

Date of Hearing: January 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1570 (Low) – As Amended January 3, 2024

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) within the Department of Consumer Affairs (DCA) 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) within the DCA 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) Provides that an optometrist diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held. (BPC § 3041.1)
- 6) Requires the CBO to establish educational and examination requirements for licensure to ensure the competence of optometrists to practice. (BPC § 3041.2)
- 7) 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)
- 8) 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 on adult patients who are 18 years of age or older:
 - 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 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 three years prior to beginning a CBO-approved training program.
- 5) Requires an optometrist seeking to become certified to perform the above advanced procedures to complete a CBO-approved training program within three years of completing coursework and exam requirements, which shall include the following practical training:
 - a) Hands-on instruction of the equivalent of an entire procedure on no less fifteen simulated eyes or other appropriate models before performing the related procedure on live human patients, as specified.
 - b) The performance of at least 52 complete surgical procedures on live human patients, as specified, with a specific number of performances required for each procedure.

- 6) Specifies additional requirements for a CBO-approved training program, including a requirement that at least 40 percent of procedures be performed in a cohort model consisting of at least five optometrists, or a greater percentage if required by the CBO.
- 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 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 at least two of 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, and provides that an optometrist who fails to attest to the performance of those procedures shall have their certification forfeited.
- 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: Unknown; this bill is keyed fiscal by the Legislative Counsel.

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. In 1913, the Legislature replaced the act 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 would be authorized to 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 newly authorized 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 additional 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 or models, 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 52 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.
- Ten surgical corneal crosslinkings 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 would require at least 40 percent of procedures to be performed under a cohort model with at least five optometrists. 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.

As of 2022, 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.

Prior Related Legislation.

AB 2236 (Low) of 2022 was substantially similar to this proposal but would have only required certification applicants to have performed one corneal crosslinking procedure, among other minor differences. *This bill was vetoed by the Governor.*

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, arguing in its letter of support that recent amendments to the bill address the opposition's concerns. According to the COA: "The need for this bill is clear. Optometric patients deserve access to the best treatments and latest technology available and should not have to set up a separate appointment to see a more expensive health care provider for treatments that optometrists are trained to provide and have safely performed in other states for decades." The COA argues that "the opposition to this bill comes from physicians that don't want to see competition in the marketplace for these procedures even though ophthalmologists have considerable backlog with patients waiting for lengthy amounts of time. The problems this bill will address will only get worse if we don't accept the safe solution being offered."

ARGUMENTS IN OPPOSITION:

The **California Medical Association** (CMA) opposes this bill, writing: "This bill would expand the scope of practice for optometrists to perform advanced surgical and laser procedures with minimal training. These procedures include corneal crosslinking and laser trabeculoplasty, among others. Under this bill, optometrists would then qualify to perform these advanced procedures after completing only forty-three various eye surgical procedures. An oppose position is recommended because this bill would put patients at harm by allowing undertrained optometrists to perform the aforementioned procedures." The CMA argues that "although proponents argue that optometrists may have already received training in some procedures as part of their education, this bill creates loopholes in how the program operates and the training is not as rigorous as needed for patient safety. As a result, CMA believes that AB 1570 will create conditions where optometrists will be certified to perform surgical procedures without having been exposed to those procedures in training, which presents a clear threat to patients."

REGISTERED SUPPORT:

California Optometric Association (*Sponsor*)
Community Health Centers

North Orange County Regional Health Foundation
Ruby's Place
Southern California College of Optometry at Marshall B. Ketchum University
United Nurses Associations of California/Union of Health Care Professionals
VSP Global
Western University of Health Sciences
95 individuals

REGISTERED OPPOSITION:

American Academy of Ophthalmology
American Association for Pediatric Ophthalmology and Strabismus
American College of Surgeons
American Glaucoma Society
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 Orthopedic Association
California Society of Dermatology and Dermatologic Surgery
California Society of Plastic Surgeons
Stanford University School of Medicine
5 individuals

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