California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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AGENDA

Tuesday, August 30, 2022
Upon Call of the Chair -- To Be Determined

BILLS REFERRED TO COMMITTEE PURSUANT TO A.R. 77.2

1.	SB 774	Hertzberg	Pets and veterinary services: emotional support dogs.
2.	AB 657	Cooper	Healing arts: expedited licensure process: applicants providing abortions.
3.	AB 852	Wood	Health care practitioners: electronic prescriptions.
4.	AB 2236	Low	Optometry: certification to perform advanced procedures.
5.	AB 2380	Maienschein	Online pet retailers: retail financing options.
6.	AB 2685	Business and Professions	Naturopathic Doctors Act: California Board of Naturopathic Medicine and licensing requirements.

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at http://abp.assembly.ca.gov. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The hearing room will be open for attendance of this hearing. Any member of the public attending a hearing is encouraged to wear a mask at all times while in the building. The public may also participate in this hearing by telephone. We encourage the public to monitor the committee's website for updates.

Date of Hearing: August 30, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 774 (Hertzberg) – As Amended August 29, 2022

NOTE: This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

SUBJECT: Pets and veterinary services: emotional support dogs

SUMMARY: SB 774 exempts individuals who are verified to be homeless from the existing requirement that individuals must have a 30-day existing relationship with a health care practitioner before being able to obtain an Emotional Support Animal (ESA) certification.

EXISTING LAW:

1) Defines a "guide dog" as a dog that has been trained or is being trained to assist blind or visually impaired individuals. (Business and Professions Code (BPC) Section 7201)

2) Defines a "signal dog" as a dog trained to alert an individual who is deaf or hard of hearing to intruders or sounds (Penal Code Section 365.5(e) and Civil Code Section 54.1(b)(6)(B)(ii))

3) Defines a "service dog" as a dog trained individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items (Penal Code section 365.5(f) and Civil Code Section 54.1(b)(6)(B)(ii))

4) Defines a "guide dog instructor" as a person who instructs or trains persons who are blind or visually impaired in the use of guide dogs or who engages in the business of training, selling, hiring, or supplying guide dogs for persons who are blind or visually impaired. (BPC Section 7201(a))

5) Prohibits a person from advertising or presenting themselves as a "guide dog instructor," "certified guide dog instructor," or any related terms without having knowledge of the special problems of persons who are blind or visually impaired and being able to teach them, being able to demonstrate the ability to train guide dogs with which persons who are blind or visually impaired would be safe under various traffic conditions, or being employed by a guide dog school certified by the International Guide Dog Federation. (BPC Section 7200)

6) States that any person who knowingly and fraudulently represents themselves to be the owner or trainer of a guide, signal, or service dog is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding six months, by a fine not exceeding $1,000, or by both that fine and imprisonment. (Penal Code Section 365.7)

7) Establishes the Polanco-Lockyer Pet Breeder Warranty Act, which regulates the breeding and sale of dogs. (Health and Safety Code, Section 122045 et seq.)

8) Establishes the California fair Employment and Housing Act (FEHA) which, broadly, provides discrimination protections in employment and housing. (Government Code Section 12900 et seq.)

9) Interprets "support animals" for the purposes of the FEHA, as animals that provide emotional, cognitive, or other support to an individual with a disability. Clarifies that a support animal does not need to be trained or certified. States that support animals are also known as comfort animals or emotional support animals. (2 California Code of Regulations (CCR) Section 12005(d)(2))

THIS BILL:

1) Create an exemption to the requirement that a health care practitioner establish a client-provider relationship with an individual seeking documentation for an emotional support dog when that individual is verified to be homeless.

2) Provide for any of the following methods for verifying an individual's homelessness status:

    a) Identification through the local Homeless Management Information System.

    b) Via a continuum of care, or a homeless services provider that is contracting with a continuum of care.

    c) Visual confirmation by a homeless services provider of individuals dwelling in a homeless shelter, homeless encampment, outdoor makeshift shelter, or vehicle.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

> "On any given night in California, at least 161,000 people are without a home. Many of these individuals refuse housing and services if doing so requires them to abandon their most treasured belonging – their pet. SB 774 removes barriers to shelter for homeless individuals, by exempting them from an existing requirement that prevents a health practitioner from issuing an Emotional Support Animal (ESA) certification unless they have a 30-day relationship with the patient. Since many interim housing placements require an ESA certification to permit an animal companion into shelter, SB 774 ensures homeless individuals can more quickly access shelter by being exempt from the 30-day rule."

Background.

Service Animals vs. Emotional Support Animals. In recent years, a new category of assistance animals has emerged, often referred to as "emotional support animals" (ESAs). ESAs are legally different from service animals. As previously referenced, service animals are defined under federal and California law as a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. An ESA is a dog (or other animal) that is not trained to perform specific acts related to a person's disability. Instead, the owner of an ESA derives a

sense of well-being, fulfillment, companionship, or lessened anxiety with the presence of the animal. Of note, ESAs do not enjoy the same legal privileges as trained service dogs: for example, while service dogs must be allowed to accompany their human partner in public places, ESAs do not have to be accommodated.

Notable Privileges for ESAs. While ESAs do not have the same rights and privileges as service dogs, there are few, notable exceptions, particularly in housing statutes. Under federal and California laws, individuals with a disability may request to keep an assistance animal as a reasonable accommodation to a housing provider's pet restrictions. In the context of housing, an assistance animal includes both service dogs and any animals that provides emotional support. Generally, reasonable accommodation requests involve a request to allow the animal to live in a property with a no-pets policy, or a request to waive a pet deposit fee. In specified instances, the housing provider may request disability-related information, such as documentation from a health care provider, if the disability and the disability-related need for the animal were not apparent. In order to respect these existing privileges, this bill clarifies that its provisions shall not be construed to restrict or change existing federal and state law related to a person's rights for reasonable accommodation and equal access to housing.

Documentation issued by health care or mental health providers. Letters from health care and mental health providers are sometimes requested to show that an animal provides a disability-related benefit to an individual. In some instances, ESAs can provide legitimate therapeutic benefits and play an important role in supplementing mental health. However, documentation from a provider may be required to bolster the legitimacy of an ESA, particularly in the context of housing and travel. As a result, it has become increasingly common for individuals to request a health care or mental health provider to provide such documentation. Providers who may issue such documentation may include physicians, psychiatrists, psychologists, licensed marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselors.

In order to ensure legitimacy and prevent fraudulent issuing of such documentations, AB 468 enacted specific criteria that must be met before a health care practitioner can issue documentation related to an individual's need for an ESA. Specifically, the provider must (1) have a valid, active license and include the effective date, license number, jurisdiction, and type of professional license in the documentation; (2) have jurisdiction in which the documentation is provided; (3) establish a client-provider relationship with the individual for at least 30 days prior to providing the documentation requested the individual's need for an emotional support dog and (4) completes an in-person clinical evaluation of the individual regarding the need for an emotional support dog.

In 2021, the Legislature passed and the Governor signed into law AB 468 (Friedman, Chapter 168, Statutes of 2021) in an effort to prevent fraudulent practices and misuse of labeling Emotional Support Animals (ESA) as Service Animals. AB 468 also prohibited a health care practitioner from certifying an ESA unless the health care practitioner has an existing relationship with their client for at least 30 days.

The requirements outlined in AB 468 relating to certification of ESA became effective January 1, 2022. As an unintended result, local homeless services agencies, such as the Los Angeles Homeless Services Authority (LAHSA) and numerous nonprofit providers, began to experience challenges moving people into shelter. Emergency housing programs like Project Roomkey

required unhoused individuals to have an Emotional Support Animal (ESA) certification for their animal companions. As these opportunities require fast turnaround, homeless service providers typically reach out to health care practitioners for help to provide day-of certifications. After the passage of AB 468, health care practitioners could no longer sign off on individuals' ESA certification without working with these clients for at least 30 days prior. Homeless service agencies are then forced to scramble to find alternative housing placements, which is not often possible.

As homeless service agencies prepare for additional state funding for housing programs, such as State Encampment Resolution Grants, Project Homekey, and other initiatives), unsheltered Californians will need quick access to ESA certifications in order to move indoors with their animal companions. The inability to bring animal companions into shelter is one of the biggest reasons unsheltered individuals choose not to partake in interim housing programs. Obtaining an ESA certification from a health care practitioner is already a barrier to unhoused individuals from securing housing, and requiring a 30-day existing relationship with practitioners will further delay shelter placements.

SB 774 exempts individuals who are verified to be homeless from the existing requirement that individuals must have a 30-day existing relationship with a health care practitioner before being able to obtain an ESA certification. This will help house homeless individuals more quickly since many interim housing placements require an ESA certification in order to bring an animal companion into shelter.

Prior Related Legislation. AB 468 (Friedman, Chapter 168, Statutes of 2021): Requires sellers and providers of emotional support dogs and related equipment to provide a written notice that emotional support dogs are not entitled to the rights and privileges of a service dog, as defined, and put limits on when a medical professional may recommend that a patient acquire an emotional support dog.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: August 30, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 657 (Cooper) – As Amended August 11, 2022

NOTE: This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

SUBJECT: Healing arts: expedited licensure process: applicants providing abortions.

SUMMARY: Requires the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), the Board of Registered Nursing (BRN), and the Physician Assistant Board (PAB) to expedite the license application for an applicant who demonstrates that they intend to provide abortions.

EXISTING LAW:

1) Establishes numerous practice acts in the Business and Professions Code (BPC), which are governed by various boards within the Department of Consumer Affairs (DCA). (Business and Professions Code (BPC) §§ 100 et seq.)

2) Oversees and affords the licensing and regulation within health care professionals, which include physicians and surgeons (under the Medical Practice Act); osteopathic physicians and surgeons (under the Osteopathic Medical Practice Act); nurse practitioners (NPs) and certified nurse-midwives (CNMs) (under the Nursing Practice Act); and physician assistants (PA) (under the Physician Assistant Practice Act). (BPC §§ 2000 et seq.; 2099.5 et seq.; 2700 et seq.; 3500 et seq.)

3) Establishes the Reproductive Privacy Act, which finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, and states that it is the public policy of the State of California that:

   a) Every individual has the fundamental right to choose or refuse birth control;

   b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by law; and,

   c) The state cannot deny or interfere with a woman's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted by law. (Health and Safety Code (HSC) § 123462)

4) Defines the following for purposes of the Reproductive Privacy Act:

   a) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth;

   b) "Pregnancy" means the human reproductive process, beginning with the implantation of an embryo;

c) "State" means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state; and,

d) "Viability" means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures. (HSC § 123464)

5) Provides that the State may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. (HSC § 123466)

6) Provides that failure to comply with the Reproductive Privacy Act in performing, assisting, procuring or aiding, abetting, attempting, agreeing or offering to procure an illegal abortion constitutes unprofessional conduct. (BPC § 2253(a))

7) Requires all DCA boards to expedite and assist the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged, or is the spouse or domestic partner of an active duty member of the Armed Forces who is currently assigned to a duty station in California under official active duty military orders and if the spouse or domestic partner holds a current license another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license. (BPC §§ 115.4; 115.5)

8) Requires all DCA boards to expedite and assist the initial licensure process for an applicant who supplies satisfactory evidence to the board that they have been admitted to the United States as a refugee under Section 1157 of Title 8 of the United States Code, have been granted asylum by the Secretary of Homeland Security or the Attorney General of the United States pursuant to Section 1158 of Title 8 of the United States Code, or they have a special immigrant visa (SIV) that has been granted a status under Section 1244 of Public Law 110-181, under Public Law 109-163, or under Section 602(b) of Title VI of Division F of Public Law 111-8. (BPC § 135.4)

9) Requires the MBC to develop a process to give priority review status to the application of an applicant for a physician and surgeon's certificate who can demonstrate that he or she intends to practice in a medically underserved area or serve a medically underserved population. (BPC § 2092)

THIS BILL:

1) Requires the MBC, the OMBC, the BRN, and the PAB to expedite the licensure process for an applicant who demonstrates that they intend to provide abortions, within the scope of practice of their license.

2) Specifies that an applicant demonstrate their intent to provide abortion services by providing documentation, including a letter from an employer or health care entity indicating that the applicant has accepted employment or entered into a contract to provide abortion services, the applicant's starting date, and the location where the applicant will be providing abortion

services, and that the applicant will be providing abortion services within the scope of practice of their license.

3) Specifies that nothing in this section shall be construed as changing existing licensure requirements. Requires an applicant applying for expedited licensure to meet all applicable statutory and regulatory licensure requirements.

4) Makes the following finding and declarations:

   a) Nearly one in four women in the United States are expected to get an abortion at some point in their lives, according to a 2017 study.

   b) Fifty-eight percent of women of reproductive age, approximately 40 million women, live in states that are hostile to abortion.

   c) When Texas enacted its six-week ban on abortion last year, some residents began to get abortions out of state, and in the final four months of last year, Planned Parenthood clinics in states near Texas reported a nearly 800 percent increase in abortion patients from Texas compared to the same period in the prior year.

   d) If our state's abortion provider network is to provide timely care to California patients and absorb any significant portion of the increase in out-of-state patients projected if the United States Supreme Court overturns Roe v. Wade, California must take steps now to ensure the growth of a network of clinicians trained in abortion and sexual and reproductive health care. These clinicians must reflect California's diverse racial, ethnic, and linguistic communities and patients and be equipped to meet the reproductive health needs of all people in California.

   e) The Guttmacher Institute estimates that 46,000 women between the ages of 15 and 49 drive to California for abortion care, and has determined that 26 states are certain or likely to ban abortion if Roe v. Wade is overturned. If all 26 of those states prohibit abortion at any point during pregnancy, the number of women of reproductive age who drive to California for abortion care may increase to 1.4 million women, a potential increase of 2,923 percent.

   f) Even in the state with the best abortion protections in the country, abortions have long been inaccessible for many, especially those living in rural, conservative areas. Forty percent of California counties have no clinics providing abortions. Many people still have to travel far to get the appropriate care, or struggle to afford abortions, and language barriers and a lack of up-to-date information can make it difficult to find help.

FISCAL EFFECT: According to the Senate Committee on Appropriations, pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is sponsored by the **American College of Obstetricians and Gynecologists – District IX**. According to the author:

"If our state's abortion provider network is to provide timely care to California patients and absorb any significant portion of the increase in out-of-state patients projected now that Roe has been overturned, California must take steps now to ensure the growth of a network of clinicians trained in abortion and sexual and reproductive health care. These clinicians must reflect California's diverse racial, ethnic, and linguistic communities and patients and be equipped to meet the reproductive health needs of all people in California. In the case of a total ban of abortion services, there will be an increase in women of reproductive ages (15-49) who may drive to CA for abortion care; it is estimated that there will be an increase from 46,000 to 1.4 million people seeking care, which is a 2,923% increase.

"Even in the state with the best abortion protections in the US, abortions have long been inaccessible for many – especially those living in rural, conservative areas. 40% of California counties have no clinics providing abortions. Many people still have to travel far to get the appropriate care, or struggle to afford abortions, while language barriers and a lack of up-to-date information can make it difficult to find help.

"Increasing the number of abortion services providers is critical to ensure that women seeking abortion services in California have timely access to care."

Background.

In 2002, the Legislature enacted the Reproductive Privacy Act, which grants every woman in California with the fundamental right to choose to bear a child or to choose and to obtain an abortion. Under the act, the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. The only restriction on abortion is when, in the good faith medical judgment of a physician, the fetus is viable and there is no risk to the life or health of the pregnant woman associated with the continuation of the pregnancy. Currently in California, medical providers who can perform abortions within their scope of practice are physicians and, under physician supervision, nurse practitioners (NPs), certified nurse-midwives (CNMs), and physician assistants (PAs).

The Reproductive Privacy Act codifies the right to choose whether to have an abortion as a form of exercising the implicit right to privacy under the Fourteenth Amendment of the United States Constitution, as affirmed by the Supreme Court of the United States in *Roe v. Wade*, which found that Texas's criminal abortion statute violated the Due Process Clause. The Court in *Roe* ruled that during the first trimester, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." The Court ruled that during the second trimester, a state may only choose to "regulate the abortion procedure in ways that are reasonably related to maternal health," but that states may ban abortion altogether during the third trimester, "except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Recent judicial action in the United States has cast uncertainty on the security of the protections in *Roe*. In 2021, the Texas Legislature passed Senate Bill 8, referred to as the Texas Heartbeat Act. That bill criminalized abortion after the detection of embryonic or fetal cardiac activity, essentially banning abortion after approximately six weeks. The constitutionality of that bill was challenged in *Whole Woman's Health v. Jackson*, which sought to enforce the *Roe* precedent and overturn Senate Bill 8. However, the Court declined to enjoin the law, which many pro-choice

advocates viewed as signaling a future decision by the Court to overturn or seriously diminish the protections outlined in *Roe*.

Subsequently, on December 1, 2021, the Court heard oral arguments in *Dobbs v. Jackson Women's Health Organization*, a case regarding a 2018 Mississippi state law that bans abortion after 15 weeks of pregnancy. *Dobbs* was a direct challenge to the precedent set in *Roe* and was the first time the Court ruled on the constitutional right to pre-viability abortion since *Roe*. On June 24, 2022, the Court ruled that abortion is not a constitutional right. This effectively overturned *Roe* and left the question of whether to ban it, and how, up to individual states.

While California law protects a pregnant person's right to choose in a manner consistent with *Roe*, the author cites statistics indicating that approximately 26 states would likely seek to ban abortion with *Roe* overturned. In this event, it is likely that patients in those states would come to California to receive abortion services, which could create a swell in demand for abortion providers. This bill seeks to ensure that there is an adequate health care provider workforce to provide urgent care to those patients by requiring licensing boards to expedite licensure for applicants who attest that they intend to provide abortion services.

Current Related Legislation.

SB 1375 (Atkins, 2022) Allows NP with a minimum of three-years of full-time practice as of January 1, 2023, to satisfy the transition to practice (TTP) requirements for purposes of independent practice; deletes the requirement for the BRN to define the minimum standards for the TTP through regulations; and makes clarifying changes to specify that NPs permitted to practice independently can provide abortion by aspiration techniques without adherence to standardized procedures and protocols. (Status: Pending on the Assembly Floor)

AB 2626 (Calderon, 2022) Prohibits the MBC and the OMBC from suspending or revoking the certificate of a physician and surgeon who performs an abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act. Prohibits the Board of Registered Nursing and the Physician Assistant Board from suspending or revoking the certification or license of a nurse practitioner, certified nurse-midwife, or a physician assistant, for performing an abortion so long as they performed the abortion in accordance with the provisions of the Nursing Practice Act or the Physician Assistant Practice Act, and the Reproductive Privacy Act. (Status: Pending on the Senate Floor)

Prior Related Legislation.

AB 154 (Atkins, Chapter 662, Statutes of 2013) Authorized NPs, certified nurse midwives, and physician assistants to perform an abortion by aspiration techniques, in addition to medication, in the first trimester of pregnancy, upon completion of training and validation of clinical competency.

SB 623 (Kehoe, Chapter 450, Statutes of 2012), extended until January 1, 2014, HWPP No. 171 to evaluate the safety, effectiveness, and acceptability of NP's, CNMs, and PAs in providing aspiration abortions.

SB 1338 (Kehoe), which was introduced in 2012, would have allowed NPs, CNMs, and PAs who have completed training in under HWPP No. 171on or before January 1, 2013 to continue to

perform abortions by aspiration techniques. *SB 1338 died in the Senate Business, Professions and Economic Development Committee.*

ARGUMENTS IN SUPPORT:

The **American College of Obstetricians and Gynecologists – District IX** is sponsoring this bill, writing the following in support: "In 2022, there have been over 500 abortion restrictions introduced across 41 states. Also this year, the U.S. Supreme Court decided on a case that directly challenges the constitutional right to abortion established under Roe v. Wade. Since the Court upholds Mississippi's abortion ban, thereby overturning Roe, people in over half of the states across the country – over 36 million women and other people who may become pregnant – will lose access to abortion. In fact, millions of Texans are already experiencing this lack of access. Since Texas' S.B. 8 went into effect last fall, Texans in need of abortion and family planning services have been denied. The ban in Texas disproportionately impacts Black, Brown, Indigenous and other people of color, people with low-income, people living in rural areas, and other historically marginalized communities who are most likely to be forced to continue pregnancies against their will, rather than be able to travel to already overburdened clinics in neighboring states, like Oklahoma. Making matters worse, Oklahoma politicians and the state's Governor has signed several extreme abortion bans. According to a report released by the Guttmacher Institute, when Roe v. Wade is overturned, 26 states are certain or likely to ban abortion almost immediately, increasing the number of out-of-state patients who would find their nearest abortion provider in California from 46,000 to 1.4 million – an increase of nearly 3,000%.

"As California prepares to see more and more patients seeking abortion services and reproductive health care in our state, we must ensure the State has the appropriate providers qualified to assist in access and ready to provide that care. AB 657 helps in this effort by ensuring qualified providers who wish to become licensed in this state to provide abortion services will have their application prioritize so they may meet this demand."

The **California Medical Association** (CMA) writes the following in support of the bill: "During the first thirty days following the Dobbs decision, eleven states had either banned abortion completely or implemented a ban on abortion starting at six weeks of pregnancy before many even learn they are pregnant, with other states attempting to take similar action. This has led to an increase in the number of out-of-state patients who would find their nearest abortion provider in California from 46,000 to 1.4 million – an increase of nearly 3,000%. Eliminating obstacles to reproductive health care for all individuals, regardless of income level, geography, or other factors is critical to achieving health equity in California. CMA policy supports ensuring that all Californians have access to safe and professional abortion services. AB 657 should not have a significant impact on the licensing boards as the licensure fees should cover any increased cost based on workload. CMA applauds efforts to remove barriers to reproductive health access and to increase the amount of health care professionals providing these essential services. California is holding the line and is truly becoming the beacon of hope for people that need this essential service but are restricted from receiving this care in other states. For these reasons, CMA is proud to support AB 657.

ARGUMENTS IN OPPOSITION:

The **Right to Life League of Southern California** writes the following in opposition: "I urge you to vote NO on AB 657 or, in the alternative, to amend it to expedite medical licensing for all

forms of obstetrical and newborn care. The current bill before the committee has been gutted from its original. It has been repurposed in a legislative sleight-of-hand to advance another radical abortion agenda which will divert much needed funding from other businesses to provide even more money for the Abortion Industry. AB 657 will expedite the licensure process for an applicant who demonstrates that they intend to provide abortions – not any other form of reproductive health care such as fertility, obstetrical care for delivering babies or neonatal care for babies born in California – AB 657 only seeks to expedite the licensing process for abortions."

REGISTERED SUPPORT:

American Congress of Obstetricians & Gynecologists - District IX
Board of Registered Nursing
California Medical Association
California Nurse Midwives Association (CNMA)
California Women's Law Center
Naral Pro-choice California
Planned Parenthood Affiliates of California

REGISTERED OPPOSITION:

Right to Life League

Analysis Prepared by: Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: August 30, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 852 Wood – As Amended August 22, 2022

NOTE: This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

SUBJECT: Health care practitioners: electronic prescriptions.

SUMMARY: Prohibits a pharmacy or pharmacist from refusing to dispense or furnish an electronic prescription solely because the prescription was not submitted via the pharmacy or pharmacist's proprietary software and expands the exemptions from the requirement that prescriptions be issued electronically.

EXISTING LAW:

1) Allows only a physician, dentist, podiatrist, veterinarian, naturopathic doctor, registered nurse, certified nurse-midwife, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code (HSC) § 11150)

2) States that a prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice, and that the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. (HSC § 11153)

3) Prohibits medical professionals from prescribing, administering, or dispensing a controlled substance to an addict, as defined. (HSC § 11156)

4) Requires that all prescription forms for controlled substance prescriptions be obtained from security printers approved by the Department of Justice (DOJ) and sets a number of parameters for the DOJ's approval process. (HSC § 11161.5)

5) Lists a number of required features that must be included for all prescription forms for controlled substances, including fraud-prevention identifiers, printing information, and information relating to the prescribing practitioner. (HSC § 11162.1)

6) Criminalizes the counterfeiting of prescription pads and the possession of counterfeit prescription pads. (HSC §§ 11162.5 – 11162.6)

7) Enables security printers and prescribers to report stolen or lost prescription pads to the DOJ through the Controlled Substance Utilization Review and Evaluation System (CURES). (HSC § 11165.3)

8) Requires all prescriptions and dispensations of controlled substances to meet a series of requirements including use of a controlled substance prescription form, presence of a signature and date in ink, and the address of the patient. (HSC § 11164)

9) Prohibits any person from obtaining or attempting to obtain a prescription for controlled substances, by fraud, deceit, misrepresentation, subterfuge, or the concealment of a material fact. (HSC § 11173)

10) Defines "electronic data transmission prescription" as any prescription order, other than a facsimile, that is electronically transmitted from a licensed prescriber to a pharmacy. (Business and Professions Code (BPC) § 4040)

11) As of January 1, 2022, requires all health care practitioners authorized to issue a prescription pursuant to have the capability to issue an electronic data transmission prescription on behalf of a patient and to transmit that electronic data transmission prescription to a pharmacy selected by the patient. (BPC § 688(a))

12) As of January 1, 2022, requires all pharmacies, pharmacists, or other practitioners authorized under California law to dispense or furnish a prescription to have the capability to receive an electronic data transmission prescription on behalf of a patient. (BPC § 688(b))

13) As of January 1, 2022, requires most prescriptions prescribed by a health care practitioner to be issued as an electronic data transmission prescription. (BPC § 688(d))

14) Exempts various categories of prescriptions, prescribers, dispensers, and patients from the requirement that prescriptions be issued electronically. (BPC § 688(e))

15) Requires a health care practitioner who issues a prescription for a controlled substance but does not transmit the prescription as an electronic data transmission prescription to document the reason in the patient's medical record as soon as practicable and within 72 hours of the end of the technological or electrical failure that prevented the electronic data transmission of the prescription. (BPC § 688(f))

16) Requires a pharmacy that receives an electronic data transmission prescription from a prescribing health care practitioner who has issued the prescription but has not dispensed the medication to the patient to, at the request of the patient or a person authorized to make a request on behalf of the patient, immediately transfer or forward the electronic data transmission prescription to an alternative pharmacy designated by the requester. (BPC § 688(g))

THIS BILL:

1) Prohibits a pharmacy, pharmacist, or other practitioner authorized to dispense or furnish a prescription from refusing to dispense or furnish an electronic data transmission prescription solely because the prescription was not submitted via, or is not compatible with, the proprietary software of the pharmacy, pharmacist, or other dispensing practitioner.

2) Allows a pharmacy, pharmacist, or other practitioner authorized to dispense or furnish a prescription to decline to dispense or furnish an electronic data transmission prescription submitted via a software that fails to meet any of the following:

   a) Adheres to the National Council for Prescription Drug Programs SCRIPT standard.

   b) Complies with the prescription content requirements prescribed by statute.

c) For a controlled substance prescription, complies with federal regulations.

d) Complies with the federal Health Insurance Portability and Accountability Act of 1996, the California Confidentiality of Medical Information Act, or the security and confidentiality requirements prescribed to by the pharmacy, pharmacist, or practitioner.

3) Adds the following exemptions from the requirement that prescriptions be issued as an electronic data transmission prescription:

a) Prescriptions issued by a prescribing health care practitioner serving as a volunteer in a free clinic who receives no remuneration for their services.

b) A prescriber who has registered with the California State Board of Pharmacy in a manner and format determined by the board, stating that they are located in the area of a declared disaster or emergency; issue 100 or fewer prescriptions per year; or are unable to issue electronic data transmission prescriptions due to circumstances beyond their control.

4) Exempts a pharmacy from the requirement to transfer or forward a patient's electronic data transmission prescription to an alternative pharmacy requested by the patient when one of the following applies:

a) The action would result in a violation of any state or federal law.

b) The action is not supported by the latest version of the National Council for Prescription Drug Programs SCRIPT standard.

5) Provides that if a pharmacy is prohibited from transferring or forwarding electronic data transmission prescriptions, and that prohibition is subsequently removed, then that pharmacy shall implement, within one year from the date the prohibition is removed, the necessary provisions to allow for the transferring or forwarding of an electronic data transmission prescription.

6) Declares that the act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect.

FISCAL EFFECT: According to the Senate Committee on Appropriations, unknown workload and fiscal impact for the California State Board of Pharmacy to provide education on and incorporate pharmacy law changes into Board-provided continuing education courses; the Office of Information Services within the Department of Consumer Affairs estimates costs of $16,000 to add online lookup functionality, which may be absorbed through the redirection of existing maintenance resources.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

"As part of the negotiations on AB 2789 in 2018, we listened to concerns from both the provider and pharmacy communities regarding the technology challenges this bill might create. We agreed to a three-year period in order to ensure sufficient lead-time was provided so that when go-live occurred on January 1, 2022, all parties would be prepared to comply

with the electronic transmission requirements. For over three years, we literally heard nothing. As the implementation date drew closer, we were asked by the Board of Pharmacy to carry clarifying amendments. The provider community also asked us to provide some additional exemptions. We agreed to all these requests and this is what AB 852 accomplishes. The intent of AB 2789 was always that pharmacies accept electronic transmissions submitted from providers using reputable softwares. However, this clarifying amendment resulted in some concerns from the pharmacy community and we engaged in discussions - meeting several times. We agreed to amendments that would clarify those circumstances under which a pharmacy could decline a transmission. AB 852 makes electronic transmission law clearer and responds to the prescriber and pharmacy asks."

Background.

Electronic Prescribing. Public health advocates long championed electronic prescribing (or "e-prescribing") as one of the most effective ways to combat prescription fraud and drug diversion. Studies dating as far back as 2000 recommended phasing out paper prescription pads in favor of mandatory e-prescribing. A cultural inertia in regards to technology persisted in the medical profession, combined with concerns about whether a sufficient number of practitioners' offices are technologically sophisticated enough to adapt to a mandate, previously represented a strong barrier to any institutionalized change. This remained relatively true even as electronic health records, specialized smartphone apps, and broadband internet access continue to become commonplace in the medical profession.

In 2008, the California Health Care Foundation issued a report entitled *The Outlook for Electronic Prescribing in California*, which stated that only 1.2 percent of prescriptions filled by California's community pharmacies were sent electronically. The report blamed cost, legal restrictions, and technology fees for the slow adoption rate. That same year, the United States Congress passed the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which incentivized e-prescribing among practitioners and providers and penalized those who did not adopt the technology within a few years. In a 2016 report, Surescripts, a health information network, stated that an estimated 73 percent of all prescriptions in the United States are now completed electronically. However, this number was only 14 percent of prescriptions for controlled substances.

As of 2017, six other states had successfully mandated e-prescribing: Connecticut, Maine, North Carolina, New York, Rhode Island, and Virginia. Efforts to pass a federal mandate through the United States Congress continue with the introduction of the Every Prescription Conveyed Securely Act by Reps. Clark and Mullin, which mandated e-prescribing for all Medicare Part D transactions by 2020. This federal legislation was supported by major retail pharmacies like CVS Health and Walgreens.

California enacted its own e-prescribing mandate in 2018 with the passage of AB 2789 (Wood). This bill required that all health care practitioners authorized to issue prescriptions be capable of electronically prescribing and required that all prescriptions for controlled substances be transmitted electronically by January 1, 2022. Various exemptions within the bill were intended to exclude cases where e-prescribing was not necessary, practical, or feasible.

Since AB 2789 went into effect, a number of issues have been identified with how its language has been interpreted and implemented. One issue is with propriety software companies aiming to monopolize the market, with pharmacies only accepting prescriptions submitted through

certain software. The Federal Trade Commission (FTC) is currently suing the company Surescripts for this kind of anticompetitive practice.

This bill also expands the exemptions to the e-prescribing mandate. Practitioners volunteering in free clinics would be exempted, as would providers who seek registration with the California State Board of Pharmacy to secure an exemption based on the location and size of their practice or if they otherwise are unable to issue electronic data transmission prescriptions due to circumstances beyond their control. The bill also makes additional clarifying changes to existing law to ensure an effective continued rollout of the state's e-prescribing mandate.

Prior Related Legislation. AB 2789 (Wood, Chapter 438, Statutes of 2018) required that all health care practitioners authorized to issue prescriptions be capable of electronically prescribing and requires that all prescriptions for controlled substances be transmitted electronically, with exceptions, by January 1, 2022.

ARGUMENTS IN SUPPORT:

The **California Dental Association** (CDA) supports this bill, writing: "AB 852's recent amendments will give health care practitioners more flexibility in complying with California's prescribing mandate. This bill would exempt low-volume prescribers, prescribers in areas of natural disasters, and prescribers who are granted a waiver based on extraordinary circumstances, so long as they register annually with the Board of Pharmacy. These exemptions align with federal regulations to ease the strain COVID-19 has put on our health care system."

The **Medical Board of California** (MBC) also supports this bill, writing that "our staff have received complaints from some licensees about the current electronic prescribing requirements, particularly from those who report they only write a low volume of prescriptions each year and that it has been cost prohibitive to incorporate these requirements into their practice." The MBC argues that "AB 852 mitigates these concerns in a manner not expected to substantially erode the benefits of the broader requirements for electronic prescribing. If warranted, the Board would be able to seek documentation from its licensees to validate they qualify for the new exemptions created by the bill."

ARGUMENTS IN OPPOSITION:

The **California Retailers Association** (CRA) and **National Association of Chain Drug Stores** (NACDS) are opposed to AB 852 "unless it is amended to clarify that pharmacies do not have to accept electronic prescriptions from software vendors without a mutually agreeable contractual relationship with a pharmacy that ensures compliance with applicable laws and interoperability." The CRA and NACDS argue that "of particular concern, AB 852 would require pharmacies to accept electronic prescriptions without advance notice nor the lead time necessary to build out system capabilities both internally and with external system vendors to accommodate this. This is particularly problematic given that AB 852 contains an urgency clause and would take effect immediately upon enactment."

REGISTERED SUPPORT:

California Dental Association
California Medical Association
California Podiatric Medical Association

Medical Board of California

REGISTERED OPPOSITION:

California Retailers Association
National Association of Chain Drug Stores

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

Date of Hearing: August 30, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2236 Low – As Amended August 25, 2022

NOTE: This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

SUBJECT: Optometry: certification to perform advanced procedures.

SUMMARY: Expands the scope of practice for optometrists certified to use therapeutic pharmaceutical agents to perform specified advanced procedures after graduating from an accredited school of optometry and meeting additional education and hands-on training requirements, including instruction involving both simulated eyes and live human patients.

EXISTING LAW:

1) Establishes the California State Board of Optometry (CBO) for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) §§ 3000 *et seq.*)

2) Establishes the Medical Board of California (MBC) for the licensure and regulation of physicians and surgeons, including ophthalmologists specializing in the diagnosis and treatment of eye disorders. (BPC §§ 2000 *et seq.*)

3) Makes it unlawful for a person to engage in or advertise the practice of optometry without having first obtained an optometrist license from the CBO. (BPC § 3040)

4) Provides that the practice of optometry includes the prevention, diagnosis, treatment, and management of disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat the human eye for various enumerated conditions. (BPC § 3041)

5) Requires an optometrist seeking certification to use therapeutic pharmaceutical agents and diagnose and treat specified conditions to apply for a certificate from the CBO and meet additional education and training requirements. (BPC § 3041.3)

6) Authorizes an assistant in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist to fit prescription lenses and perform specified services, including performing preliminary subjective refraction procedures in connection with finalizing procedures performed by an ophthalmologist or optometrist, subject to certain conditions, including at least 45 hours of documented training in subjective refraction procedures. (BPC § 2544)

THIS BILL:

1) Adds neuromuscular blockers to the listed classes of agents that are excluded from the practice of optometry absent an explicit United States Food and Drug Administration (FDA) approved indication for treatment of a condition or disease authorized by statute.

2) Requires an optometrist diagnosing or suspecting angle closure glaucoma to attempt medical stabilization, if possible, and immediately refer the patient to an ophthalmologist.

3) Authorizes an optometrist certified to treat glaucoma to become additionally certified to perform the following set of advanced procedures:

    a) Laser trabeculoplasty.

    b) Laser peripheral iridotomy for the prophylactic treatment of a clinically significant narrow drainage angle of the anterior chamber of the eye.

    c) Laser posterior capsulotomy after cataract surgery.

    d) Excision or drainage of nonrecurrent lesions of the adnexa evaluated consistent with the standard of care by the optometrist to be noncancerous, not involving the eyelid margin, lacrimal supply, or drainage systems, no deeper than the orbicularis muscle, excepting chalazia, and smaller than five millimeters in diameter. Tissue excised that is not fully necrotic shall be submitted for surgical pathological analysis.

    e) Closure of a wound resulting from a procedure to excise or drain nonrecurrent lesions of the adnexa.

    f) Injections for the treatment of chalazia and to administer local anesthesia required to excise or drain nonrecurrent lesions of the adnexa.

    g) Corneal crosslinking procedure, or the use of medication and ultraviolet light to make the tissues of the cornea stronger.

4) Requires an optometrist seeking to become certified to perform the above advanced procedures to complete a CBO-approved training program within three years, which shall include the following practical training:

    a) Hands-on instruction on no less fifteen simulated eyes before performing the related procedure on live human patients, as specified.

    b) The performance of at least 43 complete surgical procedures on live human patients, as specified.

5) Specifies additional requirements for a CBO-approved training program.

6) Requires an optometrist seeking to become certified to perform advanced procedures to complete a CBO-approved course of at least 32 hours on those procedures, and pass the Laser and Surgical Procedures Examination of the National Board of Examiners in Optometry, within two years prior to beginning a CBO-approved training program.

7) Requires the program course administrator to certify that an optometrist is competent to perform advanced procedures using a form approved by the CBO.

8) Requires an optometrist to make a timely referral of a patient and all related records to an ophthalmologist or, in an urgent or emergent situation and an ophthalmologist is unavailable, a qualified center to provide urgent or emergent care, after stabilizing the patient to the degree possible if the optometrist makes an intraoperative determination that a procedure being performed does not meet the statutory standard or if the optometrist receives a pathology report for a lesion indicating the possibility of malignancy.

9) Expressly states that the bill does not does not authorize performing blepharoplasty or any cosmetic surgery procedure, including injections, with the exception of removing acrochordons that meet other qualifying criteria.

10) Requires an optometrist to attest that they have performed each of the delineated procedures during the period of licensure preceding the renewal with each subsequent license renewal after being certified to perform the advanced procedures.

11) Requires an optometrist to monitor and report the following information to the California State Board of Optometry on a form provided by the CBO or using an internet-based portal:

    a) At the time of license renewal or in response to a request of the CBO, the number and types of procedures authorized by this section that the optometrist performed and the diagnosis of the patient at the time the procedure was performed.

    b) Within three weeks of the event, any adverse treatment outcomes that required a referral to or consultation with another health care provider.

12) Requires the CBO to review adverse treatment outcome reports in a timely manner, requesting additional information as necessary to make decisions regarding the need to impose additional training, or to restrict or revoke certifications based on its patient safety authority, and to provide a report on the data.

13) Authorizes the CBO to adopt regulations and set a fee for the implementation of the bill.

14) Makes additional technical changes to existing provisions relating to optometric scope of practice.

FISCAL EFFECT: According to the Senate Committee on Appropriations, unknown fiscal impact, likely ranging in the high-hundreds of thousands to low-millions of dollars, to the CBO, potentially offset by unknown, ongoing increase in revenue, likely in the high-hundreds of thousands of dollars.

COMMENTS:

Purpose. This bill is sponsored by the **California Optometric Association**. According to the author:

> "Today's optometrists are trained to do much more than they are permitted in California. Optometrists in other states are performing minor surgical procedures, including the use of lasers to treat glaucoma with no adverse events and little to no requirements on training. AB

2236 provides additional training that will be more rigorous than any other state and 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."

Background.

Practice of Optometry. California first formally regulated optometrists in 1903 when the Legislature defined the practice of optometry and established the California State Board of Examiners in Optometry to grant certificates of registration to individuals who demonstrated competence in the profession. In 1913, the Legislature repealed that act and replaced it with a new Optometry Law, which created a State Board of Optometry with expanded authority over optometrists, opticians, and schools of optometry. Much of the language enacted in this 1913 legislation survives in statute today. Education requirements for optometrists were subsequently enacted in 1923.

As of 2021, the current CBO is responsible for overseeing approximately 31,937 optometrists, opticians, and optical businesses. The CBO is also responsible for issuing certifications for optometrists to use Diagnostic Pharmaceutical Agents (DPA); Therapeutic Pharmaceutical Agents (TPA); TPA with Lacrimal Irrigation and Dilation (TPL); and TPA with Glaucoma Certification (TPG); and TPA with Lacrimal Irrigation and Dilation and Glaucoma Certification (TLG). The CBO additionally issues statements of licensure and fictitious name permits.

Under the Optometry Practice Act, 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." Statute establishes the scope of practice for optometrists by enumerating the examinations, procedures, and treatments that an optometrist may perform. No person may engage in the practice of optometry or advertise themselves as an optometrist in California without a valid license from the CBO.

Scope of Practice Comparison with Ophthalmology. Optometry and ophthalmology are two distinct professions that share a great deal of practice scope and interest. Whereas optometrists are often considered mid-level practitioners with a narrow focus on diagnosing and treating specific eye conditions, ophthalmologists are physicians and surgeons working within a specialty that also places an emphasis on conditions of the eye. As a result, ophthalmologists may engage in virtually any activity within the practice of optometry, while also being authorized to perform a greater number of treatments and procedures than optometrists.

In the wake of what many regard to be a physician shortage in California, efforts have been made to expand the scope of practice for optometrists to provide services traditionally reserved for physicians and surgeons specializing in ophthalmology. For example, legislation enacted in recent years have allowed optometrists to treat glaucoma, use therapeutic pharmaceutical agents, employ the use of new drugs and technologies to treat certain conditions, and treat patients with topical and oral therapeutic pharmaceutical agents. These efforts have drawn on the extensive training optometrists receive to empower them to provide additional services and alleviate the need for patients to obtain care from an ophthalmologist.

Additional Advanced Procedures. Optometrists who meet the bill's requirements for may perform specified additional advanced procedures that may currently only be performed by ophthalmologists. Only optometrists who have met the requirements to become certified to use therapeutic pharmaceutical agents are eligible to obtain this further certification. The procedures are as follows:

- **Laser trabeculoplasty** – a laser treatment for glaucoma that uses short pulses of low-energy light to target the melanin, or pigment, in specific ocular cells to improve drainage and lower intraocular pressure.

- **Laser peripheral iridotomy** – a procedure that uses a laser to create a hole in the iris, allowing the aqueous humor to traverse directly from the posterior to the anterior chamber, relieving a pupillary block; this bill would allow the procedure to be performed for the prophylactic treatment of a clinically significant narrow drainage angle of the anterior chamber of the eye.

- **Laser posterior capsulotomy** – the use of a laser to create an opening in an artificial lens that was placed into the eye during cataract surgery and subsequently became cloudy.

- **Excision or drainage of nonrecurrent lesions of the adnexa** – these procedures remove or drain noncancerous lesions of the parts of the area outside of the eyeball but within its orbit, not including the eyelid margin, lacrimal supply, or drainage systems, no deeper than the orbicularis muscle.

- **Closure of wounds, injections, and the administration of local anesthesia** required to perform the above excision or drainage.

- **Corneal crosslinking procedure** – a treatment where eyedrop medication and ultraviolet light is used to strengthen the tissues in the cornea, which treats conditions like keratoconus by reinforcing collagen fibers in the eye.

Optometrists seeking this certification would be required to complete a CBO-approved course of at least 32 hours that is designed to provide education on the advanced procedures, including, but not limited to, medical decisionmaking that includes cases that would be poor surgical candidates, an overview and case presentations of known complications, practical experience performing the procedures, including a detailed assessment of the optometrist's technique, and a written examination for which the optometrist achieves a passing score. The optometrists would also be required to pass both sections of the Laser and Surgical Procedures Examination of the National Board of Examiners in Optometry or its equivalent.

In addition to the above coursework requirement, this bill would also require optometrists to complete a CBO-approved training program. This program would include the performance of all required procedures involving sufficient direct experience with live human patients to permit certification of competency, by an accredited California school of optometry. The bill requires that there be at least fifteen procedures on simulated eyes, divided equally between laser procedures, excision and drainage procedures, and corneal crosslinking procedures.

After the completion of the hands-on instruction using simulated eyes, this bill would require the performance of at least 43 complete surgical procedures on live human patients. At a minimum, these procedures would be required to include the following:

- Eight laser trabeculoplasties.
- Eight laser posterior capsulotomies.
- Five laser peripheral iridotomies.
- Five chalazion excisions.
- Four chalazion intralesional injections.
- Seven excisions of an authorized lesion of greater than or equal to two millimeters in size.
- Five excisions or drainages of other authorized lesions.
- One surgical corneal crosslinking involving removal of epithelium.

This bill's hands-on training requirements are intended to compensate for the additional practical instruction received by ophthalmologists in medical school that is not typically received by optometrists during their prelicensure education. The bill would allow some of the procedures to be completed under a preceptorship model and some under a cohort model. Upon the optometrist's completion of all certification requirements, the course administrator, who must be a qualified educator, is required to certify that the optometrist is competent to perform advanced procedures using a form approved by the CBO.

In order to gauge whether the performance of advanced procedures by optometrists as authorized under the bill correlates with any increase in patient harm, this bill would require optometrists to report any adverse treatment outcomes that required a referral to or consultation with another health care provider to the CBO. The CBO would then review these adverse treatment outcome reports in a timely manner, requesting additional information as necessary to make decisions regarding the need to impose additional training, or to restrict or revoke certifications based on its patient safety authority. The CBO would subsequently be required to compile a report summarizing the data collected, including, but not limited to, percentage of adverse outcome distributions by unidentified licensee and CBO interventions, and would make the report available on its internet website.

Currently, ten other states reportedly allow optometrists to perform procedures involving lasers to treat eye conditions. This includes Alaska, Arkansas, Colorado, Indiana, Kentucky, Louisiana, Mississippi, Oklahoma, Virginia, and Wyoming. This bill would provide very specific types of laser procedures to be performed for specified conditions. These procedures are consistent with those allowed in most other states where advanced procedures are permitted.

Current Related Legislation. AB 2574 (Salas) makes technical changes to prior legislation increasing the scope of practice for optometrists. *This bill is pending on the Senate Floor.*

Prior Related Legislation. AB 407 (Salas, Chapter 652, Statutes of 2021) expanded and revised the scope 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.

AB 1467 (Salas and Low) of 2019 would have authorized an optometrist to provide services outlined in a delegation of services agreement between the optometrist and an ophthalmologist. *This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 443 (Salas, Chapter 549, Statutes of 2017) expanded the scope of practice for optometrists to include additional procedures including the administration of specific immunizations for optometrists who meet certain training requirements.

SB 1406 (Correa, Chapter 352, Statutes of 2008) expanded the scope of practice for optometrists, including establishing requirements for glaucoma certification and the requirement related to an acute closed-angle attack.

ARGUMENTS IN SUPPORT:

The **California Optometric Association** (COA) is sponsoring this bill. According to the COA: "For more than a decade, the California Optometric Association has been in discussions with the California Medical Association and California Academy of Eye Physicians and Surgeons about legislation to allow a certified optometrist to use the latest technology in treating patients, resulting in more effective and safer eye care than currently allowed by law." The COA argues: "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."

ARGUMENTS IN OPPOSITION:

The **California Medical Association** (CMA) opposes this bill, writing: "AB 2236 authorizes optometrists, who are not physicians, to perform surgical procedures on a patient's eye if they meet minimal specified education and training requirements. While the latest amendments increase the number of required surgeries to 43, that number is far below the clinical education requirements of ophthalmology residency programs. In contrast with optometrists, physicians are put through rigorous residency programs to develop clinical competency and judgment to identify, manage and mitigate complications during surgery to prevent permanent damage to patients' eyes and eyesight."

REGISTERED SUPPORT:

California Optometric Association *(Sponsor)*
American Optometric Student Association
Blindness Support Services
Lions in Sight of California and Nevada
Partners for Pediatric Vision
Slolionseye.org
United Nurses Associations of California/Union of Health Care Professionals
Vision to Learn
Volunteer Optometric Services to Humanity
Western University of Health Sciences

REGISTERED OPPOSITION:

American Academy of Ophthalmology
American Association for Pediatric Ophthalmology and Strabismus
American College of Surgeons
American Glaucoma Society
American Medical Association
American Society of Ophthalmic Plastic and Reconstructive Surgery
American Society of Retina Specialists
Association of University Professors of Ophthalmology
California Academy of Eye Physicians and Surgeons
California Medical Association
California Society of Dermatology & Dermatologic Surgery
California Society of Plastic Surgeons
Union of American Physicians and Dentists
Western Occupational & Environmental Medical Association

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

Date of Hearing: August 30, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2380 (Maienschein) – As Amended August 16, 2022

NOTE: This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

SUBJECT: Online pet retailers: retail financing options.

SUMMARY: Prohibits, under the Lockyer-Polanco-Farr Pet Protection Act, an online pet retailer from offering or facilitating a loan or other financing for the adoption or sale of a dog, cat, or rabbit.

EXISTING LAW:

1) Establishes various animal safety requirements for retail pet dealers under the Lockyer-Polanco-Farr Pet Protection Act. (Health and Safety Code (HSC) §§ 122125)

2) Subjects violators of the act to a civil penalty of up to $1,000 per violation. (HSC § 122150)

3) Prohibits a pet store operator from selling a live dog, cat, or rabbit in a pet store, unless the animals are offered through a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group and the pet store receives no fees. (Health and Safety Code (HSC) § 122354.5)

THIS BILL:

1) Defines "online pet retailer" as a person engaged in the business of selling dogs, cats, or rabbits, at retail, online through an internet website.

2) Prohibits an online pet retailer from offering, brokering, making a referral for, or otherwise facilitating a loan or other financing option for the adoption or sale of a dog, cat, or rabbit.

3) Specifies that the prohibition does not apply to a loan or other financing option for the purchase of a service animal.

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

COMMENTS:

Purpose. This bill is sponsored by the *Animal Legal Defense Fund.* According to the author, "Existing law allows an individual to apply for a consumer loan for the purchase of a cat or dog. Several entities engage in predatory lending practices in the offering of these loans at high interest rates or with hidden fees. This bill seeks to prevent this practice by prohibiting online pet retailers from offering financing for the purchase of a pet. While retail pet stores are now unlawful in the state, the pet sales industry has since shifted online. According to data of publicly available shipping transactions, California is the #1 importer of dogs and cats in the nation. Online sales allow puppy mills to continue to service California customers through the cloak of sanitized imagery and obfuscated origination information. Most of the large online brokers that

ship puppies to in-state customers offer financing. And many of the lenders used are not even licensed to do business in California by the Department of Financial Protection and Innovation (DFPI)."

Background. AB 485 (O'Donnell) Chapter 740, Statutes of 2017, prohibited, starting January 1, 2019, a pet store operator from selling a live cat, dog, or rabbit in a pet store unless the animal is offered through a public animal control agency or shelter, specified nonprofit, or animal rescue or adoption organization. That bill attempted to address both overcrowding in California animal shelters and reduce sales from out-of-state "puppy mills."

However, that bill did not address online pet sales, nor are there regulations specific to online sales. As noted by the author, this bill seeks to address two issues related to online sales. First, like many online retailers, online pet stores and marketplaces also offer financing through partnerships with third-party lenders or brokers. These might be loans or other forms of credit. In other states, this has led to instances of lenders or brokers who partner with banks to offer loans that have higher interest rates than allowed for non-bank lenders. There are also reports of hidden fees, such as early pay-off fees. It is unclear to what extent the high-interest lending or hidden fees are occurring in California.

Other financing products may also include offers to make them more appealing to consumers, such as lower or deferred interest if balances are paid on time. If a consumer is unclear on the terms of these types of products, they may end up paying more in interest or fees than they initially anticipated.

Second, the availability of financing through an online pet store may make it easier for out-of-state "puppy mills" to make sales here in California. A puppy mill is a large breeding operation that focuses on breeding animals as quickly as possible, often at the expense of the health and welfare of the animals themselves.

This bill seeks to address both of those issues by prohibiting an online retailer from offering or facilitating a loan or other financial product for the adoption of a dog, cat, or rabbit. Consumers may still independently seek out financing that is not offered through a retailer.

Prior Related Legislation. AB 2152 (Gloria, O'Donnell) Chapter 96, Statutes of 2020, prohibited a pet store from selling dogs, cats, or rabbits, but allows a pet store to provide space to display animals for adoption if the animals are displayed by either a shelter or animal rescue group, as defined, and establishes a fee limit, inclusive of the adoption fee, for animals adopted at a pet store.

SB 639 (Mitchell) Chapter 856, Statutes of 2019, established various limits on the use of third-party financial products in healthcare settings, including prohibiting the arranging for or establishing of an open-end credit or loan application that contains a deferred interest provision, except as specified.

AB 2445 (O'Donnell) Chapter 145, Statutes of 2018, required a pet store operator to maintain records to document the health, status, and disposition of each animal it sells for a period of not less than two years, and provide to the prospective purchaser of any animal the veterinary medical records, as specified, and the pet store return policy including the circumstances, if any, under which the pet store will provide follow-up veterinary care for the animal in the event of illness.

AB 485 (O'Donnell), Chapter 740, Statutes of 2017, prohibited, beginning January 1, 2019, a pet store operator from selling a live cat, dog, or rabbit in a pet store unless they are offered through a public animal control agency or shelter, specified nonprofit, or animal rescue or adoption organization, as defined; permits a public or private shelter to enter into a cooperative agreement with animal rescue or adoption organizations regarding rabbits; requires dogs or cats sold in a retail pet store to comply with current spay and neuter laws; provides specified exemptions to the pet warranty law; and permits an animal control officer, a humane officer, or a peace officer to enforce the pet store prohibition.

AB 1491 (Caballero) Chapter 731, Statutes of 2017, declares as void against public policy a contract for the purchase of a dog or cat which is made contingent on making of payments over a period of time, or other types of lease-to-own agreements that do not immediately transfer ownership of the animal to the purchaser.

ARGUMENTS IN SUPPORT:

The Animal Legal Defense Fund (sponsor) writes in support:

> While AB 485 (O'Donnell) passed in 2017, and subsequent legislation to close loopholes (AB 2445 and AB 2152) addressed puppy mill sales in retail stores, pet sales have subsequently shifted online. Predatory puppy financing often leads to financial hardship for borrowers due to undisclosed and often exorbitant interest rates and hidden fees. Such predatory loans provide outlets for puppy mills–commercial breeders who provide inadequate care–to unscrupulously sell dogs to consumers who might otherwise not be aware of the financial implications of these financing agreements. Financing also increases impulse puppy purchases, which can result in weeks-old puppies with families that don't have the time, willingness, or resources to properly care for them. This can lead to health and behavior issues, relinquishment to a shelter, or neglect. In some instances, adding insult to injury, consumers who fall victim to predatory lending can also find themselves dealing with a sick animal and associated cost of medical care.
>
> Financing offerings can be a key part of the pet sales proposal. Many of these animals sell for thousands of dollars, which is out of reach for the average consumer. However, lenders make it easy for potential purchasers by including a readily available link to instantaneously apply for seemingly low or no interest short term financing, even for those with bad or no credit. Full disclosure of interest rates, fees, payoff amount, and general loan terms are not available until after a loan application is made, however, which is usually after an emotional connection with and desire to purchase the animal is already present.
>
> According to data of publicly available shipping transactions, California is the number one importer of dogs and cats in the nation. Online sales allow puppy mills to continue to service California customers through the cloak of sanitized imagery and obfuscated origination information. Most of the large online brokers that ship puppies to in-state customers offer financing.
>
> [This bill] would prohibit online pet retailers from offering financing options. This would help prevent these predatory lending practices by making these loans

less accessible at the point of sale and would help to ensure financial certainty around the adoption of a new pet.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUES:

Good Actors versus Bad Actors. This bill would prohibit any person who, via an online retail business, sells dogs, cats, or rabbits from offering or otherwise facilitating any financing options for a sale. One of the goals is to protect consumers from predatory financing. However, this bill simply prohibits all forms of financing. To the extent there may be consumer-friendly financing options offered through retailers that deal with lawful and competent breeders, it may be worth weighing the potential harm to consumers against the benefits. Options other than a flat prohibition to consider could be carve-outs for certain types of consumer-friendly offers or specifically targeting known predatory financing options.

IMPLEMENTATION ISSUES:

Retail Sales versus Brokering a Sale. This bill is specific to retail sales, which is typically defined as a direct sale of a good to a consumer from inventory, typically purchased from a wholesaler or the source of the good. However, many online pet sale sites are described as a marketplace for breeders to list their animals or as a network of breeders, where the operator of the site does not take possession of the animal but merely facilitates a direct sale for a fee. As a result, there may be some online pet sale businesses that may be brokering "puppy mill" sales that are not captured under this bill.

Enforceability. A violation of the Lockyer-Polanco-Farr Pet Protection Act, in which this bill is adding the prohibition, is a $1000 civil penalty, which may be prosecuted by the district attorney for the county where the violation occurred. To the extent that online retailers operate in other states, it may be difficult to prosecute the violations under this bill.

REGISTERED SUPPORT:

Animal Legal Defense Fund
Social Compassion in Legislation

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: August 30, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2685 (Committee on Business and Professions) – As Amended August 11, 2022

NOTE: This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

SUBJECT: Naturopathic Doctors Act: Naturopathic Medicine Committee.

SUMMARY: Extends the sunset date for the Naturopathic Medicine Committee (NMC) until January 1, 2027 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the NMC's sunset review oversight process.

EXISTING LAW:

1) Establishes the Naturopathic Doctors Act for the purpose of regulating naturopathic doctors (NDs). (Business and Professions Code (BPC) §§ 3610 *et seq.*)

2) Establishes the NMC, nominally created within the Osteopathic Medical Board of California. (BPC § 3612)

3) Empowers the NMC with sole responsibility for enforcing and administering the provisions of the Naturopathic Doctors Act. (BPC § 3620)

4) Provides that the NMC shall consist of five NDs, two physicians and surgeons, and two public members, with members appointed by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. (BPC § 3621)

5) Authorizes the NMC to employ officers and employees as necessary to discharge its duties. (BPC § 3626)

6) Requires an applicant for licensure as an ND to pass the Naturopathic Physicians Licensing Examination (NPLEX) or an equivalent approved by the North American Board of Naturopathic Examiners, and if no such examination exists, allows the NMC to administer a substantially equivalent examination. (BPC § 3631)

7) Allows for an ND's continuing education requirements to be met through courses approved by the NMC or various other associations, boards, and accreditors. (BPC § 3635)

8) Requires applicants for certification as naturopathic childbirth attendants to obtain a passing grade on the American College of Nurse Midwives Written Examination or a substantially equivalent examination approved by the NMC. (BPC § 3651)

9) Provides that the Naturopathic Doctors Act shall be repealed on January 1, 2023 unless extended by the Legislature. (BPC § 3686)

THIS BILL:

1) Extends the sunset date for the Naturopathic Doctors Act from January 1, 2023 to January 1, 2027.

2) Changes the name of the NMC to the California Board of Naturopathic Medicine (CBNM).

3) Places the CBNM under the Department of Consumer Affairs and removes references to its statutory placement within the Osteopathic Medical Board of California.

4) Prohibits the CBNM from incurring any costs as a result of changing its name beyond what is absorbable within existing resources.

5) Authorizes each appointing authority to remove its appointed members from the CBNM for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct.

6) Requires the CBNM to employ a full-time staff position whose responsibilities shall include enforcement against violations of the Naturopathic Doctors Act.

7) Authorizes the CBNM to require applicants for licensure as an ND to pass additional NPLEX elective examinations relevant to a licensee's scope of practice in California.

8) Adds the North American Naturopathic Continuing Education Accreditation Council to the list of entities whose approved courses may be taken by NDs in California to meet their continuing education requirements.

9) Adds the American College of Naturopathic Obstetricians Examination to the list of examinations that an ND may pass to certify in naturopathic childbirth attendance.

FISCAL EFFECT: According to the Senate Committee on Appropriations, annual costs in the mid hundreds of thousands of dollars to support the continued operation of the NMC/CBNM.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the Naturopathic Medicine Committee, authored by the Chair of the Assembly Business and Professions Committee. The bill extends the sunset date for the NMC and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the NMC's sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunsets" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Currently, the sunset review process applies to 36 different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

Naturopathic Medicine Committee. The NMC is responsible for licensing and regulating NDs under the Naturopathic Doctors Act. The foundational principle of naturopathy is a belief that the human body is capable of healing itself with the assistance of natural therapies and treatments. Naturopathic medicine is a system of primary health care that integrates the values and practices of traditional naturopathy with modern methods and modalities for the diagnosing, treating, and preventing of health conditions, injuries, and disease.

As of December 2021, there are 917 NDs actively licensed by the NMC. California is one of 22 states that provide for licensure of naturopathic professionals. While NDs function similarly to allopathic and osteopathic physicians and surgeons, California does not allow them to use the title "physician." According to the NMC, a majority of NDs working in California provide family centered, primary care medicine through office-based private practice, and may often work in collaboration with physicians and surgeons, doctors of chiropractic, and acupuncturists, some in integrative practices.

NDs are authorized to order physical and laboratory examinations, as well as diagnostic imaging studies under certain conditions. An ND may dispense, administer, order, prescribe, and furnish various foods, medicines, vitamins, therapies, and devices. An ND can engage in health education and counseling, and may treat superficial lacerations and abrasions and remove foreign bodies in superficial tissue. An ND is also authorized to furnish or order drugs in accordance with standardized procedures or protocols developed with a supervising physician and surgeon.

An ND may professionally refer to themselves as "Doctor" or "Dr." but must clearly state that they are doctors of naturopathic medicine. While only a licensee of the NMC may represent themselves as licensed, refer to themselves as a naturopathic doctor, or use the professional designation "ND," more general words like "naturopath" and "naturopathic practitioner" are not protected or reserved and may be used generally by anyone educated and trained in naturopathy. These unlicensed individuals are not subject to regulation or oversight by the NMC.

Name and Placement of the Committee. When the Naturopathic Doctors Act was first enacted through SB 907 (Burton) in 2003, the regulatory entity established to administer it was a Bureau of Naturopathic Medicine under the DCA. The Act additionally required the Director of Consumer Affairs to establish an advisory council, consisting of three NDs, three physicians and surgeons, and three public members appointed by the Governor and the Legislature. Both the Bureau and its advisory committee were untethered from any other regulatory bodies, with the bureau chief reporting directly to the Director of Consumer Affairs.

When the DCA underwent a reorganization under Governor Schwarzenegger, the Bureau was abolished and replaced with the NMC, whose membership was similarly structured to the prior advisory council. The language of ABX4-20 (Strickland), which implemented this portion of the reorganization plan in 2009, provided that the NMC was both "created within" and "within the jurisdiction of" the Osteopathic Medical Board of California (OMBC). The bill additionally

required the OMBC's approval for the NMC to appoint its own Executive Officer and charged the OMBC with employing officers and employees to discharge the duties of the NMC.

However, it appears as though the NMC was never functionally under the direction or supervision of the OMBC. According to the NMC, the Director of Consumer Affairs was provided a legal opinion stating "that the OMBC was in no way responsible for the actions of the NMC and the Committee was deemed, independent, solely responsible for the regulation of naturopathic medicine in California." It also does not appear as though the OMBC and the NMC shared any significant resources.

SB 1050 (Yee) was chaptered the following year to make a number of changes to the NMC's administrative framework. First, the bill explicitly provided that the NMC was solely responsible for the implementation of the Naturopathic Doctors Act. The bill also struck the requirement that the OMBC approve the NMC's appointment of an Executive Officer and that the NMC would employ its own officers and employees.

Despite these changes to clarify the effective autonomy of the NMC in regulating NDs, statute continues to refer to the NMC as being "within the Osteopathic Medical Board of California." It would appear that this language inaccurately describes the structure NMC, which was never under the oversight or control of the OMBC. The NMC's sunset background paper argued that it would be more accurate to retitle the NMC as a standalone board under the DCA. This bill would rename the NMC as the California Board of Naturopathic Medicine, and clarify that the board is not within the Osteopathic Medical Board of California. No substantial costs would be allowed to incur as a result of this technical change.

Enforcement Staff. Statute provides that the NMC may appoint an Executive Officer as well as "other officers and employees as necessary to discharge the duties of the committee." Currently, the NMC is staffed by two individuals: an Executive Officer and an analyst position that was purportedly hired principally to ensure compliance with the Consumer Protection Enforcement Initiative. While the population of active NDs is substantially smaller than the licensee populations for most other boards, this is arguably still a very low number of staff for regulatory entity under the Department of Consumer Affairs. The NMC's sunset background paper argued that this could potentially prove problematic in the event that there are unanticipated changes in workload or if staff members are unable to perform their duties due to customary absences or illness.

Meanwhile, the NMC has struggled to effectively enforce the Naturopathic Doctors Act. From FY 2018-19 through FY 2020/21, the NMC reported that it received 163 complaints and engaged in 175 investigations. During this time period, the NMC reported that it initiated zero cases with the Attorney General and that there were zero formal disciplinary outcomes, with no revocations, surrenders, or probationary actions taken. The NMC's sunset background paper suggested this may be explained by the NMC's high enforcement workload associated with unlicensed activity, its small staff, or the nature of its licensee population. According to the NMC, approximately 71 percent of its enforcement activities involve unlicensed practice, and a substantially large percentage of its complaints are not against its ND licensees but against others using the naturopathic title, which is not restricted in California for individuals not claiming to be NDs or engaging in ND scope of practice.

This bill would require the CBNM to hire a dedicated staff person to focus on enforcement efforts for the board. This would include enforcement of the existing Naturopathic Doctors Act,

both against NDs that violate the law or individuals who engage in practices currently prohibited by the Act under existing law. This will hopefully result in more consistent enforcement action being taken by the CBNM.

NPLEX Elective Examinations. All applicants for licensure as an ND in California must pass both Parts I and II of the Naturopathic Physicians Licensing Examination (NPLEX). This examination is required by all other licensing states as well as most Canadian provinces. Part II of the NPLEX includes clinical elective examinations in Minor Surgery, Pharmacology, Parenteral Therapeutics and Acupuncture; while other states require these clinical elective examinations where those services are within an ND's scope, they are not required in California as the state does not include all of those subjects within its ND scope of practice for NDs.

However, NDs in California who meet certain training requirements are allowed to engage in parenteral therapy specialty (IV Therapy), which would suggest that requiring future applicants for ND licensure to pass the NPLEX Parenteral Therapeutics Elective Exam may be advisable. Further, the NMC has advocated for expanding the authority of NDs to independently prescribe medications, and recently approved a Formulary that meets the education and training as mandated by the Legislature. This bill would allow the NMC to require newly graduating naturopathic students applying for ND licensure in California to pass additional NPLEX elective examinations, including the Pharmacology Elective Exam.

Naturopathic Childbirth Attendance Examination. Current law requires an ND to obtain a passing grade on the American College of Nurse Midwives (ACNM) written examination, "or a substantially equivalent examination approved by the committee," in order to be certified for the specialty practice of naturopathic childbirth attendance. The ACNM does not offer exams to any practitioner who does not go to one of their accredited nursing schools. Therefore, this bill replaces the ACNM with the American College of Naturopathic Obstetricians (ACNO), which is the standard exam for most states and has been successfully utilized to certify NDs for the practice of childbirth attendance and midwifery.

Continuing Education Course Approvers. The Naturopathic Doctors Act requires that all continuing education providers and classes be approved by the California Naturopathic Doctors Association (CNDA), the American Association of Naturopathic Physicians (AANP), the California Board of Chiropractic Examiners, the California Board of Pharmacy, or the NMC. Continuing education classes approved for physicians and surgeons in California are also accepted. In the NMC's most recent Strategic Plan, it agreed to add the North American Naturopathic Continuing Education Accreditation Council (NANCEAC) as an approved continuing education provider. This bill adds the NANCEAC to the statutory list of approvers.

Technical Cleanup. The NMC's sunset background paper asked whether there was the need for technical changes to statute to add clarity and remove unnecessary language. This bill makes various technical and clarifying changes to the Naturopathic Doctors Act.

Prior Related Legislation. SB 907 (Burton, Chapter 485, Statutes of 2003) first established the Committee as the Bureau of Naturopathic Medicine.

ARGUMENTS IN SUPPORT:

The **California Naturopathic Doctors Association** (CNDA) supports this bill. According to the CNDA, "The Naturopathic Medicine Committee has appropriately addressed the licensing,

regulatory, and enforcement needs of California naturopathic doctors to date." The CNDA argues that "licensure and regulation of the California naturopathic doctor profession by the Naturopathic Medicine Committee provides the citizens of California safe access to well-trained primary care providers that specialize in affordable and effective healthcare."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Naturopathic Doctors Association
Naturopathic Medicine Committee

REGISTERED OPPOSITION:

None on file.

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