

- 1) Establishes the State Board of Optometry for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) § 3000 *et al.*)
- 2) Establishes the Medical Board of California for the licensure and regulation of physicians and surgeons, including ophthalmologists specializing in the diagnosis and treatment of eye disorders. (BPC §§ 2000 *et seq.*)
- 3) Makes it unlawful for a person to engage in or advertise the practice of optometry without having first obtained an optometrist license from the Board. (BPC § 3040)
- 4) States that protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC Section 3010.1)
- 5) Provides for the certification of optometrists to use therapeutic pharmaceutical agents and the authorization to diagnose and treat 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 habilitative or rehabilitative optometric services. (BPC § 3041.)

**THIS BILL:**

- 1) States that it is the intent of the Legislature to authorize ophthalmologists to enter into agreements for the delegation of services by ophthalmologists to optometrists that will increase the two professions' collaboration in the treatment of patients, and that delegation of service agreements between ophthalmologists and optometrists will improve access to quality vision care as well as provide options for screening and early diagnosis of systemic diseases.
- 2) Provides that in addition to the practice authority currently granted to an optometrist, an optometrist may provide services set forth in a delegation of services agreement between an optometrist and an ophthalmologist.
- 3) Defines "delegation of services agreement" as a writing between an ophthalmologist and an optometrist authorizing the optometrist to perform certain services.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the **California Optometric Association**. According to the author:

California's health care workforce shortage is in the headlines – and the impact on Californians' health is growing worse. According to a new report from the California Future Health Workforce Commission, seven million Californians already live in Health Professional Shortage Areas, facing long waits or long drives for care. The majority are Latino, African American and Native American. As California's population grows older and the state confronts chronic diseases like diabetes, the state needs to broaden its strategies for meeting the needs of our diverse population. Optometrists are extensively trained and are well-positioned throughout the state to meet the increasing demand for specialized eye care services.

**Background.** In the wake of what many regard to be a physician shortage in California, efforts have been made to expand the scope of practice for optometrists to provide services traditionally reserved for physicians and surgeons specializing in ophthalmology. For example, legislation enacted in recent years have allowed optometrists to treat glaucoma, use therapeutic pharmaceutical agents, and employ the use of new drugs and technologies to treat certain conditions. These efforts have drawn on the extensive training optometrists receive to empower them to provide additional services and alleviate the need for patients to obtain care from an ophthalmologist.

However, unlike in other states, California does not generally allow optometrists to perform minor surgical procedures independently. This has been a source of frustration for many optometrists who are trained in these procedures in optometry school, but are unable to perform them as long as they practice in California. The intent of this legislation is to provide a path forward for statute to authorize optometrists to take on some procedures currently only available to physicians and surgeons. The bill would authorize an optometrist to provide services that are included in a delegation of services agreement with an ophthalmologist, in which a physician expressly authorizes the optometrist to perform those services. These types of documents are frequently used by physicians who allow another license type to perform services on their behalf under supervision. The author's intention is to ultimately develop legislation that would expand the authority of an optometrist to perform certain procedures, while ensuring that a licensed physician ultimately remains involved.

**Prior Related Legislation.** AB 443 (Salas, Chapter 549, Statutes of 2017) made a number of changes to the Optometry Practice Act including broadening the scope of practice for optometrists by permitting an optometrist to conduct additional procedures on their patients.

**REGISTERED SUPPORT:**

California Optometric Association (Sponsor)

**REGISTERED OPPOSITION:**

None on file.

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