

AMENDED IN ASSEMBLY MAY 17, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2683

Introduced by Assembly Member Hernandez

February 19, 2010

An act to amend Sections 2544, 2553.6, 2559.4, and 2564 of, and to add Section 3070.1 to, the Business and Professions Code, relating to ~~optometrists~~ optometry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2683, as amended, Hernandez. ~~Optometrists~~—*Optometry*.

Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. A violation of the act constitutes a crime. Existing law requires an optometrist, prior to engaging in the practice of optometry, to notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of optometry.

This bill would authorize the practice of optometry at a health facility or residential care facility, as defined, provided the optometrist meets specified requirements, including, but not limited to, those related to maintaining a nonresidential primary business office, patient access to, and disclosure of, patient records, and specified recordkeeping requirements. The bill would exempt from the address notification requirements to the board an optometrist who practices in a health facility or residential care facility and who meets the above requirements. Because a violation of those provisions would constitute a crime, the bill would impose a state-mandated local program.

Existing law authorizes an assistant in the office of a physician and surgeon or optometrist under the direct responsibility and supervision of a physician and surgeon or optometrist to fit prescription lenses. Existing law also specifies additional duties that an assistant may perform in the office of, and under the direct supervision of, an ophthalmologist or optometrist.

This bill would authorize an assistant to fit prescription lenses and perform those additional duties in any setting where optometry or ophthalmology is practiced, under the direct responsibility and supervision of a physician and surgeon, optometrist, or ophthalmologist, respectively. The bill would define “setting” for purposes of this provision to include, without limitation, any facility licensed by the State Department of Public Health or the State Department of Social Services. The bill would make conforming changes to related provisions.

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 2544 of the Business and Professions
- 2 Code is amended to read:
- 3 2544. ~~An~~ (a) Notwithstanding any other provision of law, an
- 4 assistant in the office of a physician and surgeon or optometrist
- 5 any setting where optometry or ophthalmology is practiced who
- 6 is acting under the direct responsibility and supervision of ~~the a~~
- 7 physician and surgeon or optometrist may fit prescription lenses.
- 8 Under the direct responsibility and supervision of ~~the an~~
- 9 ophthalmologist or optometrist, an assistant in the office of an
- 10 ~~ophthalmologist or optometrist~~ any setting where optometry or
- 11 ~~ophthalmology is practiced~~ may also do the following:
- 12 ~~(a)~~
- 13 (1) Prepare patients for examination.
- 14 ~~(b)~~
- 15 (2) Collect preliminary patient data, including taking a patient
- 16 history.

- 1 (e)
- 2 (3) Perform simple noninvasive testing of visual acuity, pupils,
- 3 and ocular motility.
- 4 (d)
- 5 (4) Perform automated visual field testing.
- 6 (e)
- 7 (5) Perform ophthalmic photography and digital imaging.
- 8 (f)
- 9 (6) Perform tonometry.
- 10 (g)
- 11 (7) Perform lensometry.
- 12 (h)
- 13 (8) Perform nonsubjective auto refraction in connection with
- 14 subjective refraction procedures performed by an ophthalmologist
- 15 or optometrist.
- 16 (i)
- 17 (9) Administer cycloplegiacs, mydriatics, and topical anesthetics
- 18 that are not controlled substances, for ophthalmic purposes.
- 19 (j)
- 20 (10) Perform pachymetry, keratometry, A scans, B scans, and
- 21 electrodiagnostic testing.
- 22 (b) *For the purposes of this section, “setting” includes, but is*
- 23 *not limited to, any facility licensed by the State Department of*
- 24 *Public Health or the State Department of Social Services.*
- 25 *SEC. 2. Section 2553.6 of the Business and Professions Code*
- 26 *is amended to read:*
- 27 2553.6. The board shall deny any application for registration
- 28 under this chapter if any person licensed under Chapter 5
- 29 (commencing with Section 2000) ~~of this division~~, for whom the
- 30 applicant, in accordance with Section 2550, proposes to fill any
- 31 prescription, has any proprietary interest, or has designated or
- 32 arranged for any other person to have any proprietary interest in
- 33 or with the applicant.
- 34 The board may, in accordance with Section 2555, suspend,
- 35 revoke, or refuse to renew the certificate of any individual or firm
- 36 under this chapter, if such individual or firm, after the effective
- 37 date of this section, fills, or has filled, while holding a certificate
- 38 issued pursuant to this chapter, any prescription issued by any
- 39 person licensed under Chapter 5 (commencing with Section 2000)
- 40 ~~of this division~~ who has any proprietary interest, or has designated

1 or arranged for any other person to have any proprietary interest,
 2 in or with such individual or firm.

3 Such penalties shall be in addition to, and not to the exclusion
 4 of, any other remedies or penalties provided by law.

5 “Proprietary interest,” for the purposes of this section, means
 6 any membership, coownership, stock ownership, legal or beneficial
 7 interest, any other proprietary interest, or profit-sharing
 8 arrangement, designated or arranged or held, directly or indirectly
 9 in any form, in or with any individual or firm applying for
 10 registration or registered under this chapter, except stock ownership
 11 in a corporation which is listed on a stock exchange regulated by
 12 the Securities and Exchange Commission if the stock is acquired
 13 in a transaction conducted through such stock exchange.

14 This section shall apply only to a dispensing optician required
 15 to be registered pursuant to Chapter 5.5 (commencing with Section
 16 2550) ~~of Division 2 of this code~~, and shall not be construed to
 17 modify Section 2557, or to affect the fitting of prescription lenses
 18 by ~~a technician~~ *an assistant* pursuant to Section 2544.

19 *SEC. 3. Section 2559.4 of the Business and Professions Code*
 20 *is amended to read:*

21 2559.4. This article shall not apply to ~~a technician~~ *an assistant*
 22 fitting spectacle lenses ~~in the office of a physician and surgeon or~~
 23 ~~optometrist~~ pursuant to Section 2544 if the ~~technician~~ *assistant* is
 24 acting under the direct responsibility and supervision of ~~the a~~
 25 physician and surgeon or optometrist who engages in the practice
 26 of fitting spectacle lenses for his or her patients.

27 *SEC. 4. Section 2564 of the Business and Professions Code*
 28 *is amended to read:*

29 2564. The provisions of this article shall not apply to ~~a~~
 30 ~~technician~~ *an assistant* fitting contact lenses ~~in the office of a~~
 31 ~~physician and surgeon or optometrist~~ while acting under the direct
 32 responsibility and supervision of ~~the a~~ physician and surgeon or
 33 optometrist who engages in the practice of fitting contact lenses
 34 for his or her patients under Section 2544.

35 **SECTION 1.**

36 *SEC. 5. Section 3070.1 is added to the Business and Professions*
 37 *Code, to read:*

38 3070.1. (a) For purposes of this section, the following terms
 39 have the following meanings:

1 (1) "Health facility" means a health facility as defined in Section
2 1250 of the Health and Safety Code, exclusive of a hospital defined
3 in subdivision (a) or (b) of that section.

4 (2) "Residential care facility" means any facility licensed by
5 the State Department of Social Services caring for persons who
6 cannot live alone but who do not need extensive medical services.
7 The services provided in these facilities vary according to the needs
8 of the individual, but typically include help with medications and
9 assistance with personal hygiene, dressing, and grooming.
10 Residential care facilities include, but are not limited to, the
11 following:

12 (A) Adult residential facilities.

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

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

16 (D) Residential care facilities for the elderly.

17 (E) Continuing care retirement communities.

18 (F) Social rehabilitation facilities.

19 (b) An optometrist may engage in the practice of optometry at
20 any health facility or residential care facility provided that all of
21 the following requirements are satisfied:

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

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

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

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

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

34 (E) Is not a residential dwelling.

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

37 (A) Records are maintained and made available to the patient
38 in such a way that the type and extent of services provided to the
39 patient are conspicuously disclosed. The disclosure of records shall
40 be made at or near the time services are rendered and shall be

1 maintained at the primary business office specified in paragraph
2 (1).

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

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

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

- 17 (i) Name.
- 18 (ii) Optometrist license number.
- 19 (iii) The place of practice or primary business office.
- 20 (iv) Description of the goods and services for which the patient
21 is charged and the amount charged.

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

27 (3) The optometrist possesses and appropriately uses the
28 instruments and equipment required for all optometric services
29 and procedures performed within the health facility or residential
30 care facility.

31 (c) An optometrist who satisfies all of the requirements in this
32 section for the practice of optometry at a health facility or
33 residential care facility shall not be required to comply with Section
34 3070 with regard to providing notification to the board of each
35 facility or residential care facility at which he or she practices.

36 ~~SEC. 2.~~

37 *SEC. 6.* No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O