SENEGATE BILL  No. 492

Introduced by Senator Hernandez

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST


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.


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

SECTION 1. Section 3041 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:
(A) Through medical treatment, infections of the anterior segment and adnexa.

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

(C) Ocular inflammation, except when comanaged with the treating physician and surgeon.

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

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

(F) Ocular pain, except when comanaged with the treating physician and surgeon.

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

(H) Eyelid disorders, including hypotrichosis and blepharitis.

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

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

(d) In any case that an optometrist consults with a physician and surgeon, the optometrist and the physician and surgeon shall both maintain a written record in the patient’s file of the information provided to the physician and surgeon, the physician and surgeon’s response, and any other relevant information. Upon the request of the optometrist or physician and surgeon and with the patient’s consent, a copy of the record shall be furnished to the 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.
6. Treatment or removal of sebaceous cysts by expression.
7. Administration of oral fluorescein.
8. Use of an auto-injector to counter anaphylaxis.
9. Ordering of appropriate laboratory and diagnostic imaging tests for conditions authorized to be treated pursuant to this section.
10. 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.
11. Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.
12. 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. Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel. Corneal foreign bodies shall be nonperforating, be no
deeper than the midstroma, and require no surgical repair upon
removal.

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

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

(16) In addition to diagnosing and treating conditions of the
visual system pursuant to this section, testing for and, diagnoses
and diagnosis of diabetes mellitus, hypertension, and
hypercholesterolemia.

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

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

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

(3) For licensees who have substantially completed the
certification requirements pursuant to this section in effect between
January 1, 2001, and December 31, 2008, submission of proof of
completion of those requirements on or before December 31, 2009.
“Substantially completed” means both of the following:
(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.

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

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

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

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

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

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

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

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

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

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

(4) Cauterization or suture repairs of the eyelid and conjunctiva.
(5) Injections for the treatment of conditions of the eye and adnexa described in paragraph (1) of subdivision (b), excluding intraorbital injections and injections administered for cosmetic effect.

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

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

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

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

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

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

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

(m) For purposes of this chapter, “adnexa” means ocular adnexa.
(n) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

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

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

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

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

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

(b) Gross negligence.

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

(d) Incompetence.

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

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

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

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care
professional licensing board. A certified copy of the decision or
judgment shall be conclusive evidence of that action.

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

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

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

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

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

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

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

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

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

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

(s) The practice of optometry without a valid, unrevoked,
unexpired license.
(t) The employing, directly or indirectly, of any suspended or
unlicensed optometrist to perform any work for which an optometry
license is required.
(u) Permitting another person to use the licensee’s optometry
license for any purpose.
(v) Altering with fraudulent intent a license issued by the board,
or using a fraudulently altered license, permit certification or any
registration issued by the board.
(w) Except for good cause, the knowing failure to protect
patients by failing to follow infection control guidelines of the
board, thereby risking transmission of blood borne infectious
diseases from optometrist to patient, from patient to patient, or
from patient to optometrist. In administering this subdivision, the
board shall consider the standards, regulations, and guidelines of
the State Department of Health Services developed pursuant to
Section 1250.11 of the Health and Safety Code and the standards,
guidelines, and regulations pursuant to the California Occupational
Safety and Health Act of 1973 (Part 1 (commencing with Section
6300) of Division 5 of the Labor Code) for preventing the
transmission of HIV, hepatitis B, and other blood borne pathogens
in health care settings. As necessary, the board may consult with
the Medical Board of California, the Board of Podiatric Medicine,
the Board of Registered Nursing, and the Board of Vocational
Nursing and Psychiatric Technicians, to encourage appropriate
consistency in the implementation of this subdivision.
(x) Failure or refusal to comply with a request for the clinical
records of a patient, that is accompanied by that patient’s written
authorization for release of records to the board, within 15 days
of receiving the request and authorization, unless the licensee is
unable to provide the documents within this time period for good
cause.
(y) Failure to refer a patient to an appropriate physician in either
of the following circumstances: if an examination of the eyes
indicates a substantial likelihood of any pathology that requires
the attention of that physician.
(1) Where an examination of the eyes indicates a substantial
likelihood of any pathology that requires the attention of that
physician.
(2) As required by subdivision (c) of Section 3041.
SEC. 4. It is the intent of the Legislature that the Office of Statewide Health Planning and Development, under the Health Workforce Pilot Projects Program, designate a pilot project intended to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes mellitus, hypertension, and hypercholesterolemia.

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