

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 92

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-92-1 Objective. This chapter is intended to clarify and implement chapter 459, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 5/16/64; am and ren §16-92-1, 6/22/81; am and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-4)

§16-92-2 Definitions. As used in this chapter or in chapter 459, HRS:  
"Adverse effects" means any undesired side effects brought on by the use of diagnostic or therapeutic pharmaceutical agents.

"Board" means the board of examiners in optometry.

"Department" means the department of commerce and consumer affairs.

"Diagnostic Pharmaceutical agents" or "DPAs" means topically applied pharmaceutical agents known as anesthetics, cycloplegics, and mydriatics as specified below:

- (1) Proparacaine HCL 0.5%;
- (2) Benoxinate HCL 0.4%;
- (3) Tropicamide 0.5% and 1.0%;
- (4) Cyclopentolate 0.5% and 1.0%;
- (5) Phenylephrine HCL 2.5%; and
- (6) Hydroxyamphetamine hydrobromide 1%.

"Laboratory tests" means any diagnostic evaluation performed by a licensed medical laboratory pertaining to ocular conditions.

"NBEO" means the national board of examiners in optometry.

"Non-invasive diagnostic procedures" means any procedure used for the purpose of diagnosing ocular diseases or disorders, excluding surgery or injection.

"Prescription" means an order or formula written out in full, given by a licensed physician or optometrist, setting forth refractive powers for the manufacturing of any lens which has a spherical, cylindrical prismatic power or value or any combination thereof.

"Therapeutic pharmaceutical agents" or "TPAs" means topical solutions, suspensions, and ointments applied to the surface of the eye or adjoining tissues. Therapeutically certified optometrists are authorized to use and prescribe therapeutic pharmaceutical agents specifically formulated for topical ophthalmic use, as approved by the Food and Drug Administration, except for the treatment of glaucoma, and with the exception of any controlled substance as defined in chapter 329, HRS, (Uniform Controlled Substance Act).

Topical ophthalmic preparations or combinations thereof shall be permitted from the following categories, with restrictions as noted:

- (1) Mydriatics and cycloplegics. All listed agents except phenylephrine 10%;
- (2) Antimicrobials:
  - (A) Antibacterial agents. All listed agents except chloramphenicol;
  - (B) Antifungal agents. No antifungal agent shall be used or prescribed; and
  - (C) Antiviral agents. All listed agents provided that antiherpetics shall be used for corneal epithelial lesions only. Any lesion which fails to respond as expected within three days of instituting treatment shall be immediately referred to an ophthalmologist;
- (3) Anti-inflammatory agents:
  - (A) Non-steroidal agents; and
  - (B) Anti-allergy agents;
- (4) Anesthetics. All listed agents except cocaine;

- (5) Miotics. Dapiprazole hydrochloride only for the reversal of mydriasis. No other miotic agents are permitted for use or prescription;
- (6) Dry eye agents. All listed agents except glycerin;
- (7) Ocular decongestants;
- (8) Ophthalmic irrigating solutions;
- (9) Hyperosmolar agents. All listed agents except glycerin;
- (10) Diagnostic agents. All listed agents except methacholine and pilocarpine;
- (11) Therapeutically certified optometrists are also authorized to prescribe or use over-the-counter topical or oral agents in the diagnosis, treatment, and management of ocular conditions; and
- (12) Therapeutic pharmaceutical agents shall be used in an FDA approved manner. [Eff 5/16/64; am and ren §16-92-2, 6/22/81; am and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; am and comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§459-2, 459-4)

§16-92-3 Notification and filing of names, addresses, and changes. Every licensee shall file the licensee's business address with the board and shall notify the board in writing, of any and all changes within thirty days of the change. [Eff 5/16/64; am and ren §16-92-3, 6/22/81; am and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-4)

§16-92-4 Display of wall certificate; license identification card. The wall certificate shall be conspicuously displayed in the place of business and the licensee shall have evidence of current licensure in the licensee's possession at all times. [Eff 5/16/64; am and ren §16-92-4, 6/22/81; am and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-5 Renewal of license. Renewal fees paid by mail shall not be considered as delinquent if the envelope bears a postmark of December 31 of each odd-numbered year or earlier. In addition to the renewal fee, each licensee shall submit the required continuing education hours pursuant to subchapter 7. [Eff

§16-92-5

5/16/64; am and ren §16-92-5, 6/22/81; am and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-6 Repealed. [10/31/86]

§16-92-7 Forfeiture of license. Failure to submit the required renewal fees and continuing education hours pursuant to subchapter 7 on or before December 31 of each odd-numbered year shall constitute a forfeiture of license. [Eff and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-8 Restoration of forfeited license. A license which is forfeited due to failure to submit continuing education hours pursuant to subchapter 7 and the renewal fee by December 31 of each odd-numbered year may be restored upon payment of a penalty fee, all delinquent fees and recordkeeping fees, and submittal of all continuing education hours required for the previous biennium. [Eff and comp 10/31/86; comp 5/19/89; comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

## SUBCHAPTER 2

### APPLICATIONS

§16-92-10 Forms and instructions. (a) An application for license or therapeutic certification filed with the board shall be prepared in accordance with and contain the information called for in the application form provided by the board, or any instructions which may be required by the board with respect to the filing. A certified copy of the applicant's diploma or certificate of graduation and applicable NBEO written and practical examinations scores shall be submitted with the application for license. Each applicant for licensure shall attest that the applicant has read and will abide by the provisions of chapter 459, HRS, and this chapter.

(b) Applicants shall submit appropriate forms prescribed by the board for licensure, certification, renewal of license, and restoration of license, and any

other forms designated by the board. The aforementioned forms may be modified from time to time as required.

(c) The appropriate fees shall be paid as provided in chapter 16-53. [Eff 5/16/64; am and ren §16-92-10, 6/22/81; am and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §§459-4, 459-7.5) (Imp: HRS §§459-7, 459-7.5)

§16-92-11 Application for examination. Application for national examinations shall be in accordance with requirements set forth by the NBEO. [Eff 5/16/64; am and ren §16-92-11, 6/22/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-12 Application for reexamination. Application for reexamination for national exams shall be in accordance with requirements set forth by the NBEO. [Eff 5/16/64; am and ren §16-92-12, 6/22/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

### SUBCHAPTER 3

#### HEARINGS

§16-92-13 Denial. If an application for examination, issuance of a license or certificate, renewal of a license, or restoration of a license is denied by the board, the applicant or licensee, as the case may be, shall be notified by letter of the board's action which shall include a concise statement of the reasons therefor and a statement informing the applicant or licensee, as the case may be, of the right to a notice and hearing if so desired. [Eff 5/16/64; am and ren §16-92-13, 6/22/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-9)

§16-92-14 Demand for a hearing. Any person whose application for examination, issuance of a license or certificate, renewal of a license, or restoration of a license has been denied by the board may petition for hearing relief pursuant to chapter 16-201, administrative practice and procedure, provided

## §16-92-14

that the petition for hearing relief is filed with the board within sixty days of the date of the denial of the application. [Eff 5/16/64; am and ren §16-92-14, 6/22/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§459-7, 459-9)

§16-92-15 Proceedings upon demand for hearing. If a demand for hearing is filed within the time prescribed pursuant to section 16-92-14, the board shall order a hearing pursuant to chapter 16-201, administrative practice and procedure. [Eff 5/16/64; am and ren §16-92-15, 6/22/81; am and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§91-9, 91-9.5, 91-10)

§16-92-16 Administrative practice and procedure. The rules of practice and procedures for optometrists shall be as provided in chapter 16-201, the rules of practice and procedure of the department which are incorporated by reference and made a part of this chapter. [Eff and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §§91-2, 459-4) (Imp: HRS §§91-2, 459-4)

### SUBCHAPTER 4

#### ORAL TESTIMONY

§16-92-17 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;



- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief provisions of the rules of administrative procedure.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 10/31/86; comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §92-3)

## SUBCHAPTER 5

### EXAMINATION

§16-92-19 Examination requirements for license. (a) Each applicant shall be required to take and pass the following:

- (1) All parts of the NBEO written examinations; and
- (2) The NBEO practical (Patient Care) examination.

Subjects covered in the above examinations shall be established by the NBEO

(b) An applicant who is registered and licensed under the laws of another state or jurisdiction who wishes to be licensed in Hawaii shall meet the requirements of subsection (a). [Eff 5/16/64; am and ren §16-92-19, 6/22/81; am and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §§459-4, 459-7.5) (Imp: HRS §§459-8, 459-7.5)

§16-92-20 NBEO examinations. The board shall not accept the scores of the NBEO written examinations unless the examinations were passed in their

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entirety by the applicant after December 31, 1986. The board shall not accept the scores of the practical (Patient Care) examination unless the examination was passed in its entirety by the applicant after January 1, 1991. The board may accept scores earned prior to these dates if the examination taken is determined by the NBEO to be substantially equivalent to current examinations, and the applicant holds a current and valid license under the laws of another state. [Eff and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-8)

§16-92-21 Passing scores. The passing scores for all NBEO examinations shall be that designated by the National Board of Examiners in Optometry. [Eff and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§459-7, 459-8)

§16-92-23 Repealed. [R 5/19/89]

§16-92-24 Repealed. [R 5/19/89]

§16-92-25 Courses and examination to use diagnostic pharmaceutical agents (DPAs). (a) All optometrists licensed after January 1, 1987, shall be required to be certified to use DPAs by having taken and passed a pharmacology course given by an optometric school, college, or university accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Office of Education, and having passed the NBEO practical (Patient Care) examination.

(b) An optometrist holding a current and valid license under the laws of another state or jurisdiction, in addition to Hawaii, may be certified to administer DPAs for examination purposes provided the licensee meets the requirements set forth in subsection (a), or is certified to administer DPAs in the other state or jurisdiction, at the time of application. [Eff and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §§459-4, 459-7.5) (Imp: HRS §§459-7.5, 459-8)

§16-92-25.1 Requirements for therapeutic certification. Each applicant for therapeutic certification shall hold a current and unencumbered license, with

certification to use DPAs, and submit documentation of successful completion of the following requirements:

- (1) A one hundred hour board approved course in the treatment and management of ocular diseases prepared and graded by an accredited school of optometry, provided that an applicant who graduated from an accredited optometric college, school, or university after January 1, 1997, may satisfy the course requirement by submitting written verification from the optometric college, school, or university that the applicant has satisfactorily completed at least one hundred hours of education in the treatment and management of ocular diseases. Board approval of the course includes, but is not limited to:
  - (A) Favorable evaluation of the applicant's official transcripts, as related to the course in the treatment and management of ocular diseases, issued by an accredited school of optometry;
  - (B) The provision of written verification from the accredited school of optometry that the applicant has satisfactorily completed the course; and
  - (C) Any other such criteria, as determined and approved by the board;
- (2) The NBEO Treatment and Management of Ocular Disease examination, provided that an applicant who has completed the NBEO Part II (Clinical Science) examination after January 1, 1993, shall be considered to have passed the NBEO Treatment and Management of Ocular Disease examination; and
- (3) One hundred hours of preceptorship acquired under the supervision of an ophthalmologist after July 2, 1997, which included training in the diagnosis, treatment, and management of ocular diseases, and is verified by the supervising ophthalmologist on a form and format prescribed by the board. [Eff and comp 7/23/99; comp 6/3/02] (Auth: HRS §§459-4, 459-7.4) (Imp: HRS §§459-7.4, 459-8)

§16-92-26 Reciprocity. An optometrist who is registered and licensed under the laws of another state or jurisdiction shall be licensed in this State, subject to all of the following:

- (1) That the originating state accords like privileges to the licensees of this State;

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- (2) That the educational requirements of the originating state are equivalent to or greater than those of this State, as specified in section 459-7, HRS;
- (3) That the applicant has met the requirements of section 16-92-10;
- (4) That the applicant has passed the NBEO written and practical examinations in their entirety;
- (5) That the applicant shall have been engaged in the practice of optometry or in federal service continuously for not less than four of the five years immediately preceding the date of application;
- (6) That the applicant must not have committed acts which constitute professional misconduct, gross carelessness or negligence, or manifest incapacity in the practice of optometry as specified in subchapter 10; and
- (7) That all states or jurisdictions in which applicant is licensed provide a certified statement that the license of the applicant shall not have been and is not currently in the process of being investigated, suspended, or revoked by that state for any cause which constitutes grounds for revocation, suspension, or refusal to issue a license as specified in this chapter. [Eff and comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §§459-4, 459-7.5) (Imp: HRS §§459-7, 459-8)

SUBCHAPTER 6

§16-92-28 Repealed. [R 4/21/97]

§16-92-29 Repealed. [R 4/21/97]

§16-92-30 Repealed. [R 4/21/97]

§16-92-31 Repealed. [R 4/21/97]

§16-92-32 Repealed. [R 4/21/97]

§16-92-33 Repealed. [R 4/21/97]

§16-92-34 Repealed. [R 5/19/89]

§16-92-35 Repealed. [R 5/19/89]

§16-92-36 Repealed. [R 5/19/89]

## SUBCHAPTER 7

### CONTINUING EDUCATION

§16-92-38 Minimum hours. (a) Licensees who are not therapeutically certified shall obtain thirty-two hours during the biennium in approved programs of continuing education for relicensure. A person who is initially licensed in the first year of the biennium shall be required to submit certification of having earned sixteen continuing education hours for the biennium, and a person who obtains licensure in the second year of the biennium need not obtain any continuing education hours for the first renewal of the license.

(b) Licensees who are therapeutically certified shall obtain thirty-six hours of approved continuing education in the diagnosis, treatment, and management of ocular and systemic diseases for relicensure, regardless of initial date of licensure. The one hundred hour course in the treatment and management of ocular disease shall satisfy the thirty-six hour requirement provided that the course was taken within the two years prior to the date the application of license renewal was received by the board, and credits for the course were not used for a previous license renewal. [Eff 1/1/74; am and ren §16-92-38, 6/21/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-39 Educational courses; approval. (a) Professional educational but not practice management courses sponsored by the following are automatically approved:

- (1) United States accredited colleges and schools of optometry;
- (2) Regional and national optometric societies and councils;

- (3) American Academy of Optometry;
- (4) International Optometric Extension Program Foundation; and
- (5) United States optometric associations.

(b) Correspondence courses sponsored by optometric journals recognized by the board shall be approved by the board provided that the number of hours constitutes no more than twenty-five per cent of the total number of continuing education hours required per biennium for license renewal.

(c) All courses sponsored by persons or organizations other than those outlined above shall be submitted to the board for approval on a form as provided by the board, unless the course is approved by the Council on Optometric Practitioner Education. Forms shall be submitted to the board no more than forty-five days after the course is completed.

(d) Practice management courses shall be considered for approval of continuing education credit hours if they meet the following criteria:

- (1) Aids the optometrist and the optometrist's staff to directly serve more patients in a more productive and efficient manner;
- (2) Is presented by an optometrist who is actively in practice, or by an instructor at any of the accredited colleges and schools of optometry, or by someone who is very knowledgeable of optometric practices; and
- (3) Promotes greater patient satisfaction and greater patient awareness of optometry.

(e) Practice management courses pertaining to any of the following subject matters shall not be approved for continuing education credits:

- (1) Tax strategies;
- (2) Marketing/advertising;
- (3) Investments; or
- (4) Financial planning.

(f) Board approval of a course shall remain valid until December 31 of the odd-numbered year, provided that approval may be withdrawn for cause after notification to the course provider by the board.

(g) The board may reconsider disapproval of continuing education credit hours for any course if the sponsor files a motion for reconsideration in writing within ten days after the notice of disapproval is received by the licensee, pursuant to chapter 16-201, the rules of practice and procedure of the department. [Eff 1/1/74; am and ren §16-92-39, 6/22/81; am and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-40 Certificates of continuing education. (a) Certificates of continuing education shall be submitted on or before December 31 of each odd-numbered year and shall contain the following information:

- (1) Name of sponsoring organization;
- (2) Name of licensee;
- (3) Place of course;
- (4) Title of course;
- (5) Number of hours of course;
- (6) Date of course;
- (7) The index number assigned by the board, except for courses provided by sponsors listed in section 16-92-39 (a) and (b); and
- (8) Signature of lecturer or any authorized official of the sponsoring body.

(b) The board shall accept certified copies of certificates of continuing education in lieu of originals if good cause is shown.

(c) The board shall not accept any continuing education credit hours of courses taken by the optometrist more than two years prior to the date the application for license renewal was received by the board. [Eff 1/1/74; am and ren §16-92-40, 6/22/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

§16-92-41 Hours which qualify. (a) A minimum of fifty minutes shall constitute one continuing education hour. The hours spent in continuing education programs shall be measured as follows:

- (1) One hour of attendance in a group program other than a university or college course shall equal one continuing education hour;
- (2) An academic credit hour earned on a semester basis at an accredited university or college as specified in section 16-92-39(a)(1) shall equal fifteen continuing education hours;
- (3) An academic credit earned on a quarter basis at an accredited university or college as specified in section 16-92-39(a)(1) shall equal ten continuing education hours; and
- (4) One accredited university or college classroom hour in non-credit study shall equal one continuing education hour.

(b) No credit shall be given for programs or courses repeated in any single year.

(c) Continuing education submitted for license restoration shall not be applied toward the subsequent license renewal. [Eff and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

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§16-92-42 Exceptions. Any licensee seeking restoration of license without full compliance with the continuing education requirements shall submit the restoration application, the required fees, a notarized affidavit setting forth the facts explaining the reasons for noncompliance, and a request to extend the time for compliance if good cause is shown. The board shall consider each case on an individual basis and may extend the time for compliance of the requirements based on the following:

- (1) Health, as certified by a medical doctor currently licensed in accordance with chapter 453, HRS, or licensed in the state or jurisdiction in which the applicant was treated; or
- (2) Military service on extended active duty with the armed forces of the United States. [Eff and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-7)

SUBCHAPTER 8

FEES

§16-92-44 Fees. The fees for the board shall be as provided in chapter 16-53, relating to boards and commissions. [Eff 11/7/64; am and ren §16-92-44, 6/22/81; am and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§26-9(j), 92-28, 459-4)

SUBCHAPTER 9

§16-92-46 Repealed. [R 5/19/89]

SUBCHAPTER 10

PROFESSIONAL MISCONDUCT

§16-92-49 Actions which constitute professional misconduct, gross carelessness or negligence, or manifest incapacity in the practice of optometry. Professional misconduct, gross carelessness or negligence, or manifest incapacity in the practice of optometry includes, but shall not be limited to, any of the following:



- (1) Fraudulent or deceptive procurement or use of a license or certificate;
- (2) Making or filing a false report or records in the practice of optometry, wilfully impeding or obstructing the proper making and filing of reports or records, or wilfully failing to file the proper report or record;
- (3) Exercising undue influence on a person using the licensee's services, or promoting the sale or use of services or goods in a manner which exploits a person for the financial gain of the practitioner or third party;
- (4) Failure to comply with provisions of federal law or state statute governing the practice of optometry;
- (5) Conviction of a crime related to the practice of optometry;
- (6) Failing to make available, upon request of a person using the licensee's services, or the person's designee, copies or summaries of documents in the possession and under the control of the licensee, when those documents have been prepared by the licensee relating to the licensee's services performed for the person;
- (7) Practicing optometry when medically unfit to do so; and
- (8) Malpractice, or an act or acts below the standard of care held by practitioners in the same community. [Eff and comp 10/31/86; comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-9)

## SUBCHAPTER 11

### GROUND FOR REFUSAL TO ADMIT TO EXAMINATION, REFUSAL TO ISSUE LICENSE OR CERTIFICATE, REVOCATION, SUSPENSION, REFUSAL TO RENEW

§16-92-52 Grounds for refusal to issue license or certificate, revocation, suspension, refusal to renew. Failure of any licensee to comply with chapter 459, HRS, or this chapter shall be grounds for the board to refuse to admit a person to the examination, refuse to issue a license or certificate, suspend or revoke a license or certificate, fine a licensee, or refuse to renew a license. In addition, the following shall be grounds for the board to refuse to admit a person to the examination, refuse to issue a license or certificate, suspend or revoke a license or certificate, fine a licensee, or refuse to renew a license:

- (1) Presentation to the board of any certificate or testimony or information which was untrue in any material respect or illegally or fraudulently obtained, or when fraud or deceit has been practiced in obtaining any license or certificate under this chapter or in passing an examination;
- (2) Conduct of a character likely to deceive or defraud the public, or habits of intemperance or drug addiction calculated to destroy the accuracy of the work of an optometrist, or professional misconduct, or gross carelessness or negligence, or manifest incapacity in the practice of optometry;
- (3) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (4) Directly or indirectly accepting or offering employment to practice optometry from, or to any person not having a valid, unrevoked, and unsuspended license or from any company or corporation, excepting health maintenance organizations;
- (5) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any intended or prospective wearer or user;
- (6) Using any name in connection with the licensee's practice other than the name under which the licensee is licensed to practice, or using any advertising which fails to clearly identify the individual licensee or which is ambiguous or misleading as to the licensee's identity;
- (7) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performance of the services;
- (8) Utilizing pharmaceutical agents without first being certified by the board to do so, or utilizing pharmaceutical agents for purposes other than those as specified in chapter 459, HRS;
- (9) Failing to refer a patient to an appropriate licensed physician upon discovery, by history or examination, that the patient evidences an

- ocular abnormality or symptoms of systemic disease requiring further diagnosis and possible treatment by a licensed physician;
- (10) Being convicted, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions or duties in the practice of optometry notwithstanding any statutory provision to the contrary; and
  - (11) Failing to report any disciplinary action taken against the licensee in another jurisdiction to the board within thirty days of the disciplinary action. [Eff and comp 10/31/86; am and comp 5/19/89; am and comp 4/21/97; am and comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§459-1, 459-4, 459-9)

## SUBCHAPTER 12

### TRADE NAMES

§16-92-65 Approval of trade name. All trade names, other than the licensed name of an individual optometric practitioner, shall be approved by the board. All trade names shall not connote or imply any relationship either directly or indirectly with any governmental agencies (municipal, state, or federal), union or labor organizations, church or religious sects, schools or colleges, medical or optometric material manufacturing business corporations or companies, nor shall it imply that it is connected with any race or racial organizations, student leagues, fraternities or sororities, or imply the use of specialized techniques. [Eff and comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-9)

§16-92-66 Trade name restricted to licensee. Whenever a trade name is used, the trade name shall be used in conjunction with the name under which the licensee is licensed to practice. The only exception to this rule shall be when the trade name is used verbally. If the name of a licensed optometrist appears in the trade name of the firm and the optometrist's association with the firm is terminated because of resignation, retirement, or otherwise, the trade name shall be deleted forthwith. [Eff and comp 5/19/89; am and comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §§459-2, 459-9)

§16-92-67

§16-92-67 Registration of trade name. Once approved by the board, all trade names shall be registered with the business registration division of the department, in accordance with chapter 482, HRS. [Eff and comp 5/19/89; comp 4/21/97; comp 7/23/99; comp 6/3/02] (Auth: HRS §459-4) (Imp: HRS §459-9)

Amendments to and compilation of chapter 16-92, Hawaii Administrative Rules, on the Summary page dated March 25, 2002, were adopted on March 25, 2002, following a public hearing held on the same date, after public notices were given in the Hawaii State and County Public Notices for the City and County of Honolulu, County of Kauai, County of Maui and the County of Hawaii, and the Honolulu Star Bulletin on February 18, 2002.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Dennis Kuwabara, O.D.  
DENNIS KUWABARA, O.D., Chairperson  
Board of Examiners in Optometry

APPROVED AS TO FORM:           Date 5/2/02

/s/ David A. Webber  
Deputy Attorney General

APPROVED:                           Date 5/9/02

/s/ Kathryn S. Matayoshi  
KATHRYN S. MATAYOSHI, Director  
Commerce and Consumer Affairs

APPROVED:                           Date 5/21/02

/s/ Benjamin J. Cayetano  
BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

May 23, 2002  
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-92  
Hawaii Administrative Rules

March 25, 2002

SUMMARY

1. §16-92-2 is amended.
2. Chapter 92 is compiled.

This material can be made available for individuals with special needs. Please call the Program Specialist, Professional and Vocational Licensing Division, DCCA, at 586-2692 to submit your request.

Effective 6/3/02