

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 356 (Chen) – As Introduced February 1, 2021

**SUBJECT:** Fluoroscopy: temporary permit.

**SUMMARY:** Authorizes the California Department of Public Health (CDPH) to issue to a physician and surgeon or a doctor of podiatric medicine a one-time, temporary permit authorizing them to operate or supervise the operation of fluoroscopic x-ray equipment if they meet certain requirements.

**EXISTING LAW:**

- 1) Provides the Radiologic Health Branch (RHB) within the CDPH with responsibility for administering and enforcing the Radiologic Technology Act. (Health and Safety Code (HSC) §§ 106955 *et seq.*)
- 2) Requires the RHB within the CDPH to provide for the certification of radiologic technologists, as well as physicians and surgeons, to use certain radiologic technology. (HSC § 114870)
- 3) Requires the RHB within the CDPH to issue a fluoroscopy permit to a qualified licensee of the healing arts. (HSC § 114872)
- 4) Authorizes only a licensed physician and surgeon, podiatrist, chiropractor, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of those persons, to operate or maintain any X-ray fluoroscope, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet. (HSC § 106955)
- 5) Prohibits any healing arts licensee from administering or using diagnostic, mammographic, or therapeutic X-rays on human beings unless that person is certified and acting within the scope of that certification. (HSC § 107110)
- 6) Allows the RHB within the CDPH to grant limited-term special permits to persons exempting them from certification requirements if there is substantial evidence that the people in the locality in which the exemption is sought would be denied adequate medical care because of unavailability of certified radiologic technologists. (HSC § 114885)
- 7) Establishes the Medical Practice Act, which provides for the state's licensure and regulation of physicians and surgeons. (Business and Professions Code (BPC) §§ 2000 *et seq.*)
- 8) Establishes the Podiatric Medical Board of California (PMBC) within the jurisdiction of the Medical Board of California (MBC) and vests the BPM with regulation of podiatric medicine. (BPC §§ 2460 *et seq.*)

**THIS BILL:**

- 1) Authorizes the CDPH to issue a physician and surgeon or a doctor of podiatric medicine a one-time, temporary permit authorizing them to operate or supervise the operation of fluoroscopic x-ray equipment.
- 2) Requires that a physician and surgeon or doctor of podiatric medicine seeking this temporary permit to hold a valid California license, submit an application for a fluoroscopy certificate, and have used fluoroscopy in another state.
- 3) Requires temporary permit applications to indicate the locations or facilities where the physician and surgeon or the doctor of podiatric medicine will be providing fluoroscopy.
- 4) Provides that a temporary permit shall convey the same rights as a fluoroscopy certificate for the period for which it is issued in the classification for which the physician and surgeon or the doctor of podiatric medicine is eligible and shall be valid for up to 12 months from the date of issue.
- 5) Prohibits the CDPH from renewing a temporary permit, and allows each applicant to receive a temporary permit one time only.
- 6) Authorizes the CDPH to charge a fee for the temporary permits.
- 7) Provides that temporary permits may be denied, revoked, or suspended by the CDPH for any of the reasons currently provided for other certificates and permits issued to radiographical technologists.

**FISCAL EFFECT:** Unknown; this bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the **California Podiatric Medical Association** and the **California Orthopaedic Association**. According to the author:

“Fluoroscopy is a kind of video X ray used in surgery for many purposes. This simple bill helps patients by allowing doctors and podiatrists who have used fluoroscopy in their practice in another state to have a one-time, temporary permit to use fluoroscopy to give them time to complete the requirements for a California fluoroscopy permit. Because California is one of only two states to require doctors and podiatrists to have an additional permit to use fluoroscopy in surgery, many doctors who have practiced in other states do not know they need to get a permit until they get to California. The process to get a permit can take up to nine months. Since patients need their doctors to be able to use fluoroscopy in surgery, this bill will help surgical patients by letting out of state doctors who have used fluoroscopy get a one time temporary permit to use fluoroscopy while they complete the requirements for a California permit.”

**Background.** The U.S. Food and Drug Administration describes fluoroscopy as “a type of medical imaging that shows a continuous X-ray image on a monitor, much like an X-ray movie. During a fluoroscopy procedure, an X-ray beam is passed through the body. The image is transmitted to a monitor so the movement of a body part or of an instrument or contrast agent

(‘X-ray dye’) through the body can be seen in detail.” Like most other forms of radiologic procedures, use of this technology is regulated through the CDPH, and healing arts licensees must meet certain training and certification requirements to perform fluoroscopy services.

In California, a radiologic technologist fluoroscopy permit, a fluoroscopy supervisor and operator permit, or a Physician Assistants fluoroscopy permit is required to operate fluoroscopy equipment. To obtain such a permit, an applicant must currently pass an examination administered by the American Registry of Radiology Technologists. According to the CDPH, 12,530 licensed physicians and surgeons and doctors of podiatric medicine currently hold a current and valid fluoroscopy permit.

The supporters of this bill point out that the current timeline for an applicant to sign up for, take, and pass the permit examination is relatively protracted, taking up to six months for an applicant to ultimately receive their results. This has been even more prolonged during the COVID-19 pandemic. Because the examination must only be taken and passed once, most practitioners whose initial licensure takes place within California will sit for the permit exam immediately upon eligibility, and there is no significant interruption in their subsequent ability to perform those services if relevant to their practice. However, because California is unique in requiring this examination to perform fluoroscopy services, practitioners coming to California from other states can potentially see their ability to perform services interrupted as they must wait until they are able to take and pass the permit exam.

This bill would allow the CDPH to issue a temporary permit for physicians and surgeons and doctors of podiatric medicine to operate or supervise the operation of fluoroscopic x-ray equipment. The author contends that this will pose very little risk to patients, as the statistical probability that a person will experience these effects from a fluoroscopic procedure is very small. These permits would not be eligible to be renewed and if a physician and surgeon or doctor of podiatric medicine who wishes to maintain the authority after 12 months would be required to seek full authorization.

**Prior Related Legislation.** AB 407 (Santiago) would have allowed for a physician and surgeon or a doctor of podiatric medicine to provide fluoroscopy services without a fluoroscopy permit or certification if they are providing those services a setting that is compliant with the Centers for Medicare and Medicaid Services’ (CMS) Conditions for Coverage (CfC) relating to radiation safety. *This bill died in the Senate Committee on Appropriations.*

AB 2544 (Santiago) would have authorized the CDPH to issue a nonrenewable, temporary 9-month fluoroscopy permit to a physician and surgeon or a licensed doctor of podiatric medicine. *This bill died in the Assembly Committee on Business and Professions.*

## **ARGUMENTS IN SUPPORT:**

The **California Orthopaedic Association** and the **Podiatric Medical Association of California** are co-sponsoring this bill. In a joint letter, the organizations state: “This simple bill creates a one-time, temporary permit allowing physicians and doctors of podiatric medicine, who have used fluoroscopy in another state, to use fluoroscopy in California while they go through the process to receive fluoroscopy certification. California has the most stringent and burdensome regulations regarding doctors performing fluoroscopy and radiography across the country. In fact, only California and Alaska require additional certification to use fluoroscopy.”

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

California Orthopaedic Association (*Co-Sponsor*)  
Podiatric Medical Association of California (*Co-Sponsor*)  
California Radiological Society

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Robert Sumner / B. & P. / (916) 319-3301