
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No: AB 2236
Author: Low
Version: June 22, 2022
Urgency: No
Consultant: Elissa Silva

Hearing Date: June 27, 2022

Fiscal: Yes

Subject: Optometry: certification: use of anterior segment lasers and performing minor procedures.

SUMMARY: Adds additional optometric procedures that an optometrist is authorized to perform pursuant to the Optometric Practice Act (Act) if specified education and training conditions are met. Authorizes the Board of Optometry (Board) to charge a fee to issue a certificate to an optometrist who is authorized to perform those procedures.

Existing law:

- 1) Establishes the Board under the Department of Consumer Affairs (DCA) to license and regulate optometrists and registered dispensing opticians, spectacle lens dispensers and contact lens dispensers. (Business and Professions Code (BPC) § 3000 *et seq.*)
- 2) Authorizes the Board to adopt regulations prescribing minimum standards governing the optometric services offered or performed, the equipment, or the sanitary conditions in all offices for the practice of optometry, which are necessary to protect the health and safety of persons seeking services. (BPC § 3025.5)
- 3) States that the practice of optometry includes the diagnosis, prevention, treatment, and management of disorders and dysfunctions of the visual system, as specified, as well as the provision of habilitative or rehabilitative optometric services, and is the doing of any or all of the following:
 - a) The examination of the human eyes and their adnexa, including through the use of all topical and oral diagnostic pharmaceutical agents that are not controlled substances, and the analysis of the human vision system, either subjectively or objectively.
 - b) The determination of the powers or range of human vision and the accommodative and refractive states of the human eyes, including the scope of their functions and general condition.

- c) The prescribing, using, or directing the use of any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.
- d) The prescribing, fitting, or adaptation of contact and spectacle lenses to, the human eyes, including lenses that may be classified as drugs or devices by any law of the United States or of this state, and diagnostic or therapeutic contact lenses that incorporate a medication or therapy the optometrist is certified to prescribe or provide.
- e) For an optometrist certified to use therapeutic pharmaceutical agents, as specified, and treat certain conditions, diagnosing and preventing conditions and diseases of the human eyes and their adnexa, and treating nonmalignant conditions and diseases of the anterior segment of the human eyes and their adnexa, including ametropia and presbyopia:
 - i) Using or prescribing, including for rational off-label purposes, topical and oral prescription and nonprescription therapeutic pharmaceutical agents that are not controlled substances and are not antiglaucoma agents or limited or excluded
 - ii) Prescribing the oral analgesic controlled substance codeine with compounds, hydrocodone with compounds, and tramadol as listed in the California Uniform Controlled Substances Act limited to three days, with referral to an ophthalmologist if the pain persists.
 - iii) If also certified under subdivision (c), using or prescribing topical and oral antiglaucoma agents for the medical treatment of all primary open-angle, exfoliation, pigmentary, and steroid-induced glaucomas in persons 18 years of age or over, as specified
 - iv) If also certified, as specified, administration of immunizations for influenza, herpes zoster virus, pneumococcus, and SARS-CoV-2 in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the federal Centers for Disease Control and Prevention (CDC) in persons 18 years of age or over, as specified.
 - v) Utilizing specified techniques and instrumentation necessary for the diagnosis of conditions and diseases of the eye and adnexa.
 - vi) Laboratory tests or examinations ordered from an outside facility, Laboratory tests or examinations performed in an office classified as waived.

- vii) Detecting indicators of possible systemic disease that manifests in the eye for facilitating appropriate referral to or consultation with a physician and surgeon.
 - viii) Performing specified procedures, which are excluded from restrictions imposed on the performance of surgery unless explicitly indicated.
 - ix) Corneal scraping with cultures, debridement of corneal epithelium not associated with band keratopathy, mechanical epilation, collection of blood by skin puncture or venipuncture for laboratory testing authorized by this subdivision, suture removal subject to management, as required, treatment or removal of sebaceous cysts by expression, Lacrimal punctal occlusion, foreign body and staining removal from the cornea, eyelid, and conjunctiva with any appropriate instrument. Removal of corneal foreign bodies and any related stain shall, as relevant, be limited to that which is nonperforating, no deeper than the midstroma, and not reasonably anticipated to require surgical repair, lacrimal irrigation and dilation in patients 12 years of age or over, excluding probing of the nasolacrimal tract, administration of oral fluorescein for the purpose of ocular angiography, intravenous injection for the purpose of performing ocular angiography at the direction of an ophthalmologist as part of an active treatment plan in a setting where a physician and surgeon is immediately available, use of noninvasive devices delivering intense pulsed light therapy or low-level light therapy that do not rely on laser technology, limited to treatment of conditions and diseases of the adnexa, Use of an intranasal stimulator in conjunction with treatment of dry eye syndrome, as specified. (BPC § 3041)
- 4) Requires an optometrist diagnosing or treating eye disease to be held to the same standards of care to which physicians and surgeons and osteopathic physicians and surgeons are held, as specified. (BPC § 3041.1)
 - 5) Requires an optometrist seeking certification to use therapeutic pharmaceutical agents, diagnose, and treat specified conditions to apply for a certificate from the Board and meet additional education and training requirements. (BPC § 3041.3)
 - 6) Requires all examinations for an optometry license be practical in character, designed to ascertain applicants' fitness to practice the profession of optometry, as specified. (BPC § 3053)
 - 7) Permits the Board to issue a license to practice optometry to a person who meets all of the following:
 - a) Has a degree as a doctor of optometry issued by an accredited school or college of optometry;

- b) Is currently licensed in another state;
- c) Is currently a full-time faculty member of an accredited California school or college of optometry and has served in that capacity for a period of at least five years;
- d) Has successfully completed the Board's jurisprudence examination;
- e) Is in good standing, with no past or pending malpractice awards or judicial or administrative actions.
- f) Has met the minimum continuing education (CE) requirements, as specified.
- g) Has met the requirements to use therapeutic pharmaceutical agents.
- h) Has never had his or her license to practice suspended. (BPC § 3056(a)(1-9))

This bill:

- 1) Defines "anterior segment laser" to mean any of the following:
 - a) Therapeutic lasers appropriate for treatment of glaucoma;
 - b) Peripheral iridotomy for the prophylactic treatment of angle closure glaucoma;
 - c) Therapeutic lasers used for posterior capsulotomy secondary to cataract surgery.
- 2) Defines "minor procedure" to mean any of the following:
 - a) Removal, destruction, or drainage or lesions of the adnexa clinically evaluated by the optometrist to be noncancerous, not involving the eyelid margin, lacrimal supply, or drainage systems, no deeper than the orbicularis muscle, and smaller than five millimeters in diameter.
 - b) Closure of a wound resulting from a procedure for the removal destruction, or drainage or lesions of the adnexa.
 - c) Subcutaneous, intramuscular, subconjunctival, and intralesional injections for the diagnosis or treatment of conditions of the eye and adnexa authorized, as specified.
- 3) States that minor procedures does not include blepharoplasty or other cosmetic surgery procedures that reshape normal structures of the body in order to improve appearance and self-esteem.
- 4) Permits an optometrist certified to treat glaucoma, as specified, to use anterior segment lasers and may perform minor procedures if the optometrist is additionally certified, as specified.

- 5) Requires an optometrist permitted to use anterior segment lasers as specified in 3) above to meet all of the following requirements in order to obtain certification to use the lasers as follows:
 - a) Complete a board-approved course that is at least 16 hours in length and includes education and testing for competency on specific subjects regarding the use of anterior segment lasers, including placement of the laser, focus of the laser, and application of the laser, and on minor procedures, including but not limited to, suturing, eyelid surgery, injections, anesthesia and chalazion excision, as well as medical decision making. Requires the course to include hands-on instruction on no less than 15 simulated eyes to learn surgical skills, a practical assessment of the optometrist's technique, and a written examination.
 - b) Pass the National Board of Examiners in Optometry's Laser and Surgical Procedures Examination or in the event, the examination is no longer offered, its equivalent as determined by the Board.
 - c) Complete a clinical rotation training by an accredited school of optometry that relates to use of both anterior segment lasers and minor procedures. Specifies that the training must require a cohort of optometrists to independently assess each patient, develop a treatment plan, evaluate the clinical outcome post-treatment, and address adverse or unintended clinical outcomes.
 - d) Requires the cohort to discuss and defend their decision making for each patient and include direct experience with as many live human patients as needed to ensure competency.
 - e) Requires the training to include a *blank* number of procedures of each type of laser procedure on live humans and include a *blank* number of chalazion and other type of lesion procedures authorized by this bill on live humans.
- 6) Requires the board, by regulation, to set the fee for issuance and renewal of a certificate authorizing the use of anterior segment lasers and performance of minor procedures at an amount no higher than the reasonable cost of regulating anterior segment laser and minor certified procedure optometrists, which may not exceed \$150.
- 7) Requires an optometrist certified to use anterior segment lasers and perform minor procedures to complete 5 hours of continuing education (CE) on anterior segment lasers and the diagnosis, treatment, and management of lesions of the adnexa as part of the required CE every two years.
- 8) Requires an optometrist who performs a procedure using an anterior segment laser or performs a minor procedure to monitor and report all of the following information to the board on a yearly basis:
 - a) The number of anterior segment laser procedures and minor procedures performed;

- b) The diagnosis of the patient at the time the procedure was performed; and,
 - c) Any adverse treatment outcomes associated with the anterior segment laser procedure or minor procedure that required a referral to an ophthalmologist.
- 9) Requires the board to report the information required in 7) above to the Governor and the Secretary of Health and Human Services and make the report available on the board's internet website.
- 10) Requires an optometrist with a certificate to perform anterior segment lasers and minor procedures to comply with the reporting requirement as set by the board with respect to unprofessional conduct, malpractice settlements and judgements, criminal charges, and convictions and any disciplinary action taken by another licensing entity or authority of this state or of another state or agency of the federal government or the Armed Forces of the United States that is related to the practice of optometry.
- 11) Authorizes the board to adopt rules and regulation to implement the provisions of this bill.

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

COMMENTS:

1. **Purpose.** The California Optometric Association is the Sponsor of this bill. According to the Author, "Under current law, an optometrist can only use medication to treat glaucoma. Medication has big downsides for some patients. Older patients sometimes have a hard time getting the drops in their eyes so there are compliance issues. Some people can't tolerate the medications. Plus, the medication can be expensive. This bill would allow a certified optometrist to use a laser to focus light on the front part of the eye and allow drainage to occur and reduce eye pressure. The procedure is done in the office on an outpatient basis, is low risk, and takes just a few minutes.

The bill also allows a certified optometrist to remove small, non-cancerous lesions from around the eye. There is a tremendous demand for this type of lesion removal, and it can be very expensive to get this done in a physician office. That's why many people remove these lesions at a day spa or at home.

These procedures present no increased risk to patients. An optometrist is already trained to perform these procedures as part of their education in school. The bill would provide additional training that will be more rigorous than any other state. The bill also requires national board testing on these procedures to ensure competency. In the eight other states that allow these procedures, there has been no increase in malpractice insurance premiums and no reported problems to the state optometry board.

This bill will ensure that patients will have access to the care they need. In some counties, Medi-Cal patients must wait months to get in with an ophthalmologist.

Optometrists already provide 81 percent of the eye care under Medi-Cal. Optometrists are located in almost every county in California. Optometrists are well situated to bridge the provider gap for these eye conditions that are becoming more common as our population ages.”

2. **Background.**

Optometrists. An optometrist is an independent primary health care professional for the eye. Optometrists examine, diagnose, treat, and manage diseases, injuries, and disorders of the visual system, the eye, and associated structures, as well as identify related systemic conditions affecting the eye. Optometrists prescribe medications, provide low vision rehabilitation, vision therapy, spectacle lenses, contact lenses, and perform certain surgical procedures. Optometrists have a narrower scope of practice than do ophthalmologists, but are held to the identical standard of care for the same treatments they provide.

An optometrist degree requires both an undergraduate education in a college or university and four years of professional education at a college of optometry. Some optometrists also undertake an optional one-year non-surgical residency program to enhance their experience in a particular area. Students graduate with between 2,500-3,000 patient encounters; these include a mix of post-surgical, medical and routine visits.

In order to be licensed to practice in California by the Board, an individual must obtain an optometrist degree; pass the three-part National Board of Examiners in Optometry examination, and the California Optometric State Law Examination.

Optometrists are trained to diagnose mild to severe eye problems such as serious eye infections, inflammations of the eye, trauma, foreign bodies and glaucoma. They also examine the eye for vision prescription and corrective lenses. Optometrists may also pursue any of five additional state certifications to perform certain advanced procedures: use of diagnostic pharmaceutical agents (DPA); use of therapeutic pharmaceutical agents (TPA); lacrimal irrigation and dilation for individuals over the age of 12 + TPA (TPL); diagnosis and treatment of open angle glaucoma for adults + TPA (TPG); and a combination of TPA, TPL and TPG.

Ophthalmologists. An ophthalmologist is a physician and surgeon who has specialty training in the anatomy, function and diseases of the eye. The central focus of ophthalmology is surgery and management of complex eye diseases. An ophthalmologist specializes in the refractive, medical and surgical care of the eyes and visual system, and in the prevention of disease and injury.

Optometrists and the Board of Optometry. The Board responsible for issuing optometry certifications for Diagnostic Pharmaceutical Agents, Therapeutic Pharmaceutical Agents, Lacrimal Irrigation and Dilation, and Glaucoma.

The practice of optometry is specified in BPC § 3041 and 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 rehabilitative optometric services, and any or all of the acts further specified in BPC § 3041.

To obtain an optometry license in California, an individual must have a degree of optometry issued by an accredited school or college of optometry, successfully pass the examinations developed by the National Board of Examiners in Optometry (NBEO), the California Laws and Regulations Examination (CLRE), and not have been convicted of a crime, or disciplined for acts substantially related to the profession. There are currently three accredited schools of optometry located in California: 1) University of California, Berkeley, School of Optometry, 2) Marshall B. Ketchum University, Fullerton, and 3) Western University of Health Sciences, College of Optometry, Pomona.

Examinations. As noted by the Board, the primary purpose of the required examinations is “to help ensure public health and safety by assessing the candidate’s ability to safely practice optometry at a minimum entry level within California’s laws and regulations. The NBEO examinations test the candidate’s optometric education and training. The California Laws and Regulation’s supplemental examination identifies candidates who are qualified to safely practice optometry in the State of California.”

The Board has required passage of NBEO Parts I, II, and III examinations for licensure since 2001. Parts I and II of the NBEO examination are offered to students while still in optometry school and are computer-based tests offered at Pearson VUE testing centers. The administration of Part III of the NBEO is conducted in person, with a testing site exclusively located in North Carolina.

As part of the new certification requirements proposed by this bill, for an optometrist to obtain certification to utilize lasers and perform certain surgical procedures, this bill would require an individual to take and pass the NBEO’s Laser and Surgical Examination after the optometrist has completed additional education. Like Part III of the clinical portion of the licensure examination offered by the NBEO, the Laser and Surgical Examination is an in-person examination and test takers are required to travel to North Carolina to be eligible to test.

As currently proposed by this bill, an optometrist would need to take and complete the following education:

- 1) 16-hour board-approved course, which is required to include hands-on instruction on at least 15 simulated eyes, a practical assessment and a written examination. As currently drafted, it is unclear if both the time taken for a written and practical examination are counted towards the 16-hour course requirements.
- 2) Clinical rotation training that includes a cohort of optometrists. The training is required to include the performance of at least ____ procedure of each type of laser procedure on live humans and include the performance of at least ____ chalazion and other types of lesion procedures. As noted, the number of procedures that an optometrist must complete in order to be eligible to perform

laser and minor and procedures, is currently unspecified as this bill as drafted. It is unclear, what if any; education programs currently exist to meet the specified training requirements proposed by this bill.

There are three schools of optometry in California, and the educational requirements as prescribed by this bill are not specifically included in the curriculum as the optometric practices proposed in this bill are not a part of the defined scope of practice that current California optometrists are permitted to do. In order to implement the educational and training requirements prescribed by this bill, an additional education course will need to be developed, and the Board will need to approve the education program before any course will become operational.

Current Practice of Optometry. A “scope of practice” typically specifies what a healthcare provider can and cannot do for their patients, and generally how they can operate within their profession. Most scope of practice laws are determined by state governments and are based on a profession’s training and education. As currently drafted, this bill modifies the current scope of practice for optometrists by revising the current definition of the practice of optometry in the BPC. The intent is to include up-to-date procedures or treatments that an optometrist may be authorized to perform, as is currently being done in a number of other states.

BPC § 3041 defines the practice of optometry. The current definition of optometry includes a myriad of services that an optometrist is authorized to perform. Last year, AB 407 (Salas, Chapter, Statutes of 2021) revised the scope of practice for licensed optometrists by authorizing additional tests related to conditions of the eye along with authorizing the treatment specified conditions of the eye, authorizing the utilization of light therapy, and permitting the use of new US Food and Drug Administration approved technologies. This bill seeks to further increase the scope of practice for optometrists by adding certain laser procedures and surgical procedures around the eye to the list of elements that comprise the practice of optometry under the Act. This bill does not change the current education or testing that is currently required for an individual to obtain an optometric license.

Other States. There are reportedly 10 other states that allow optometrists to utilize lasers for the treatment of certain eye conditions including Alaska, Wyoming, Colorado, Oklahoma, Arkansas, Mississippi, Louisiana, Kentucky, Mississippi, and Virginia. This bill is specific to the types of laser procedures that an optometrist would be permitted to perform and the conditions that the laser treatments will be applicable to (treatment of glaucoma, peripheral iridotomy, and posterior capsulotomy), as specified. The laser procedures identified in this bill appear to be consistent with the types of laser procedures that other states authorize optometrists to utilize to treat similar conditions with the exception of Mississippi, which only authorizes one type of laser treatment, and Arkansas, which appears to allow all but one type of laser treatment as well. Related to the additional education required in other states, according to the Author, only one state, Mississippi requires a procedure to be conducted on a human, and it is currently only one procedure.

This bill requires an optometrist who is certified to use lasers and perform minor procedures to report annually to the board data about the number of, and the types

of procedures performed, along with the diagnosis of the patient and any adverse outcomes that required a referral to an ophthalmologist. The Board is then required to submit the information to the Governor and the Secretary of Health and Human Services. Currently, the state of Virginia has a similar reporting requirement. It is unclear what the California Governor and the Secretary of Health and Human Services will do with the reported information.

3. **Related Legislation.** AB 407 (Salas, Chapter, Statutes of 2021) expanded and revised the scopes of practice for qualified optometrists and optometric assistants to diagnose and treat specified disorders and dysfunctions of the visual system and authorized optometric assistants to perform preliminary subjective refraction procedures under specified conditions.

SB 509 (Wilk, Chapter, Statutes of 2021) required the Board to issue a temporary license to practice optometry to applicants who are unable to meet certain examination requirements due to the state of emergency declared in response to the COVID-19 pandemic.

AB 691 (Chau, Chapter, Statutes of 2021), authorizes a licensed optometrist to utilize a CLIA-waived test to detect the presence of SARS-CoV-2, authorizes a licensed optometrist certified to use Therapeutic Pharmaceutical Agents to provide the SARS CoV-2 immunization, and establishes the required form necessary to obtain certification from the Board necessary for optometrists seeking to administer immunizations, as specified, and makes this bill an urgency. (Status: *This bill is pending in Senate Committee on Appropriations*).

AB 1467 (Salas of 2020) would have authorized an optometrist to provide services set forth in a delegation of services agreement between the optometrist and an ophthalmologist. (Status: *This bill died in the Senate Committee on Business, Professions and Economic Development*.)

AB 443 (Salas, Chapter 549, Statutes of 2017) expanded the optometry scope of practice to include further independence, the administration of specified vaccines, and the treatment of additional conditions, as specified.

SB 622 (Hernandez of 2016) would have expanded the scope of practice for optometrists to include the use noninvasive and nonsurgical technologies to treat conditions authorized by the Act, perform laser and minor procedures, and administer certain vaccines. (Status: *This bill was held in the Assembly Business and Professions Committee*.)

SB 492 (Hernandez, 2014) would have authorized an optometrist to administer influenza and herpes zoster virus (shingles) immunizations to persons 18 years of age and older after completing a training program. (Status: *This bill was held on the Assembly floor*.)

4. **Arguments in Support.** The California Optometric Association writes in support and notes, "These procedures are not any more difficult or invasive than procedures that optometrists already perform, like foreign body removal. The most difficult part

of using the laser is focusing light using a special lens. Optometrists are experts at using lenses to focus light and do so every day in their practice. Optometrists also already do pre- and post-op care for many surgical procedures so they know how to treat any side effects that may occur. This bill will ensure that patients will have access to the care they need. In some counties, MediCal patients must wait months to get in with an ophthalmologist. Optometrists already provide 81 percent of the eye care under Medi-Cal. Optometrists are located in almost every county in California. Optometrists are well situated to bridge the provider gap for these eye conditions that are becoming more common as our population ages.”

5. **Policy Issue for Consideration: Procedure Report to the Board.** As currently drafted, this bill requires optometrists certified pursuant to this bill to annually report information to the Board related to the number of procedures they conducted, the diagnosis for the treatments provided and any adverse outcomes. The Board is then to share that information with the Governor and Secretary of Health and Human Services. It is unclear what the Governor or the Secretary of Health and Human Services will use this information for. If the goal is understand the number of adverse events that resulted in a referral to an ophthalmologist, it may be more appropriate for the Board to collect the data and make it available on its website. Moreover, instead of reporting all procedures, it may be prudent to report only those with adverse effects. Additionally, as currently drafted, this would obviously result in significant new responsibilities for the Board to continuously receive data and reports from optometrists, as each optometrist would be required to report annually, but not on the same day or within the same month. *The Author should continue to work with the Board and other interested parties to determine if this information is necessary, and if so, if the collection of this data can more easily be absorbed into existing processes.*

6. **Proposed Author’s Amendments.**

The author is proposing the following amendments:

Delete the fee ceiling of \$150 to allow the Board to properly determine the appropriate fee for issuing a certificate.

Revise the number of hours from 16 to 32, for the board-approved course that is to include education and testing for competency on specific subjects regarding the use of anterior segment lasers and on minor procedures, as specified.

Adds “corneal crosslinking procedures”, as specified, to the definition of minor procedures.

Revise the course requirements to include hands-on instruction of no less than five simulated eyes for each laser procedure, as specified.

Authorize an optometrist to complete the clinical training as required by this bill by a preceptorship, as specified, in addition to a clinical rotation, and specifies training requirements to include:

The training shall include the performance of at least 5 laser trabeculoplasty procedures, 5 laser posterior capsulotomy procedures, 4 laser peripheral iridotomy procedures, at least 3 chalazion, at least 5-other type of lesion procedures, as authorized, at least 1 corneal crosslinking procedure, at least 3 chalazian injection procedures, and at least 1 of each other type of injection on live humans, as specified.

SUPPORT AND OPPOSITION:

Support:

California Optometric Association

Opposition:

None received.

-- END --