

CHAPTER 459 OPTOMETRY

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§459-1 Optometry; practice of, defined. (a) The practice of optometry, for the purpose of this chapter, is defined to be:

- (1) The examination, diagnosis, treatment, and management of diseases and disorders of the human visual system, the eye, and the eyelids;
- (2) The employment of trial frame or trial lenses, and any objective or subjective means or methods, other than the use of surgery, including refractive or therapeutic laser surgery, but including the use and prescription of pharmaceutical agents, as established by the board, and the performance of non-invasive diagnostic procedures or ordering of laboratory tests related to the use of pharmaceutical agents for the purpose of examining, diagnosing, treating, and managing visual, muscular, or other diseases and disorders of the human visual system, the eye, and the eyelids; or
- (3) The prescribing, fitting, or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular anomalies of the human eye.

Superficial foreign bodies may be removed from the human eye and eyelids, including the removal of corneal superficial foreign bodies above Bowman's Layer.

(b) Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked and unsuspended license as provided in this chapter; provided that an orthoptist may give visual training, including exercises, under the supervision of a physician or optometrist. The use and prescription of pharmaceutical agents and the removal of superficial foreign bodies from the human eye and eyelid shall be granted to an optometrist licensed under this chapter who has met the requirements under sections 459-7 and 459-7.4.

(c) If while examining or treating a patient a licensed optometrist finds, by history or examination, any ocular abnormality or any evidence of systemic disease requiring further diagnosis and possible treatment beyond the scope of practice as defined in this section, the optometrist shall refer that patient to an appropriate licensed physician.

[§459-1.5] Definitions. As used in this chapter:

"Board" means the board of examiners in optometry.

"Director" means the director of commerce and consumer affairs.

"Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.

§459-2 Optometry; unauthorized practice, unlawful. It shall be unlawful for any person to practice optometry or to append the letters "O.D." or any other optometric degree to a person's name with the intent thereby to imply that the individual is a practitioner of optometry, without first securing and holding an unrevoked and unsuspended license under and as provided in this chapter. This chapter shall not apply to, or prohibit, a duly licensed physician from practicing optometry as in this chapter defined, nor shall it prohibit a duly licensed physician or optometrist from filling prescriptions or orders, nor shall it prohibit the replacement, duplication, or repair of ophthalmic lenses, contact lenses, frames, or fittings thereof, by persons qualified to write or fill prescriptions or orders under this chapter, nor shall it prohibit or prevent any dispensing optician licensed under chapter 458 from performing the activities authorized by the license, nor shall it apply to optometric service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of optometrists and of contracting on behalf of optometrists to furnish services as provided in chapter 424.

Any "ophthalmic lens" within the meaning of this chapter means any spectacle lens which has a spherical, cylindrical, or prismatic power or value, and is ground pursuant to a prescription.

§459-3 Board of examiners; members, appointment, qualifications. There shall be a board to be known as the board of examiners in optometry, for the State. The board shall consist of seven members, five of whom shall be licensed optometrists who have actually engaged in the practice of optometry for at least five years and two of whom shall be public members. One of the five licensed optometrist members shall be from a county other than the city and county of

Honolulu. No member of the board shall be a stockholder, member of the faculty, or on a board of trustees of any school of optometry.

§459-4 Powers and duties of the board. The members of the board of examiners in optometry shall qualify by taking oath of office before a notary public, or other officer empowered to administer oaths. At the first meeting of the board after each annual appointment, the board shall elect a chairperson and vice chairperson. In addition to any other powers and duties authorized by law, the board shall prescribe rules in harmony with this chapter, as may be necessary to carry out its legal responsibilities and duties, to do all things necessary or incidental to the exercise of the powers and duties as established by these statutes, and to regulate the practice of optometry in the State.

§459-5 Records. The department of commerce and consumer affairs on behalf of the board of examiners in optometry shall preserve a record of all applications for examination. The record shall also show whether applicants were rejected or licensed, and, if rejected, the reasons therefor.

§459-6 Examinations, time of. Examinations shall be administered by the National Board of Examiners in Optometry (NBEO) at least once a year with additional examinations as the NBEO deems necessary. The time and place of the examinations shall be determined by the NBEO. If any of the examinations administered by the NBEO are no longer considered appropriate by the board or any of the examinations are no longer administered by the NBEO, the examination shall be administered by the board or a testing agency designated by the board.

§459-7 Application; examination; reexamination; appeal; renewal; continuing education; license. (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence that the applicant is a graduate of an optometric college, school, or university approved by the board of examiners in optometry and accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Department of Education, shall pass all examinations required by the board and comply with the following requirements:

- (1) Submit a completed application for licensure to the department of commerce and consumer affairs;
- (2) Submit a nonrefundable application fee together with the application; and
- (3) Submit a copy of the applicant's diploma or certificate of graduation from an optometric college, school, or university approved in accordance with this subsection.

(b) Applicants for examination shall be given due notice of the date and place of each examination by the NBEO. If an NBEO examination is no longer recognized by the board,

applicants shall pass an examination designated by the board and shall be notified by the board or testing agency designated by the board of the date and place of examination.

Every candidate who passes all examinations required by the board and who has met all requirements for licensure shall receive from the board a license to practice optometry.

(c) Each licensee shall pay a biennial license fee to the board on or before December 31 of each odd-numbered year for a renewal of the license for the biennium. The failure of any licensee to pay the biennial license fee and submit proof of satisfying the continuing education program requirements on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license. Any license which is so forfeited may be restored upon payment of a penalty, renewal, and recordkeeping fee as provided in rules adopted by the director pursuant to chapter 91, and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for the biennium immediately preceding the application for restoration of the license. The applicant shall pay a recordkeeping fee for each biennium the license was on forfeited status.

(d) Each licensee, on or before the date designated in each odd-numbered year, shall submit to the board proof that the licensee has met the continuing education requirement through programs recognized and approved by the board. The board shall have the authority to extend the time for compliance of continuing education requirement if good cause is shown. The board shall adopt rules relating to the requirements and standards that continuing education programs shall meet to obtain recognition or approval from the board.

§459-7.4 Therapeutically certified optometrists; scope; qualifications. (a) The use and prescription of therapeutic pharmaceutical agents as established by the board for the treatment and management of conditions of the anterior segment of the human eye, eyelids, and lacrimal system, and the non-invasive surface removal of superficial foreign bodies from the anterior segment of the human eye and eyelids is authorized only for an optometrist licensed under this chapter who meets the requirements of a therapeutically certified optometrist as authorized in this section. A therapeutically certified optometrist may use or prescribe steroidal agents. A therapeutically certified optometrist shall not administer injectable agents except for anaphylaxis. Performing any invasive surgery shall not be allowed. Therapeutic pharmaceutical agents shall not include any of the controlled substances enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22.

(b) The board shall grant recognition as a therapeutically certified optometrist; provided the optometrist has:

- (1) A current, unencumbered license as an optometrist in this State;
- (2) Completed a one hundred hour board-approved course in the treatment and management of ocular diseases;
- (3) Passed the National Board of Examiners in Optometry Treatment and Management of Ocular Disease examination;
- (4) Completed one hundred hours of preceptorship under the supervision of an ophthalmologist. The supervising ophthalmologist shall certify completion of the one hundred hours of hands-on experience and the competency of the optometrist to prescribe, dispense, and administer therapeutic pharmaceutical agents on a form and format prescribed by the board; provided that the preceptorship shall include training in diagnosis, treatment, and management of ocular disease; and

- (5) The therapeutically certified optometrist shall renew the certification with the biennial renewal of license and submit proof of satisfying thirty-six hours of continuing education in the diagnosis, treatment, and management of ocular, and systemic diseases. Completion of the thirty-six hours in the diagnosis, treatment, and management of ocular and systemic diseases shall fulfill the continuing education requirements pursuant to section 459-7 and this section.

§459-7.45 REPEALED.

[§459-7.5] Reciprocity. The board, by rules, shall provide for licensure of optometrists registered and licensed under the laws of any state or territory of the United States or any other jurisdiction with qualifications for licensure which equal or exceed those of this State.

§459-8 Conduct of examinations. Each applicant whose application is received by the board after December 31, 1986, shall pass all written examinations given by the National Board of Examiners in Optometry. Beginning January 1, 1991, each applicant shall also pass a practical (Patient Care) examination administered by the National Board of Examiners in Optometry.

The board shall state in its rules the pass/fail cutoff scores for all required examinations. The board shall accept the passing scores of all National Board of Examiners in Optometry written examinations if the examinations were passed in their entirety by the applicant after December 31, 1986. The board shall accept the scores of the practical (Patient Care) examination only if the examination was passed by the applicant after January 1, 1991. The board may accept the scores of the National Board of Examiners in Optometry written examinations passed before December 31, 1986, and the National Board of Examiners in Optometry practical (Patient Care) examination passed before January 1, 1991, if the examinations are determined by the National Board of Examiners in Optometry to be substantially equivalent to the current examinations and the applicant holds a current and valid license under the laws of another state.

§459-9 Refusal to permit examination or issue license; revocation and suspension of license; grounds for. In addition to any other actions authorized by law, the board of examiners in optometry may refuse to admit persons to its examinations or to issue a license or may revoke or suspend, for the period of time as may be determined by the board, a license previously issued, or may impose a penalty as shall be established by the board, for any cause authorized by law, including but not limited to the following:

- (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 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;
 - (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 performances of the services;
 - (8) Violating this chapter or the rules adopted by the board;
 - (9) Utilizing pharmaceutical agents for purposes other than those specified in section 459-1; or
 - (10) Failure 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.

§459-9.5 REPEALED.

§459-10 Advertising, contents of. All advertising by a licensee which contains a price for specified ophthalmic goods or services shall contain the following information when appropriate:

- (1) Whether an advertised price includes single vision or multifocal lenses;
- (2) Whether an advertised price for contact lenses refers to soft or hard lenses;
- (3) Whether an advertised price for ophthalmic goods includes an eye examination;
- (4) Whether an advertised price for ophthalmic goods includes all dispensing fees; and
- (5) Whether an advertised price for eyeglasses includes both frames and lenses.

§459-11 REPEALED.

§459-12 REPEALED.

§459-13 Exceptions. Nothing in this chapter shall apply to duly licensed physicians authorized to practice medicine under the laws of the State, nor to the commissioned officers of the United States army medical corps on duty in the State.

§459-14 Penalty. Any person practicing optometry in violation of this chapter or any rule may be fined up to \$500 or be imprisoned not more than six months, or both, for each separate violation, and each day of the violation shall constitute a separate offense.

[§459-14.5] Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§459-15 REPEALED.

[§459-16] Adverse effects, temporary reporting requirements. The board of examiners in optometry shall promulgate rules and regulations as will require a licensed optometrist to report findings of adverse effects experienced by any of the optometrist's patients from the optometrist's use of pharmaceutical agents during an examination. This requirement shall expire on June 30, 1988.