

CHAPTER 34-A

OPTOMETRISTS

SUBCHAPTER 1

GENERAL PROVISIONS

§2411. Definitions

1. Practice of optometry. The practice of optometry is defined as one or a combination of the following practices:

A. The examination of the eye and related structures without the use of invasive surgery or tissue-altering lasers to diagnose defects, abnormalities or diseases of the eye; [PL 2009, c. 195, §1 (AMD).]

B. The determination of the accommodative or refractive states of the human eye and evaluation of visual functions; [PL 1993, c. 600, Pt. A, §142 (AMD).]

C. The correction, treatment or referral of vision problems and ocular abnormalities by the prescribing, adapting and application of ophthalmic lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision therapy, pharmaceutical agents and prosthetic devices and other optical aids, and by using other corrective procedures to preserve, restore or improve vision, excluding invasive surgery and tissue-altering lasers; [PL 1995, c. 439, §2 (AMD).]

D. The fitting, bending and adjusting of eyeglasses with ophthalmic lenses, except that activities covered by this subsection are not considered the practice of optometry if the fitting, bending and adjusting are by order of and under the responsibility of an optometrist or ophthalmologist; and [PL 1993, c. 600, Pt. A, §142 (AMD).]

E. The replacement or duplication of an ophthalmic lens without a written prescription from an individual licensed under the laws of this State to practice either optometry or medicine.

Nothing in this subsection may be construed to prevent an optical mechanic from doing the merely mechanical work associated with adapting, fitting, bending, adjusting, replacing or duplicating of eyeglasses with ophthalmic lenses.

An ophthalmic lens is a spectacle lens or contact lens that has a spherical, cylindrical or prismatic power or value or a lens ground pursuant to a written prescription. [PL 1993, c. 600, Pt. A, §142 (AMD).]

[PL 2009, c. 195, §1 (AMD).]

2. Optometrist. "Optometrist" means an individual who has obtained a license to practice optometry in the State.

[PL 1993, c. 600, Pt. A, §143 (AMD).]

3. Pharmaceutical agent. "Pharmaceutical agent" means any diagnostic and therapeutic substances for use in the diagnosis, cure, treatment, management or prevention of ocular conditions and diseases, but does not include drugs administered exclusively by injection, except injections for the emergency treatment of anaphylactic shock.

[PL 2009, c. 195, §2 (AMD).]

4. Diagnostic pharmaceuticals. "Diagnostic pharmaceuticals" means those pharmaceutical agents required to detect and diagnose an abnormal condition or eye disease.

[PL 1987, c. 439, §5 (NEW); PL 1987, c. 542, Pt. K, §§5, 20 (NEW).]

5. Therapeutic pharmaceuticals. "Therapeutic pharmaceuticals" means those pharmaceutical agents required to prevent, manage or treat abnormal ocular conditions or diseases.

Nothing in this section may be construed to permit the optometric use of pharmaceutical agents that are:

- A. Controlled substances identified in schedules I and II as described in the United States Code, Title 21, Section 812; [PL 1995, c. 439, §4 (AMD).]
- B. Any pharmaceutical agent administered exclusively by subdermal injection, intramuscular injection, intravenous injection, subcutaneous injection or retrobulbar injections, except injections for the emergency treatment of anaphylactic shock; and [PL 2009, c. 195, §3 (AMD).]
- C. Any pharmaceutical agent for the specific treatment of a systemic disease, unless the agent is used specifically for an ocular disease. [PL 1995, c. 439, §4 (AMD).]

Notwithstanding any other provision of this Act, an optometrist may dispense, prescribe and administer nonlegend agents.

[PL 2009, c. 195, §3 (AMD).]

6. Contact lens. "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. "Contact lens" includes, but is not limited to, cosmetic, therapeutic and corrective lenses.

[PL 2015, c. 173, §1 (NEW).]

7. Dispense. "Dispense" means the act of furnishing a pair of ophthalmic or contact lenses to a patient.

[PL 2015, c. 173, §1 (NEW).]

8. Eye examination. "Eye examination" means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the determination of a refractive error.

[PL 2015, c. 173, §1 (NEW).]

9. Kiosk. "Kiosk" means automated equipment or an application designed to be used on a phone, computer or Internet-based device that can be used either in person or remotely to provide refractive data or information.

[PL 2015, c. 173, §1 (NEW).]

10. Ophthalmic lens. "Ophthalmic lens" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer and commonly known as glasses or spectacles, including ophthalmic lenses that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement. "Ophthalmic lens" does not include an optical instrument or device not intended to correct or enhance vision or that is sold without consideration of the visual status of the individual who will use the optical instrument or device.

[PL 2015, c. 173, §1 (NEW).]

11. Provider. "Provider" means an individual licensed as an optometrist under this chapter or an individual licensed as an osteopathic or medical doctor under chapter 36 or 48, respectively, who has also completed a residency in ophthalmology.

[PL 2015, c. 173, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1975, c. 293, §4 (AMD). PL 1975, c. 563, §1 (RPR). PL 1985, c. 748, §42 (AMD). PL 1987, c. 542, §§K2-K5, K20 (AMD). PL 1993, c. 600, §§A142, 143 (AMD). PL 1995, c. 439, §§1-4 (AMD). PL 1995, c. 439, §8 (AFF). PL 1995, c. 606, §1 (AMD). PL 2009, c. 195, §§1-3 (AMD). PL 2015, c. 173, §1 (AMD).

§2413. Standard of care

An optometrist authorized to use pharmaceutical agents for use in the diagnosis, cure, treatment or prevention of ocular disease shall be held to the same standard of care in diagnosis, use of such agents and treatment as that degree of skill and proficiency commonly exercised by a medical practitioner in the same community. [PL 1987, c. 439, §6 (NEW); PL 1987, c. 542, Pt. K, §§ 6 and 20 (NEW).]

SECTION HISTORY

PL 1987, c. 542, §§K6, K20 (NEW).

SUBCHAPTER 2

BOARD OF OPTOMETRY

§2415. Appointment; tenure; vacancies; removal

The State Board of Optometry, as established by Title 5, section 12004-A, subsection 28 and in this chapter called the "board," consists of 6 persons appointed by the Governor. Five of the appointees must have been resident optometrists engaged in the actual practice of optometry in this State for a period of at least 5 years prior to their appointment and after the 1999 renewal they must hold advanced therapeutic licenses. One of the appointees must be a consumer member who is a resident of this State and has no pecuniary interest in optometry or in the merchandising of optical products. Appointment is for a term of 5 years. Appointments of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor. The board has a common seal. [PL 2007, c. 695, Pt. B, §10 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1975, c. 771, §354 (AMD). PL 1983, c. 812, §220 (AMD). PL 1989, c. 503, §B136 (AMD). PL 1993, c. 600, §A144 (AMD). PL 1995, c. 606, §2 (AMD). PL 2007, c. 695, Pt. B, §10 (AMD).

§2416. Officers; compensation; meetings

The board shall annually elect from its members a president and a secretary-treasurer. They each have authority, during their term of office, to administer oaths and take affidavits as required by this chapter. The secretary-treasurer shall receive all fees, charges and assessments payable to the board and account for and pay over the same according to law. The board shall meet at least once in each year within the Capital area, and, in addition, whenever and wherever necessary to conduct the business of the board. A majority of the board constitutes a quorum. [PL 1993, c. 600, Pt. A, §145 (AMD).]

The members of the board are each entitled to compensation according to the provisions of Title 5, chapter 379. In a year in which the income of the board is not sufficient to pay members of the board, available funds must be prorated. [PL 1993, c. 600, Pt. A, §145 (AMD).]

The secretary-treasurer is responsible to keep a full record of the proceedings of the board, which must be open to public inspection at all reasonable times. [PL 1993, c. 600, Pt. A, §145 (AMD).]

The board may employ clerical personnel, define their duties and fix their compensation, subject to the Civil Service Law. [PL 1999, c. 607, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1983, c. 812, §221 (AMD). PL 1993, c. 600, §A145 (AMD). PL 1999, c. 607, §1 (AMD).

§2417. Standards; rules of board

1. Standards for licensure. The following are the requirements applicants must meet before licensure:

- A. Be at least 18 years of age; [PL 1973, c. 788, §156 (NEW).]
- B. [PL 1983, c. 378, §24 (RP).]
- C. Be a graduate of a recognized school of optometry; and [PL 1993, c. 600, Pt. A, §146 (AMD).]
- D. Have succeeded in an examination as described in section 2422. [PL 1973, c. 788, §156 (NEW).]

Upon satisfying these requirements, an applicant may be licensed by the board. [PL 1993, c. 600, Pt. A, §146 (AMD).]

2. Standards for renewal.
[PL 1983, c. 378, §25 (RP).]

3. Standards for minimum eye examination. The following are the minimum standards for a competent professional eye examination:

- A. A history of the patient's visual problems and care; [PL 1993, c. 600, Pt. A, §146 (AMD).]
- B. A test of the acuity of each eye, uncorrected and with best correction; [PL 1993, c. 600, Pt. A, §146 (AMD).]
- C. An examination for an abnormal condition or any significant characteristics of internal and external ocular tissues; [PL 1993, c. 600, Pt. A, §146 (AMD).]
- D. Advice for medical treatment or referral, or both; [PL 1987, c. 439, §7 (RPR); PL 1987, c. 542, Pt. K, §§7, 20 (RPR).]
- E. Objective and subjective refraction of the eyes; and [PL 1993, c. 600, Pt. A, §146 (AMD).]
- F. A cover test or muscle balance tests, or both. [PL 1993, c. 600, Pt. A, §146 (AMD).]

Each optometrist shall maintain a complete record of all eye examinations given. Each optometrist shall include in the examination record the findings under paragraphs A through F, as well as any prescriptions or programs of corrective procedure. This information for each patient must be available from the optometrist for a period of not less than 10 years.

[PL 1993, c. 600, Pt. A, §146 (AMD).]

4. Minimum prescription requirements. The following are the minimum requirements for optometric prescriptions.

- A. [PL 1993, c. 600, Pt. A, §146 (RP).]
- A-1. For ophthalmic lenses and contact lenses:
 - (1) The prescription must contain all the information necessary to be properly dispensed;
 - (2) The prescription must specify whether it is for contact lenses or ophthalmic lenses;
 - (3) All prescriptions must include the name of the patient, date of prescription, name and office location of prescriber and an expiration date. A prescription may not contain an expiration date of more than 2 years from the date of the eye examination by the provider unless the prescription contains a statement made by the provider of the reasons why a longer time frame is appropriate based on the medical needs of the patient;

- (4) A person or entity may not dispense ophthalmic lenses or contact lenses to a patient without a valid prescription from a provider issued after an eye examination performed by the provider, except that a person or entity may dispense without a prescription spectacle lenses, solely for the correction of vision, that are of uniform focus power in each eye of between plano and +3.25 diopters; and
- (5) A prescription for ophthalmic lenses or contact lenses may not be made based solely on the diagnosis of a refractive error of the human eye as generated by a kiosk. [PL 2015, c. 173, §2 (AMD).]
- B. [PL 1993, c. 600, Pt. A, §146 (RP).]
- C. All prescriptions must be reduced to writing and placed on file as provided in subsection 3. [PL 1993, c. 600, Pt. A, §146 (AMD).]
- D. For pharmaceutical agents all prescriptions must include:
- (1) The patient's name;
 - (2) The date;
 - (3) The name, quantity and dosage of drugs;
 - (4) The number of refills;
 - (5) The name of the prescriber;
 - (6) The drug license number of the prescriber;
 - (7) A sequential number; and
 - (8) The prescriber's directions for usage.

Nothing in this paragraph may be construed to restrict the dispensation or sale by an optometrist of contact lenses that contain and deliver pharmaceutical agents authorized under this chapter for use or prescription. [PL 2009, c. 195, §4 (AMD).]

[PL 2015, c. 173, §2 (AMD).]

4-A. Release of contact lens prescription. After contact lenses have been adequately fitted and the patient released from immediate follow-up care by the optometrist, the patient may request a copy of the contact lens specifications from the optometrist. Upon patient request, the optometrist shall provide a copy of the prescription, at no cost, which must contain the information necessary to properly duplicate the current prescription. The contact lens prescription must contain an expiration date not to exceed 24 months from the date of issue. The prescription may contain fitting guidelines and may also contain specific instructions for use by the patient.

The prescribing optometrist is not liable for an injury or condition to a patient that results from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing optometrist.

The dispensing party may dispense contact lenses only upon receipt of a written prescription, except that an optometrist may fill a prescription of another optometrist or a physician without a copy of the prescription. Mail order contact lens suppliers must be licensed by and register with the Board of Commissioners of the Profession of Pharmacy pursuant to section 13751, subsection 3-A and are subject to discipline by that board for violations of that board's rules and the laws governing the board. An individual who fills a contact lens prescription shall maintain a file of that prescription for a period of 5 years. An individual, corporation or other entity, other than a mail order contact lens supplier, that improperly fills a contact lens prescription or fills an expired prescription commits a civil violation for which a forfeiture of not less than \$250 nor more than \$1,000 may be adjudged.

An individual may file a complaint with the board seeking disciplinary action concerning violations of this subsection. The board shall investigate or cause to be investigated and shall resolve a complaint in a timely fashion on its own motion or upon receipt of a written complaint. The board shall conduct its actions in accordance with the Maine Administrative Procedure Act.

[PL 1997, c. 117, §1 (AMD).]

5. Rules. The board shall, in accordance with the Maine Administrative Procedure Act, Title 5, sections 8051 to 8059, make reasonable rules, not inconsistent with law, to govern the following:

A. The time, place and manner of conducting state board examinations in optometry and the manner and form in which applications for examination must be filed; [PL 1993, c. 600, Pt. A, §146 (AMD).]

B. The fees for registration and licensing under subchapter III; and [PL 1993, c. 600, Pt. A, §146 (AMD).]

C. The conduct of the lawful practice of optometry in accordance with the standards established by this chapter. [PL 2009, c. 195, §5 (AMD).]

The board may make other reasonable rules, in accordance with Title 5, sections 8051 to 8059, as necessary for the proper performance of its duties, including rules relating to false, deceptive and misleading advertising. Rules adopted relating to such advertising may not be inconsistent with any rules adopted pursuant to Title 5, section 207, subsection 2.

[PL 2009, c. 195, §5 (AMD).]

6. Determination of the scope of the practice of optometry.

[PL 1995, c. 606, §3 (RP); PL 1995, c. 606, §11 (AFF).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 458, §4B (AMD). PL 1977, c. 694, §§594,595 (AMD). PL 1983, c. 378, §§24,25 (AMD). PL 1987, c. 542, §§K7,K8,K20 (AMD). PL 1991, c. 675, §1 (AMD). PL 1993, c. 600, §A146 (AMD). PL 1995, c. 439, §5 (AMD). PL 1995, c. 439, §8 (AFF). PL 1995, c. 606, §3 (AMD). PL 1995, c. 606, §11 (AFF). PL 1997, c. 117, §1 (AMD). PL 2009, c. 195, §§4, 5 (AMD). PL 2015, c. 173, §2 (AMD).

§2418. Reports; liaison; limitations

On or before August 1st of each year, the board shall submit to the Commissioner of Professional and Financial Regulation, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with comments and recommendations the board considers essential. [PL 1993, c. 600, Pt. A, §147 (AMD).]

The commissioner shall act as a liaison between the board and the Governor. [PL 1977, c. 604, §22 (RPR).]

The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [PL 1995, c. 462, Pt. A, §58 (RPR).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 604, §22 (RPR). PL 1985, c. 748, §42 (AMD). PL 1993, c. 600, §A147 (AMD). PL 1993, c. 659, §B10 (AMD). PL 1995, c. 462, §A58 (AMD).

§2418-A. Budget

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements as provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision or other change, unless alterations are mutually agreed upon by the department and the board or the board's designee. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this subchapter. [PL 1995, c. 462, Pt. A, §59 (RPR).]

SECTION HISTORY

PL 1977, c. 604, §23 (NEW). PL 1985, c. 748, §42 (AMD). PL 1993, c. 600, §A148 (AMD). PL 1993, c. 659, §B11 (AMD). PL 1995, c. 462, §A59 (RPR).

§2418-B. Consumer information

(REPEALED)

SECTION HISTORY

PL 1991, c. 675, §2 (NEW). PL 1993, c. 600, §A149 (RP).

§2419. Use of drugs

(REPEALED)

SECTION HISTORY

PL 1975, c. 563, §2 (NEW). PL 1983, c. 378, §26 (AMD). PL 1987, c. 542, §§K9,K20 (RP).

§2419-A. Licensure for use of therapeutic pharmaceutical agents

(REPEALED)

SECTION HISTORY

PL 1987, c. 542, §§K10,K20 (NEW). PL 1993, c. 600, §A150 (AMD). PL 1995, c. 606, §4 (RP).

§2420. Notification to Maine Board of Pharmacy

Every year at the completion of the license renewal cycle, the board shall provide to the Maine Board of Pharmacy a current listing of all licensees designating licensees who may prescribe pharmaceuticals pursuant to therapeutic or advanced therapeutic licensure and the pharmaceuticals those licensees may prescribe. [PL 1997, c. 117, §2 (AMD); PL 1997, c. 245, §19 (AMD).]

SECTION HISTORY

PL 1995, c. 606, §5 (NEW). PL 1997, c. 117, §2 (AMD). PL 1997, c. 245, §19 (AMD).

SUBCHAPTER 3

LICENSURE

§2421. Licensure required

1. Licensure required. An individual may not practice optometry in this State without first obtaining a license from the board, but this chapter does not apply to individuals already licensed to practice medicine within this State.

[PL 1993, c. 600, Pt. A, §152 (NEW).]

2. Penalty. An individual who practices optometry in violation of subsection 1 commits a Class E crime. The State may bring action in Superior Court to enjoin an individual from violating subsection 1 regardless of whether proceedings have been or may be instituted in District Court and regardless of the status of criminal proceedings.

[PL 1993, c. 600, Pt. A, §152 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

3. Operation of kiosks. The following provisions govern the operation of kiosks.

A. The ownership and operation of a kiosk, including use of a kiosk by a provider, must comply with section 2435. [PL 2015, c. 173, §3 (NEW).]

B. In addition to the enforcement actions available to the board under section 2431-A, the board has the following powers of enforcement for violations of this chapter that relate in any way to kiosks, their use or the issuance of prescriptions arising out of their use. Nothing in this paragraph may be construed to apply to enforcement for violations by physicians who are governed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure.

(1) A person or governmental entity that believes a violation of this chapter in relation to a kiosk has occurred or has been attempted may make an allegation of that fact to the board in writing.

(2) If, upon reviewing an allegation under subparagraph (1), the board determines there is a reasonable basis to believe a violation of this chapter or attempted violation of this chapter has occurred in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use, the board shall investigate.

(3) The board may hold adjudicatory hearings and administer oaths and order testimony to be taken at a hearing or by deposition conducted pursuant to Title 5, sections 9051 to 10005.

(4) The board may proceed with an action if the board determines that a violation in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use has occurred.

(5) The board is not required to wait until human harm has occurred to initiate an investigation under this subsection.

(6) The board, upon finding, after notice and an opportunity for a hearing, that a person has violated or has attempted to violate any requirement related to a kiosk, its use or the issuance of a prescription arising out of kiosk use, may impose an administrative fine of not more than \$10,000 for each violation or attempted violation and may issue an order requiring reimbursement of the reasonable costs to the board of investigation and hearing.

(7) The board shall advise the Attorney General of the failure of a person to pay an administrative fine or reimburse costs of investigation and hearing imposed under this paragraph. The Attorney General may bring an action in a court of competent jurisdiction for the failure to pay any amount imposed under this paragraph.

(8) The board may request that the Attorney General file a civil action seeking an injunction or other appropriate relief to enforce this subsection. The court may impose on a person for violations of this subsection that relate in any way to a kiosk, its use or the issuance of a prescription arising out of kiosk use a fine of not more than \$20,000 for each violation or attempted violation. In addition, the Attorney General may bring an action to recover the reasonable costs of the investigation and hearing.

(9) The board may adopt rules to implement, administer and enforce this subsection. Rules adopted pursuant to this subparagraph are routine technical rules under Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 173, §3 (NEW).]

C. Nothing in this subsection prohibits the Attorney General from initiating an action without referral or request from the board if the Attorney General determines there is a reasonable basis to believe a violation or attempted violation of this subsection occurred. [PL 2015, c. 173, §3 (NEW).]

D. It is neither a violation of this subsection nor grounds for professional discipline or liability for an optometrist to fill a prescription for a patient based in part on measurements obtained through a kiosk. [PL 2015, c. 173, §3 (NEW).]

[PL 2015, c. 173, §3 (NEW).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1993, c. 600, §A152 (RPR). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2015, c. 173, §3 (AMD).

§2422. Examination; fees; initial licensure

Every individual before beginning the practice of optometry in this State must pass an examination before the board. The board shall provide an opportunity for applicants to take the examination at least twice per year. At the discretion of the board, the examination may consist of tests in basic sciences; in anatomy and physiology of the eye; pathology; practical, theoretical and physiological optics; practical and theoretical optometry; clinical diagnosis and therapeutics; and other phases of optometric knowledge and skill the board determines to be essential. The board shall require that a new applicant pass Parts I, II and III of the National Board of Examiners in Optometry examination, including all sections of the Treatment and Management of Ocular Diseases (TMOD) examination. An individual who has applied to be examined shall appear before the board at the time and place the board designates and, before the examination, shall pay to the board a sum not in excess of \$400 as established by the board. All applicants successfully passing the examination must be licensed to practice optometry. The board may require applicants who have failed to pass the licensure examination 3 times to enroll in a course of continuing education as prescribed by the board. [PL 2003, c. 252, §1 (AMD).]

1. Requirement. All applicants for a therapeutic or advanced therapeutic pharmaceutical license under this section shall submit proof of compliance with the application requirements set forth in section 2430, subsections 1 and 3.

A. [PL 1995, c. 606, §6 (RP).]

B. [PL 1995, c. 606, §6 (RP).]

C. [PL 1995, c. 606, §6 (RP).]

[PL 1995, c. 606, §6 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1975, c. 563, §3 (AMD). PL 1987, c. 542, §§K11,K20 (AMD). PL 1993, c. 600, §A153 (AMD). PL 1995, c. 606, §6 (AMD). PL 2003, c. 252, §1 (AMD).

§2423. Licensing

1. Annual renewal. Every licensed optometrist practicing in the State shall pay annually, before the first day of April, to the board a license renewal fee not in excess of \$400 as established by the board under section 2417.

[PL 2003, c. 252, §2 (AMD).]

2. Nonactive license. Every licensed optometrist not practicing within the State must upon payment of an annual license renewal fee not in excess of \$400 as established by the board, be issued a nonactive license renewal. The fee is payable to the board before the first day of April each year. Should a holder of a nonactive license desire to practice within the State, the licensee shall notify the board in writing, and except as otherwise provided in this chapter, must then be issued an active license by the board.

[PL 2003, c. 252, §3 (AMD).]

3. Examination. Every optometrist holding a nonactive license for a period of 3 years or more who desires an active license shall submit to a practical examination for professional and technical

proficiency conducted by the board. If the applicant demonstrates professional and technical proficiency in the examinations, the applicant may be issued an active license authorizing practice in this State. The active license is renewed annually as provided in subsection 1.

[PL 1993, c. 600, Pt. A, §154 (AMD).]

4. Default. In case of default in payment of any license renewal fees by a licensed optometrist, the license expires. A license may be renewed up to 60 days after the date of expiration upon payment of a late fee, established by the board in an amount not to exceed the annual renewal fee, in addition to the renewal fee.

[PL 1993, c. 600, Pt. A, §154 (AMD).]

5. Military service; license to practice optometry. A resident of the State who is serving in the military service of the United States and is engaged in the practice of optometry as defined in section 2411 is entitled to the issuance of an active license upon payment of the required annual renewal fee.

[PL 1993, c. 600, Pt. A, §154 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 187 (AMD). PL 1977, c. 694, §596 (AMD). PL 1983, c. 378, §27 (AMD). PL 1993, c. 600, §A154 (AMD). PL 1995, c. 606, §7 (AMD). PL 1997, c. 117, §3 (AMD). PL 2003, c. 252, §§2,3 (AMD).

§2424. Reciprocity

(REPEALED)

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 694, §597 (AMD). PL 1993, c. 600, §A155 (RP).

§2425. Display of license

Every individual to whom a license is granted shall display the license in a conspicuous part of the office where the licensee practices. An optometrist awarded credentials by the board in the use of diagnostic, therapeutic or advanced therapeutic pharmaceuticals shall affix current documentation of these privileges to that optometrist's license as provided by the board upon annual renewal. [PL 1997, c. 117, §4 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1987, c. 542, §§K12,K20 (AMD). PL 1993, c. 600, §A156 (AMD). PL 1997, c. 117, §4 (AMD).

§2426. Educational programs

All optometrists licensed in the State of Maine are required to take annual courses in subjects related to the practice of the profession of optometry, to the end that the utilization and application of new techniques, scientific and technical advances, the use of pharmaceutical agents and treatment of ocular diseases and the achievements of research will assure comprehensive vision care to the public. The length of study is determined by the board, but in no event may the length be less than 15 hours nor exceed 30 hours in any calendar year. Optometrists authorized to use therapeutic pharmaceutical agents shall complete at least 25 hours of Category 1 continuing education, approved by the American Optometric Association, the American Medical Association, the American Academy of Ophthalmologists or the American Council on Pharmaceutical Education, of which 15 hours must be in diagnosis and treatment of ocular disease. Attendance must be at a course or courses approved by the board and certified to the board upon a form provided by the board and submitted by each optometrist at the time of application to the board for license renewal accompanied by the annual renewal fee. The board shall notify all optometrists licensed in this State of all courses approved by it at least 15 days prior to the offering of each course. [PL 1995, c. 606, §8 (AMD).]

The board may waive this continuing education requirement in cases of illness or undue hardship. If an applicant for license renewal fails to comply with this continuing education provision and action has not been taken by the board to waive the requirements because of the causes specified, then the board may not renew the license, except that in its discretion, it may renew the license conditionally with the provision that within 6 months the applicant shall fulfill the requirements. [PL 1995, c. 606, §8 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1987, c. 542, §§K13,K20 (AMD). PL 1993, c. 600, §A157 (AMD). PL 1995, c. 606, §8 (AMD).

§2427. Diagnostic drug license

(REPEALED)

SECTION HISTORY

PL 1975, c. 563, §4 (NEW). PL 1983, c. 378, §28 (AMD). PL 1987, c. 542, §§K14,K20 (RP).

§2428. Therapeutic Pharmaceutical Monitoring Panel

(REPEALED)

SECTION HISTORY

PL 1987, c. 542, §§K15,K20 (NEW). PL 1987, c. 586 (AMD). PL 1989, c. 45 (AMD). MRSA T. 32 §2428, sub-§8 (RP).

§2429. Consumer information

(REPEALED)

SECTION HISTORY

PL 1991, c. 675, §3 (NEW). PL 1993, c. 600, §A158 (RPR). PL 1995, c. 370, §2 (RP).

§2430. Use of therapeutic pharmaceutical agents

An optometrist may not use pharmaceutical agents, except diagnostic agents, unless licensed in accordance with this section. [PL 1995, c. 606, §9 (NEW).]

1. Therapeutic license. An optometrist may use topical therapeutic agents for any purpose associated with ocular conditions and diseases, except for the treatment of glaucoma, if the optometrist has received a therapeutic license in accordance with the following requirements.

A. Licensure requires a review of credentials by the board including the successful completion of a transcript quality course in general and ocular pharmacology. For the purposes of this section, "transcript quality course" means a course given by a regional or professional accrediting organization approved by the Council on Post-secondary Accreditation of the United States Department of Education and approved by the board. The board may not approve a course that does not include a minimum of 100 hours of ocular therapeutics including at least 25 hours of supervised clinical training in the examination, diagnosis and treatment of conditions of the eye and its adnexa. That course must include participation by an ophthalmologist. [PL 1995, c. 606, §9 (NEW).]

B. An applicant must be a graduate from an accredited optometric institution and successfully complete a graded written examination administered by the board or the National Board of Examiners in Optometry, demonstrating competency in the use of therapeutic pharmaceutical agents. [PL 1995, c. 606, §9 (NEW).]

Effective October 1, 1996, the board may not issue new therapeutic licenses.
[PL 1995, c. 606, §9 (NEW).]

2. Therapeutic pharmaceutical agents; use permitted. An optometrist who has received an advanced therapeutic license may use and prescribe any therapeutic pharmaceutical agent, except for the treatment of glaucoma unless the requirements of section 2430-B have been met, including any drug identified in schedules III, IV and V as described in 21 United States Code, Section 812, for any purpose associated with ocular conditions and diseases except for oral chemotherapeutic agents, oral immunosuppressive agents and oral immunostimulant agents, and except that an optometrist who has received an advanced therapeutic license may prescribe one 5-day supply of any analgesic identified in schedules III, IV and V as described in 21 United States Code, Section 812.

- A. [PL 2009, c. 195, §6 (RP).]
 - B. [PL 2009, c. 195, §6 (RP).]
 - C. [PL 2009, c. 195, §6 (RP).]
 - D. [PL 2009, c. 195, §6 (RP).]
 - E. [PL 2009, c. 195, §6 (RP).]
- [PL 2009, c. 195, §6 (AMD).]

3. Requirements for advanced therapeutic license. Requirements for an advanced therapeutic license are as follows.

A. Optometrists without a therapeutic license must complete the following:

(1) Licensure requires a review of credentials by the board including the successful completion of a transcript quality course in general and ocular pharmacology. For the purposes of this section, "transcript quality course" means a course given by a regional or professional accrediting organization approved by the Council on Post-secondary Accreditation of the United States Department of Education and approved by the board. The board may not approve a course that does not include a minimum of 100 hours of ocular therapeutics including at least 25 hours of supervised clinical training in the examination, diagnosis and treatment of conditions of the eye and its adnexa. That course must include participation by an ophthalmologist;

(2) An applicant must be a graduate from an accredited optometric institution and successfully complete a graded written examination administered by the board or the National Board of Examiners in Optometry, demonstrating competency in the use of therapeutic pharmaceutical agents; and

(3) Successful completion of a course of at least 25 hours devoted primarily to pharmacology and glaucoma, referred to in this section as the "Lancaster Course," or its board-approved equivalent, and 3 additional hours of a board-approved course in pharmacology dealing solely with antiglaucoma agents. The requirements of this subparagraph may be completed anytime after the 2nd year of optometric study. [PL 1995, c. 606, §9 (NEW).]

B. Optometrists with a therapeutic license must meet the following requirements:

(1) Successful completion of the "Lancaster Course" or a board-approved equivalent course of at least 25 hours devoted primarily to the study of pharmacology and glaucoma. The requirements of this subparagraph may be completed any time after the 2nd year of optometric study;

(2) Successful completion of 3 didactic hours of a board-approved course in pharmacology dealing solely with antiglaucoma agents; and

(3) Successful passage of the Treatment and Management of Ocular Diseases (TMOD) component of the National Board of Examiners in Optometry examination on or after July 1, 1991. [PL 1995, c. 606, §9 (NEW).]

[PL 1995, c. 606, §9 (NEW).]

SECTION HISTORY

PL 1995, c. 606, §9 (NEW). PL 2009, c. 195, §6 (AMD).

§2430-A. Treatment of glaucoma

(REPEALED)

SECTION HISTORY

PL 1995, c. 606, §9 (NEW). PL 2009, c. 195, §7 (RP).

§2430-B. Treatment of glaucoma

1. Optometrists qualified. An optometrist who graduated from optometric college in the year 1996 or thereafter and who is an advanced therapeutic licensee is authorized to independently treat glaucoma.

[PL 2009, c. 195, §8 (NEW).]

2. Consultation required. In order to be authorized to independently treat glaucoma, an advanced therapeutic licensee who graduated from optometric college prior to 1996 must provide evidence to the board of no more than 30 glaucoma-related consultations with a physician in accordance with this section. For purposes of this section, "physician" means a licensed physician specializing in diseases of the eye. The board shall form a glaucoma consultation subcommittee comprised of 2 optometrists appointed by the board and 2 physicians appointed by the Board of Licensure in Medicine to review evidence of consultations submitted pursuant to this section in accordance with the following criteria.

A. The glaucoma-related consultations must be conducted as follows:

- (1) A new or existing glaucoma or glaucoma-suspect patient is examined and diagnosed by the optometrist;
 - (2) The optometrist develops a proposed treatment plan and forwards the plan with examination documentation to a physician for consultation;
 - (3) The physician examines the patient and reviews the optometrist's examination documentation and proposed treatment plan; and
 - (4) The physician, optometrist and patient mutually agree to and document a treatment plan.
- [PL 2009, c. 195, §8 (NEW).]

B. An advanced therapeutic licensee may petition the glaucoma consultation subcommittee to reduce or waive the number of consultations required. A reduction or waiver may be granted by a majority vote of the subcommittee. If the subcommittee is evenly divided on the question of a specific waiver or reduction, then the request for waiver or reduction must be referred to the board. The board shall hold a hearing on the request for waiver or reduction and shall render a decision. The subcommittee or the board, in evaluating a request for a waiver or reduction in the number of cases, shall consider, among other things:

- (1) Optometric college education and course work;
- (2) Any residency or practical experience;
- (3) Certifications in other states;
- (4) Any partial completion of the consultation regimen under paragraph A;
- (5) Ongoing education; and
- (6) Any other factors considered relevant by the subcommittee or board. [PL 2009, c. 195, §8 (NEW).]

C. An optometrist who has been licensed and practiced under the laws of another state and has been authorized to independently treat glaucoma in that state may petition the glaucoma consultation subcommittee for a waiver of the consultation requirement. If the optometrist graduated from optometric college in 1996 or thereafter, the waiver must be granted. The subcommittee shall evaluate the education, licensure and experience of an optometrist who graduated prior to 1996 and, if they are equivalent to that of an advanced therapeutic licensee in this State authorized under this section to treat glaucoma independently, shall waive the consultation requirements of this section. [PL 2009, c. 195, §8 (NEW).]

[PL 2009, c. 195, §8 (NEW).]

SECTION HISTORY

PL 2009, c. 195, §8 (NEW).

SUBCHAPTER 4

REVOCAION, REFUSAL OR SUSPENSION OF LICENSE

§2431. Revocation, refusal or suspension of certificate

(REPEALED)

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 694, §598 (RPR). PL 1983, c. 378, §29 (RP).

§2431-A. Disciplinary actions

1. Disciplinary proceedings and sanctions. The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but not later than 60 days from receipt of this information. The licensee shall respond within 30 days. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it determines appropriate:

A. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §160 (AMD).]

B. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and that serve to rehabilitate or educate the licensee. These stipulations may be set forth only

in a consent agreement signed by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §160 (AMD).]

C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or [PL 1993, c. 600, Pt. A, §160 (AMD).]

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court in accordance with Title 4, chapter 5. [PL 1999, c. 547, Pt. B, §63 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]
[PL 1999, c. 547, Pt. B, §63 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of an optometrist licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [PL 1983, c. 378, §30 (NEW).]

B. Habitual substance use that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; [PL 2017, c. 407, Pt. A, §127 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of the patients; [PL 1993, c. 600, Pt. A, §160 (AMD).]

D. Aiding or abetting the practice of optometry by an individual not licensed under this chapter who claims to be legally licensed; [PL 1993, c. 600, Pt. A, §160 (AMD).]

E. Incompetence in the practice for which the optometrist is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the optometrist is licensed; [PL 1993, c. 600, Pt. A, §160 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a commonly understood standard of professional behavior or board rule governing professional conduct; [PL 1993, c. 600, Pt. A, §160 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [PL 1993, c. 600, Pt. A, §160 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [PL 1993, c. 600, Pt. A, §160 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [PL 1983, c. 378, §30 (NEW).]

J. Practicing in or on premises where materials other than those necessary to render optometric services are dispensed to the public; [PL 1993, c. 600, Pt. A, §160 (AMD).]

K. Practicing under a name other than that given in the license. Licensees practicing in association with other licensed optometrists or physicians, as authorized by section 2434 may practice under a name adopted to denote this association if the names of all optometrists and physicians so

associated are stated as they appear on each individual's license whenever the association name is used; [PL 1993, c. 600, Pt. A, §160 (AMD).]

L. Representing one's self to the public as something other than an optometrist, for example, as an optician, eye physician or by use of another designation that would tend to confuse the nature of one's licensed practice. The following titles are considered lawful:

- (1) John Doe, O.D., Optometrist;
- (2) John Doe, O.D.;
- (3) John Doe, Optometrist;
- (4) Dr. John Doe, Optometrist; and
- (5) Doctor John Doe, Optometrist; [PL 1993, c. 600, Pt. A, §160 (AMD).]

M. [PL 1993, c. 600, Pt. A, §160 (RP).]

N. Maintaining more than three offices for the practice of optometry without the prior written approval of the board; [PL 1993, c. 600, Pt. A, §160 (AMD).]

O. Failure to display a diagnostic or therapeutic drug license issued under section 2419-A or 2425; or [PL 1987, c. 439, §16 (AMD); PL 1987, c. 542, Pt. K, §§16, 20 (AMD).]

P. Splitting or dividing a fee with an individual not an associate in conformance with section 2434, or giving or accepting a rebate from an optician or ophthalmic dispenser. [PL 1993, c. 600, Pt. A, §160 (AMD).]

[PL 2017, c. 407, Pt. A, §127 (AMD).]

SECTION HISTORY

PL 1983, c. 378, §30 (NEW). PL 1987, c. 542, §§K16,K20 (AMD). PL 1993, c. 600, §A160 (AMD). PL 1999, c. 547, §B63 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2017, c. 407, Pt. A, §127 (AMD).

§2432. General grounds

(REPEALED)

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1975, c. 563, §5 (AMD). PL 1983, c. 176, §A15 (AMD). PL 1983, c. 378, §31 (RP). PL 1987, c. 402, §A170 (AMD).

§2433. Unprofessional conduct

(REPEALED)

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 458, §§5,5A (AMD). PL 1983, c. 378, §32 (RP).

§2434. Unauthorized associations

An optometrist may practice only in an individual capacity under the optometrist's own name or in association with a licensed practitioner of optometry or of another of the healing arts and sciences. The following are unauthorized associations subject to the sanctions of section 2431-A: [PL 1993, c. 600, Pt. A, §161 (AMD).]

1. Associations. Association for the joint practice of optometry with an individual, corporation or partnership not licensed to practice optometry or another of the healing arts; [PL 1993, c. 600, Pt. A, §161 (AMD).]

2. Aiding unauthorized practice. Assisting an unlicensed individual, corporation or partnership in the practice of optometry;

[PL 1993, c. 600, Pt. A, §161 (AMD).]

3. Loan of license. The lending, leasing or in any other manner placing of one's license at the disposal of or in the service of an individual not licensed to practice optometry in this State;

[PL 1993, c. 600, Pt. A, §161 (AMD).]

4. Mercantile employment. The practice of optometry as a full or part-time employee of a mercantile establishment or directly or indirectly encouraging one's optometric services to be promoted as part of a mercantile or commercial establishment. In this prohibition is included the practice of optometry as a lessee of a commercial or mercantile establishment involved in the selling of spectacles, frames, mounting, lenses or other optical devices; and

[PL 1993, c. 600, Pt. A, §161 (AMD).]

5. Continuing unauthorized associations. The continuance of an optometrist directly or indirectly in the employ of or in association with an optometrist after knowledge that the optometrist is engaged in the violation of the provisions of this chapter.

[PL 1993, c. 600, Pt. A, §161 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1983, c. 378, §33 (AMD). PL 1993, c. 600, §A161 (AMD).

§2435. Corporate practice of optometry

A licensed optometrist, under this chapter, may not associate with an individual who is not a licensed optometrist nor a copartnership, firm or corporation for the promotion of a commercial practice for profit or division of profit that enables the individual, copartnership, firm or corporation to engage, either directly or indirectly, in the practice of optometry in this State. [PL 1993, c. 600, Pt. A, §162 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1983, c. 378, §34 (AMD). PL 1993, c. 600, §A162 (AMD).

§2436. Succession in practice

An optometrist taking over an established practice shall clearly indicate that the new optometrist is responsible individually for the practice, but the optometrist may use the term: "succeeded by," "successor to" or "succeeding" for a period not exceeding 2 years. [PL 1993, c. 600, Pt. A, §163 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1993, c. 600, §A163 (AMD).

SUBCHAPTER 5

UNAUTHORIZED PRACTICE

§2441. Penalties

(REPEALED)

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1987, c. 542, §§K17,K20 (AMD). PL 1993, c. 600, §A164 (RP).

§2442. Fraudulent acts**(REPEALED)**

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1993, c. 600, §A165 (RP).

§2443. Referrals by optical firms prohibited**(REPEALED)**

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1993, c. 600, §A165 (RP).

§2444. Public aid ocular services

All agencies, commissions, clinics and bureaus administering relief, public assistance, public welfare assistance, social security, health insurance or health services under the laws of this State may accept the service of licensed optometrists for a service covered by their licenses relating to individuals receiving benefits from those agencies or commissions and must pay for the services in the same way as practitioners of other professions are paid for similar services. Government agencies, or their agents, officials or employees, including the public schools, may not discriminate among licensed ocular practitioners. [PL 1993, c. 600, Pt. A, §166 (AMD).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1993, c. 600, §A166 (AMD).

§2445. Solicitation**(REPEALED)**

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1977, c. 458, §6 (RP).

§2446. Drugs

An optometrist who uses pharmaceutical agents without first having obtained the appropriate license under this chapter commits a Class E crime. [PL 1995, c. 606, §10 (AMD).]

SECTION HISTORY

PL 1975, c. 563, §6 (NEW). PL 1977, c. 564, §121 (AMD). PL 1987, c. 542, §§K18,K20 (AMD). PL 1993, c. 600, §A167 (AMD). PL 1995, c. 606, §10 (AMD).

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