

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 14, 2010

AMENDED IN ASSEMBLY MAY 17, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2683**

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**Introduced by Assembly Member Hernandez**

February 19, 2010

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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 optometry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2683, as amended, Hernandez. 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. (a) Notwithstanding any other provision of law, an
- 4 assistant in any setting where optometry or ophthalmology is
- 5 practiced who is acting under the direct responsibility and
- 6 supervision of a physician and surgeon or optometrist may fit
- 7 prescription lenses. Under the direct responsibility and supervision
- 8 of an ophthalmologist or optometrist, an assistant in any setting
- 9 where optometry or ophthalmology is practiced may also do the
- 10 following:
- 11 (1) Prepare patients for examination.
- 12 (2) Collect preliminary patient data, including taking a patient
- 13 history.

1 (3) Perform simple noninvasive testing of visual acuity, pupils,  
2 and ocular motility.

3 (4) Perform automated visual field testing.

4 (5) Perform ophthalmic photography and digital imaging.

5 (6) Perform tonometry.

6 (7) Perform lensometry.

7 (8) Perform nonsubjective auto refraction in connection with  
8 subjective refraction procedures performed by an ophthalmologist  
9 or optometrist.

10 (9) Administer cycloplegiacs, mydriatics, and topical anesthetics  
11 that are not controlled substances, for ophthalmic purposes.

12 (10) Perform pachymetry, keratometry, A scans, B scans, and  
13 electrodiagnostic testing.

14 (b) For the purposes of this section, “setting” includes, but is  
15 not limited to, any facility licensed by the State Department of  
16 Public Health or the State Department of Social Services.

17 (c) Nothing in this section shall be construed to authorize  
18 activities that corporations and other artificial legal entities are  
19 prohibited from conducting by Section 2400.

20 SEC. 2. Section 2553.6 of the Business and Professions Code  
21 is amended to read:

22 2553.6. The board shall deny any application for registration  
23 under this chapter if any person licensed under Chapter 5  
24 (commencing with Section 2000), for whom the applicant, in  
25 accordance with Section 2550, proposes to fill any prescription,  
26 has any proprietary interest, or has designated or arranged for any  
27 other person to have any proprietary interest in or with the  
28 applicant.

29 The board may, in accordance with Section 2555, suspend,  
30 revoke, or refuse to renew the certificate of any individual or firm  
31 under this chapter, if such individual or firm, after the effective  
32 date of this section, fills, or has filled, while holding a certificate  
33 issued pursuant to this chapter, any prescription issued by any  
34 person licensed under Chapter 5 (commencing with Section 2000)  
35 who has any proprietary interest, or has designated or arranged for  
36 any other person to have any proprietary interest, in or with such  
37 individual or firm.

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

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

10 This section shall apply only to a dispensing optician required  
 11 to be registered pursuant to Chapter 5.5 (commencing with Section  
 12 2550) and shall not be construed to modify Section 2557, or to  
 13 affect the fitting of prescription lenses by an assistant pursuant to  
 14 Section 2544.

15 SEC. 3. Section 2559.4 of the Business and Professions Code  
 16 is amended to read:

17 2559.4. This article shall not apply to an assistant fitting  
 18 spectacle lenses pursuant to Section 2544 if the assistant is acting  
 19 under the direct responsibility and supervision of a physician and  
 20 surgeon or optometrist who engages in the practice of fitting  
 21 spectacle lenses for his or her patients.

22 SEC. 4. Section 2564 of the Business and Professions Code is  
 23 amended to read:

24 2564. The provisions of this article shall not apply to an  
 25 assistant fitting contact lenses while acting under the direct  
 26 responsibility and supervision of a physician and surgeon or  
 27 optometrist who engages in the practice of fitting contact lenses  
 28 for his or her patients under Section 2544.

29 SEC. 5. Section 3070.1 is added to the Business and Professions  
 30 Code, to read:

31 3070.1. (a) For purposes of this section, the following terms  
 32 have the following meanings:

33 (1) “Health facility” means a health facility as defined in Section  
 34 1250 of the Health and Safety Code, exclusive of a hospital defined  
 35 in subdivision (a) or (b) of that section.

36 (2) “Residential care facility” means ~~any facility~~ *a residential*  
 37 *facility, as defined in paragraph (1) of subdivision (a) of Section*  
 38 *1502 of the Health and Safety Code, licensed by the State*  
 39 *Department of Social Services caring for persons who cannot live*  
 40 *alone but who do not need extensive medical services. The services*

1 ~~provided in these facilities vary according to the needs of the~~  
2 ~~individual, but typically include help with medications and~~  
3 ~~assistance with personal hygiene, dressing, and grooming.~~  
4 ~~Residential care facilities include, but are not limited to, the,~~  
5 ~~*including, but not limited to, the* following:~~

- 6 (A) Adult residential facilities.
- 7 (B) Adult residential facilities for persons with special health  
8 care needs.
- 9 (C) Residential care facilities for the chronically ill.
- 10 (D) Residential care facilities for the elderly.
- 11 (E) Continuing care retirement communities.
- 12 (F) Social rehabilitation facilities.

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

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

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

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

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

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

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

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

31 (A) Records are maintained and made available to the patient  
32 in such a way that the type and extent of services provided to the  
33 patient are conspicuously disclosed. The disclosure of records shall  
34 be made at or near the time services are rendered and shall be  
35 maintained at the primary business office specified in paragraph  
36 (1).

37 (B) The optometrist complies with all federal and state laws  
38 and regulations regarding the maintenance and protection of  
39 medical records, including, but not limited to, the federal Health

1 Insurance Portability and Accountability Act of 1996 (42 U.S.C.  
2 Sec. 300gg).

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

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

12 (i) Name.

13 (ii) Optometrist license number.

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

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

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

22 (3) The optometrist possesses and appropriately uses the  
23 instruments and equipment required for all optometric services  
24 and procedures performed within the health facility or residential  
25 care facility.

26 (c) An optometrist who satisfies all of the requirements in this  
27 section for the practice of optometry at a health facility or  
28 residential care facility shall not be required to comply with Section  
29 3070 with regard to providing notification to the board of each  
30 facility or residential care facility at which he or she practices.

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

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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