

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 24, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 492

Introduced by Senator Hernandez

February 21, 2013

An act to amend Sections ~~3041 and 3041.1~~ *3041, 3041.1, and 3110* of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as amended, Hernandez. Optometrist: practice: licensure.

The Optometry Practice Act creates the State Board of Optometry, which licenses optometrists and regulates their practice. Existing law defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. Any violation of the act is a crime.

~~This bill would add the provision of habilitative optometric services to the definition of the practice of optometry. The bill would expand the practice parameters of optometrists who are certified to use therapeutic pharmaceutical agents by removing certain limitations on their practice and adding certain responsibilities, including, but not limited to, the ability to immunize and treat certain diseases, and deleting the specified drugs the optometrist would be authorized to use, and authorizing the optometrist to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration, as provided. The bill would also delete limitations on certain kinds of diagnostic tests an optometrist can order and would authorize an optometrist to order appropriate laboratory and diagnostic imaging tests, as provided.~~

This bill would include the provision of habilitative optometric services within the scope of practice of optometry. The bill would expand the scope of practice of optometrists who are certified to use therapeutic pharmaceutical agents by, among other things, authorizing those optometrists to use all therapeutic pharmaceutical agents approved by the United States Food and Drug Administration for use in treating the eye conditions covered by these provisions. The bill would also expand the ability of an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat certain diseases, as provided. The bill would require the board to grant a certificate to an optometrist for the use of advanced procedures, which include the administration of certain immunizations, if the optometrist meets certain educational requirements.

Existing law requires optometrists in diagnosing or treating eye disease to be held to the same standard of care as physicians and surgeons and osteopathic physicians and surgeons.

This bill would expand this requirement to include diagnosing other diseases, and would require an optometrist to consult with and, if necessary, refer to a physician and surgeon or other appropriate health care provider if a situation or condition was beyond the optometrist's scope of practice.

This bill would delete obsolete provisions and make conforming changes.

Because this bill would change the definition of a crime, it would create 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 3041 of the Business and Professions
2 Code is amended to read:

3 3041. (a) The practice of optometry includes the prevention
4 and diagnosis of disorders and dysfunctions of the visual system,
5 and the treatment and management of certain disorders and
6 dysfunctions of the visual system, as well as the provision of
7 habilitative or rehabilitative optometric services, and is the doing
8 of any or all of the following:

9 (1) The examination of the human eye or eyes, or its or their
10 appendages, and the analysis of the human vision system, either
11 subjectively or objectively.

12 (2) The determination of the powers or range of human vision
13 and the accommodative and refractive states of the human eye or
14 eyes, including the scope of its or their functions and general
15 condition.

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

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

23 (5) The use of topical pharmaceutical agents for the purpose of
24 the examination of the human eye or eyes for any disease or
25 pathological condition.

26 (b) (1) An optometrist who is certified to use therapeutic
27 pharmaceutical agents, pursuant to Section 3041.3, may also
28 diagnose and treat the human eye or eyes, or any of its or their
29 appendages, for all of the following conditions:

1 (A) Through medical treatment, infections of the anterior
2 segment and adnexa.

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

4 (C) Ocular ~~inflammation~~, *inflammation* nonsurgical in ~~cause~~
5 *cause*, except when comanaged with the treating physician and
6 surgeon.

7 (D) Traumatic or recurrent conjunctival or corneal abrasions
8 and erosions.

9 (E) Corneal surface disease and dry eyes. *Treatment for purposes*
10 *of this subparagraph includes, but is not limited to, the use of*
11 *mechanical lipid extraction of meibomian glands using nonsurgical*
12 *techniques.*

13 (F) Ocular ~~pain~~, *pain* nonsurgical in ~~cause~~ *cause*, except when
14 comanaged with the treating physician and surgeon.

15 (G) Pursuant to subdivision (f), glaucoma in patients over 18
16 years of age, as described in subdivision ~~(j)~~. *(l)*.

17 (H) Eyelid disorders, including hypotrichosis and blepharitis.

18 (2) For purposes of this section, “treat” means the use of
19 therapeutic pharmaceutical agents, as described in subdivision (c),
20 and the procedures described in subdivision (e).

21 (c) In diagnosing and treating the conditions listed in subdivision
22 (b), an optometrist certified to use therapeutic pharmaceutical
23 agents pursuant to Section 3041.3 may use all therapeutic
24 pharmaceutical agents approved by the United States Food and
25 Drug Administration for use in treating eye conditions set forth in
26 this chapter, including codeine with compounds and hydrocodone
27 with compounds as listed in the California Uniform Controlled
28 Substances Act (Division 10 (commencing with Section 11000)
29 of the Health and Safety Code) and the ~~United States~~ *federal*
30 Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use
31 of ~~these agents~~ *controlled substances* shall be limited to three
32 days.

33 (d) In any case that an optometrist consults with a physician
34 and surgeon, the optometrist and the physician and surgeon shall
35 both maintain a written record in the patient’s file of the
36 information provided to the physician and surgeon, the physician
37 and surgeon’s response, and any other relevant information. Upon
38 the request of the optometrist or physician and surgeon and with
39 the patient’s consent, a copy of the record shall be furnished to the
40 requesting party.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

- (1) Corneal scraping with cultures.
- (2) Debridement of corneal epithelia.
- (3) Mechanical epilation.
- (4) Venipuncture for testing patients suspected of having diabetes.

(5) Suture removal, upon notification of the treating physician and ~~surgeon~~: *surgeon or optometrist*.

(6) Treatment or removal of sebaceous cysts by expression.

~~(7) Administration of oral fluorescein.~~

~~(8)~~

(7) Use of an auto-injector to counter anaphylaxis.

~~(9)~~

(8) Ordering of appropriate laboratory and diagnostic imaging tests for conditions authorized to be treated pursuant to this section.

~~(10)~~

(9) A clinical laboratory test or examination classified as waived under ~~CLIA and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.~~ *the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a) (CLIA). These laboratory tests are required to be performed in compliance with both CLIA and all clinical laboratory licensing requirements in Chapter 3 (commencing with Section 1200), and any ancillary personnel utilized shall be in compliance with those same requirements.*

~~(11)~~

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

~~(12)~~

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

~~(13)~~

(12) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a ~~scalpel~~: *scalpel*. Corneal foreign bodies shall be nonperforating, be no

1 deeper than the midstroma, and require no surgical repair upon
2 removal.

3 ~~(14)~~

4 *(13)* For patients over 12 years of age, lacrimal irrigation and
5 dilation, excluding probing of the nasal lacrimal tract. The board
6 shall certify any optometrist who graduated from an accredited
7 school of optometry before May 1, 2000, to perform this procedure
8 after submitting proof of satisfactory completion of 10 procedures
9 under the supervision of an ophthalmologist *or lacrimal irrigation*
10 *and dilation certified optometrist* as confirmed by the
11 ophthalmologist *or lacrimal irrigation and dilation certified*
12 *optometrist*. Any optometrist who graduated from an accredited
13 school of optometry on or after May 1, 2000, ~~shall be~~ *is* exempt
14 from the certification requirement contained in this paragraph.

15 ~~(15) Administration of immunizations for influenza, Herpes~~
16 ~~Zoster Virus, and additional immunizations that may be necessary~~
17 ~~to protect public health during a declared disaster or public health~~
18 ~~emergency.~~

19 ~~(16)~~

20 *(14)* In addition to diagnosing and treating conditions of the
21 visual system pursuant to this section, testing for ~~and, diagnoses~~
22 *and diagnosis* of diabetes mellitus, hypertension, and
23 hypercholesterolemia.

24 (f) The board shall grant a certificate to an optometrist certified
25 pursuant to Section 3041.3 for the treatment of glaucoma, as
26 described in subdivision ~~(j)~~; *(l)*, in patients over 18 years of age
27 after the optometrist meets the following applicable requirements:

28 (1) For licensees who graduated from an accredited school of
29 optometry on or after May 1, 2008, submission of proof of
30 graduation from that institution.

31 (2) For licensees who were certified to treat glaucoma under
32 this section prior to January 1, 2009, submission of proof of
33 completion of that certification program.

34 ~~(3) For licensees who have substantially completed the~~
35 ~~certification requirements pursuant to this section in effect between~~
36 ~~January 1, 2001, and December 31, 2008, submission of proof of~~
37 ~~completion of those requirements on or before December 31, 2009.~~
38 ~~“Substantially completed” means both of the following:~~

1 ~~(A) Satisfactory completion of a didactic course of not less than~~
2 ~~24 hours in the diagnosis, pharmacological, and other treatment~~
3 ~~and management of glaucoma.~~

4 ~~(B) Treatment of 50 glaucoma patients with a collaborating~~
5 ~~ophthalmologist for a period of two years for each patient that will~~
6 ~~conclude on or before December 31, 2009.~~

7 ~~(4)~~

8 (3) For licensees who completed a didactic course of not less
9 than 24 hours in the diagnosis, pharmacological, and other
10 treatment and management of glaucoma, submission of proof of
11 satisfactory completion of the case management requirements for
12 certification established by the board pursuant to Section 3041.10.

13 ~~(5)~~

14 (4) For licensees who graduated from an accredited school of
15 optometry on or before May 1, 2008, and not described in
16 paragraph ~~(2), (3), or (4)~~, (2) or (3), submission of proof of
17 satisfactory completion of the requirements for certification
18 established by the board pursuant to Section 3041.10.

19 (g) *The board shall grant a certificate to an optometrist certified*
20 *pursuant to subdivision (f) for the use of advanced procedures, as*
21 *described in subdivision (h), after the optometrist meets the*
22 *following applicable requirement:*

23 (1) *For licensees who graduated from an accredited school of*
24 *optometry that includes satisfactory curriculum on advanced*
25 *procedures, as determined by the board, on or after May 1, 2016,*
26 *submission of proof of graduation from that institution.*

27 (2) *For licensees who graduated from an accredited school*
28 *before May 1, 2016, submission of proof of completion of a 32-hour*
29 *course that includes clinical training in advanced procedures and*
30 *is approved the board.*

31 (h) *For the purposes of this chapter, “advanced procedures”*
32 *means any of the following:*

33 (1) *Therapeutic lasers used for posterior capsulotomy secondary*
34 *to cataract surgery.*

35 (2) *Therapeutic lasers appropriate for treatment of glaucoma*
36 *and peripheral iridotomy for the prophylactic treatment of angle*
37 *closure glaucoma.*

38 (3) *Excision, scraping, and biopsy, or any combination of those,*
39 *of superficial lesions of the eyelid and adnexa.*

40 (4) *Cauterization or suture repairs of the eyelid and conjunctiva.*

1 (5) *Injections for the treatment of conditions of the eye and*
2 *adnexa described in paragraph (1) of subdivision (b), excluding*
3 *intraorbital injections and injections administered for cosmetic*
4 *effect.*

5 (6) *Administration of immunizations for influenza, Herpes Zoster*
6 *Virus, and additional immunizations that may be necessary to*
7 *protect public health during a declared disaster or public health*
8 *emergency in compliance with individual Advisory Committee on*
9 *Immunization Practices (ACIP) vaccine recommendations*
10 *published by the federal Centers for Disease Control and*
11 *Prevention (CDC) for persons three years of age or older.*

12 (7) *Any noninvasive technology authorized by the board for the*
13 *treatment of conditions described in paragraph (1) of subdivision*
14 *(b).*

15 ~~(g)~~

16 (i) *Other than for prescription ophthalmic devices described in*
17 *subdivision (b) of Section 2541, any dispensing of a therapeutic*
18 *pharmaceutical agent by an optometrist shall be without charge.*

19 ~~(h) The~~

20 (j) *Except as authorized by this section, the practice of optometry*
21 *does not include performing surgery. “Surgery” means any*
22 *procedure in which human tissue is cut, altered, or otherwise*
23 *infiltrated by mechanical or laser means. “Surgery” does not*
24 *include those procedures specified in subdivision (e). Nothing in*
25 *this section shall limit an optometrist’s authority to utilize*
26 *diagnostic laser and ultrasound technology within his or her scope*
27 *of practice.*

28 ~~(i)~~

29 (k) *An optometrist licensed under this chapter is subject to the*
30 *provisions of Section 2290.5 for purposes of practicing telehealth.*

31 ~~(j)~~

32 (l) *For purposes of this chapter, “glaucoma” means either of the*
33 *following:*

34 (1) *All primary open-angle glaucoma.*

35 (2) *Exfoliation and pigmentary glaucoma.*

36 ~~(k)~~

37 (m) *For purposes of this chapter, “adnexa” means ocular adnexa.*

38 ~~(l)~~

1 (n) In an emergency, an optometrist shall stabilize, if possible,
2 and immediately refer any patient who has an acute attack of angle
3 closure to an ophthalmologist.

4 SEC. 2. Section 3041.1 of the Business and Professions Code
5 is amended to read:

6 3041.1. With respect to the practices set forth in Section 3041,
7 optometrists diagnosing or treating eye disease or diagnosing other
8 diseases shall be held to the same standard of care to which
9 physicians and surgeons and osteopathic physicians and surgeons
10 are held. An optometrist shall consult with and, if necessary, refer
11 to a physician and surgeon or other appropriate health care provider
12 if a situation or condition occurs that is beyond the optometrist's
13 scope of practice.

14 SEC. 3. *Section 3110 of the Business and Professions Code is*
15 *amended to read:*

16 3110. The board may take action against any licensee who is
17 charged with unprofessional conduct, and may deny an application
18 for a license if the applicant has committed unprofessional conduct.
19 In addition to other provisions of this article, unprofessional
20 conduct includes, but is not limited to, the following:

21 (a) Violating or attempting to violate, directly or indirectly
22 assisting in or abetting the violation of, or conspiring to violate
23 any provision of this chapter or any of the rules and regulations
24 adopted by the board pursuant to this chapter.

25 (b) Gross negligence.

26 (c) Repeated negligent acts. To be repeated, there must be two
27 or more negligent acts or omissions.

28 (d) Incompetence.

29 (e) The commission of fraud, misrepresentation, or any act
30 involving dishonesty or corruption, that is substantially related to
31 the qualifications, functions, or duties of an optometrist.

32 (f) Any action or conduct that would have warranted the denial
33 of a license.

34 (g) The use of advertising relating to optometry that violates
35 Section 651 or 17500.

36 (h) Denial of licensure, revocation, suspension, restriction, or
37 any other disciplinary action against a health care professional
38 license by another state or territory of the United States, by any
39 other governmental agency, or by another California health care

1 professional licensing board. A certified copy of the decision or
2 judgment shall be conclusive evidence of that action.

3 (i) Procuring his or her license by fraud, misrepresentation, or
4 mistake.

5 (j) Making or giving any false statement or information in
6 connection with the application for issuance of a license.

7 (k) Conviction of a felony or of any offense substantially related
8 to the qualifications, functions, and duties of an optometrist, in
9 which event the record of the conviction shall be conclusive
10 evidence thereof.

11 (l) Administering to himself or herself any controlled substance
12 or using any of the dangerous drugs specified in Section 4022, or
13 using alcoholic beverages to the extent, or in a manner, as to be
14 dangerous or injurious to the person applying for a license or
15 holding a license under this chapter, or to any other person, or to
16 the public, or, to the extent that the use impairs the ability of the
17 person applying for or holding a license to conduct with safety to
18 the public the practice authorized by the license, or the conviction
19 of a misdemeanor or felony involving the use, consumption, or
20 self administration of any of the substances referred to in this
21 subdivision, or any combination thereof.

22 (m) Committing or soliciting an act punishable as a sexually
23 related crime, if that act or solicitation is substantially related to
24 the qualifications, functions, or duties of an optometrist.

25 (n) Repeated acts of excessive prescribing, furnishing or
26 administering of controlled substances or dangerous drugs specified
27 in Section 4022, or repeated acts of excessive treatment.

28 (o) Repeated acts of excessive use of diagnostic or therapeutic
29 procedures, or repeated acts of excessive use of diagnostic or
30 treatment facilities.

31 (p) The prescribing, furnishing, or administering of controlled
32 substances or drugs specified in Section 4022, or treatment without
33 a good faith prior examination of the patient and optometric reason.

34 (q) The failure to maintain adequate and accurate records
35 relating to the provision of services to his or her patients.

36 (r) Performing, or holding oneself out as being able to perform,
37 or offering to perform, any professional services beyond the scope
38 of the license authorized by this chapter.

39 (s) The practice of optometry without a valid, unrevoked,
40 unexpired license.

1 (t) The employing, directly or indirectly, of any suspended or
2 unlicensed optometrist to perform any work for which an optometry
3 license is required.

4 (u) Permitting another person to use the licensee's optometry
5 license for any purpose.

6 (v) Altering with fraudulent intent a license issued by the board,
7 or using a fraudulently altered license, permit certification or any
8 registration issued by the board.

9 (w) Except for good cause, the knowing failure to protect
10 patients by failing to follow infection control guidelines of the
11 board, thereby risking transmission of blood borne infectious
12 diseases from optometrist to patient, from patient to patient, or
13 from patient to optometrist. In administering this subdivision, the
14 board shall consider the standards, regulations, and guidelines of
15 the State Department of Health Services developed pursuant to
16 Section 1250.11 of the Health and Safety Code and the standards,
17 guidelines, and regulations pursuant to the California Occupational
18 Safety and Health Act of 1973 (Part 1 (commencing with Section
19 6300) of Division 5 of the Labor Code) for preventing the
20 transmission of HIV, hepatitis B, and other blood borne pathogens
21 in health care settings. As necessary, the board may consult with
22 the Medical Board of California, the Board of Podiatric Medicine,
23 the Board of Registered Nursing, and the Board of Vocational
24 Nursing and Psychiatric Technicians, to encourage appropriate
25 consistency in the implementation of this subdivision.

26 (x) Failure or refusal to comply with a request for the clinical
27 records of a patient, that is accompanied by that patient's written
28 authorization for release of records to the board, within 15 days
29 of receiving the request and authorization, unless the licensee is
30 unable to provide the documents within this time period for good
31 cause.

32 (y) Failure to refer a patient to an appropriate physician ~~in either~~
33 ~~of the following circumstances: if an examination of the eyes~~
34 ~~indicates a substantial likelihood of any pathology that requires~~
35 ~~the attention of that physician.~~

36 ~~(1) Where an examination of the eyes indicates a substantial~~
37 ~~likelihood of any pathology that requires the attention of that~~
38 ~~physician.~~

39 ~~(2) As required by subdivision (c) of Section 3041.~~

1 *SEC. 4. It is the intent of the Legislature that the Office of*
2 *Statewide Health Planning and Development, under the Health*
3 *Workforce Pilot Projects Program, designate a pilot project*
4 *intended to test, demonstrate, and evaluate expanded roles for*
5 *optometrists in the performance of management and treatment of*
6 *diabetes mellitus, hypertension, and hypercholesterolemia.*

7 ~~SEC. 3.~~

8 *SEC. 5.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.