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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1956

H.P. 1258

House of Representatives, May 18, 2023

An Act to Amend the Laws Governing Optometrists

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative POIRIER of Skowhegan.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-A, sub-§28**, as amended by PL 1999, c. 687, Pt. B, §1, is
3 further amended to read:

4 **28.**

5 State Board of Optometry \$35/Day 32 MRSA §2415
6 §19201

7 **Sec. 2. 24-A MRSA §4314, sub-§1, ¶A**, as enacted by PL 2001, c. 408, §1 and
8 affected by §2, is amended to read:

9 A. "Eye care provider" means a participating provider who is an optometrist licensed
10 to practice optometry pursuant to Title 32, chapter ~~34-A~~ 149, or an ophthalmologist
11 licensed to practice medicine pursuant to Title 32, chapter 48.

12 **Sec. 3. 32 MRSA c. 34-A**, as amended, is repealed.

13 **Sec. 4. 32 MRSA §2594-A, last ¶**, as amended by PL 1993, c. 600, Pt. A, §184, is
14 further amended to read:

15 When the delegated activities are part of the practice of optometry as defined in chapter
16 ~~34-A~~ 149, then the individual to whom these activities are delegated must possess a valid
17 license to practice optometry in Maine or otherwise may perform only as a technician
18 within the established office of a physician and may act solely on the order of and under
19 the responsibility of a physician skilled in the treatment of eyes as designated by the proper
20 professional board and without assuming evaluation or interpretation of examination
21 findings by prescribing corrective procedures to preserve, restore or improve vision.

22 **Sec. 5. 32 MRSA §3270-A, last ¶**, as amended by PL 1993, c. 600, Pt. A, §205, is
23 further amended to read:

24 When the delegated activities are part of the practice of optometry as defined in chapter
25 ~~34-A~~ 149, then the individual to whom these activities are delegated must possess a valid
26 license to practice optometry in Maine, or otherwise may perform only as a technician
27 within the established office of a physician, and otherwise acting solely on the order of and
28 under the responsibility of a physician skilled in the treatment of eyes as designated by the
29 proper professional board, and without assuming evaluation or interpretation of
30 examination findings by prescribing corrective procedures to preserve, restore or improve
31 vision.

32 **Sec. 6. 32 MRSA §3300-E**, as reallocated by RR 2015, c. 1, §36, is amended to
33 read:

34 **§3300-E. Issuance of prescription for ophthalmic lenses**

35 A physician licensed pursuant to section 3275 may not issue a prescription for
36 ophthalmic lenses, as defined in section ~~2411~~ 19101, subsection ~~40~~ 18, solely in reliance
37 on a measurement of the eye by a kiosk, as defined in section ~~2411~~ 19101, subsection ~~9~~ 13,
38 without conducting an eye examination, as defined in section ~~2411~~ 19101, subsection ~~8~~ 11.

39 **Sec. 7. 32 MRSA c. 149** is enacted to read:

40 **CHAPTER 149**

1 OPTOMETRISTS

2 SUBCHAPTER 1

3 GENERAL PROVISIONS

4 §19101. Definitions

5 As used in this chapter, unless the context otherwise indicates, the following terms
6 have the following meanings.

7 1. ACCME. "ACCME" means the Accreditation Council for Continuing Medical
8 Education.

9 2. ACOE. "ACOE" means the Accreditation Council on Optometric Education, which
10 is the accrediting body for professional optometric degree programs, optometric residency
11 programs and optometric technician programs in the United States and Canada.

12 3. Board. "Board" means the State Board of Optometry.

13 4. Commissioner. "Commissioner" means the Commissioner of Professional and
14 Financial Regulation.

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

18 6. COPE. "COPE" means the Council on Optometric Practitioner Education.

19 7. Department. "Department" means the Department of Professional and Financial
20 Regulation.

21 8. Dispense. "Dispense" means the act of furnishing drug samples, spectacle lenses or
22 contact lenses to a patient.

23 9. Drug sample. "Drug sample" means a unit of a prescription drug that is not intended
24 to be sold and is intended to promote the sale of the drug.

25 10. Entrance visual acuity. "Entrance visual acuity" means the corrected or
26 uncorrected acuity presented by the patient prior to the actual eye examination of the
27 patient.

28 11. Eye examination. "Eye examination" means an assessment of the ocular health
29 and visual status of a patient that meets the minimum requirements of this chapter and that
30 does not consist solely of objective refractive data or information generated by an
31 automated testing device or computer application, including a kiosk or autorefractor, in
32 order to establish a medical diagnosis or refractive error.

33 12. Individual. "Individual" means a natural person, not an association of individuals
34 or a legally created entity.

35 13. Kiosk. "Kiosk" means automated equipment, or a computer application designed
36 to be used on a telephone, computer or Internet-based device that can be used either in
37 person or remotely to provide refractive data or information.

1 **14. License applicant.** "License applicant" means an individual who has applied for
2 licensure to practice optometry in this State, but who has not yet been granted such
3 licensure by the board.

4 **15. Licensee.** "Licensee" means an individual who holds a license under this chapter.

5 **16. National Board of Examiners in Optometry.** "National Board of Examiners in
6 Optometry," or "NBEO," means an organization that develops, administers, scores and
7 reports results of valid examinations that assess competence in optometry.

8 **17. Nonlegend agent.** "Nonlegend agent" means a pharmaceutical drug for which a
9 prescription is not required.

10 **18. Ophthalmic lens.** "Ophthalmic lens" means:

11 A. A spectacle lens or contact lens that has a sphere, cylinder, axis, prism value or a
12 lens ground or formed pursuant to a written prescription; and

13 B. An optical instrument or device worn or used by an individual that has one or more
14 ophthalmic lenses designed to correct or enhance the individual's vision.

15 Ophthalmic lenses are also known as glasses or spectacles. "Ophthalmic lens" includes an
16 ophthalmic lens that may be adjusted by the wearer to achieve different types of visual
17 correction or enhancement.

18 "Ophthalmic lens" does not include an optical instrument or device that is sold without
19 consideration of the visual status of the individual who will use the optical instrument or
20 device.

21 **19. Optometrist.** "Optometrist" means an individual who is licensed to practice
22 optometry in the State.

23 **20. Optometrist-patient relationship.** "Optometrist-patient relationship" means the
24 relationship that begins when:

25 A. An individual with an ocular or health-related matter seeks assistance from the
26 licensee;

27 B. The licensee agrees to undertake examination, diagnosis, consultation or treatment
28 of the individual; and

29 C. The individual agrees to receive ocular or health care services from the licensee
30 whether or not there has been an in-person encounter between the licensee and the
31 individual.

32 "Optometrist-patient relationship" includes the relationship established between a licensee
33 who uses telehealth in providing optometric care and a patient who receives telehealth
34 services in the following circumstances: through consultation with another licensee or other
35 health care provider who has an established relationship with the patient upon agreement
36 to participate in, or supervise, the patient's care; or through telehealth, if the standard of
37 care does not require an in-person encounter, and in accordance with evidence-based
38 standards of practice and telehealth practice guidelines that address the clinical and
39 technological aspects of telemedicine.

40 **21. Person.** "Person" means an individual, corporation, partnership, professional
41 association or any other entity.

1 member of the board may be removed from office for cause by the Governor. The board
2 has a common seal.

3 **§19202. Powers and duties of the board**

4 The board has the following powers and duties in addition to all other powers and
5 duties imposed by this chapter:

6 **1. Hearings and procedures.** The power to hold hearings and take evidence in all
7 matters relating to the exercise and performance of the powers and duties vested in the
8 board and the authority to subpoena witnesses, books, records and documents in hearings
9 before the board;

10 **2. Complaints.** The duty to investigate complaints in a timely fashion, whether filed
11 on the board's own motion or lodged with the board or its representatives, regarding the
12 violation of a provision of this chapter or of rules adopted by the board;

13 **3. Fees.** The authority to adopt by rules any fees for purposes authorized under this
14 chapter in amounts that are reasonable and necessary for the fees' respective purposes,
15 except that the fee for any one purpose may not exceed \$600;

16 **4. Budget.** The duty to submit to the commissioner the board's budgetary requirements
17 in the same manner as is provided in Title 5, section 1665. The commissioner shall in turn
18 transmit these requirements to the Department of Administrative and Financial Services,
19 Bureau of the Budget without revision, alteration or change, unless alterations are mutually
20 agreed upon by the department and the board or the board's designee. The budget submitted
21 by the board to the commissioner must be sufficient to enable the board to comply with
22 this chapter;

23 **5. Adequacy of the budget and staffing.** The duty to ensure that the budget submitted
24 by the board to the commissioner pursuant to subsection 4 is sufficient, if approved, to
25 provide for adequate legal and investigative personnel on the board's staff and that of the
26 Attorney General to ensure that complaints filed pursuant to this chapter can be resolved
27 in a timely fashion;

28 **6. Clerical and staff personnel; duties.** The power to appoint staff who serve at the
29 pleasure of the board and who shall assist the board in carrying out the board's duties and
30 responsibilities under this chapter;

31 **7. Authority to delegate.** The power to delegate to staff the authority to review and
32 approve applications for licensure pursuant to procedures and criteria established by rule;

33 **8. Authority to order a mental or physical examination.** The authority to direct a
34 licensee or license applicant, who by virtue of an application for and acceptance of a license
35 to practice under this chapter is considered to have given consent, to submit to an
36 examination of the board's choice. With respect to a licensee, the board may order that
37 licensee to submit to an examination whenever information is received by the board that
38 would cause the board to reasonably determine that the licensee may be suffering from a
39 mental illness or physical illness that may be interfering with competent practice under this
40 chapter or from the use of intoxicants or drugs to an extent that the use is preventing the
41 licensee from practicing optometry competently and safely. A licensee or license applicant
42 examined pursuant to an order of the board may not prevent the testimony of the examining
43 individual or prevent the acceptance into evidence of the report of the examining individual
44 in a proceeding under this chapter. The board may petition the District Court for immediate

1 suspension of license if the licensee fails to comply with an order of the board to submit to
2 a mental or physical examination pursuant to this subsection; and

3 **9. Report.** The duty to submit to the commissioner, on or before August 1st of each
4 year, the board's annual report of its operations and financial position for the preceding
5 fiscal year ending June 30th, together with comments and recommendations the board
6 considers essential.

7 **§19203. Powers and duties of commissioner**

8 **1. Liaison.** The commissioner shall act as a liaison between the board and the
9 Governor.

10 **2. Limitation.** The commissioner may not exercise or interfere with the exercise of
11 discretionary, regulatory or licensing authority granted by statute to the board.

12 **3. Accessibility to public; provide information.** The commissioner may require the
13 board to be accessible to the public for complaints and questions during regular business
14 hours and to provide any information that the commissioner requires to ensure that the
15 board is operating administratively within the requirements of this chapter.

16 **§19204. Rulemaking authority**

17 The board shall adopt rules that are necessary for the implementation of this chapter.
18 The rules may include, but need not be limited to, requirements for licensure, license
19 renewal and license reinstatement as well as practice setting standards that apply to
20 individuals licensed under this chapter. Rules adopted pursuant to this section are routine
21 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **SUBCHAPTER 3**

23 **LICENSURE**

24 **§19301. Requirements for licensure**

25 **1. Requirements.** A license applicant must meet the following requirements before
26 licensure:

27 A. Be a graduate of a learning institution accredited by the ACOE;

28 B. Pass all examinations required by the board; and

29 C. Satisfy all other requirements set forth in this chapter.

30 **2. Waiver or modification.** Upon written request from a license applicant, the board
31 may waive or modify licensing requirements if the license applicant demonstrates
32 successful completion of equivalent requirements and the board is otherwise satisfied that
33 granting the license applicant a license will not harm the health, safety and welfare of the
34 public.

35 **§19302. Licensure required**

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

1 **§19303. Licensure by endorsement**

2 **1. Board to establish process.** The board shall establish a process to issue a license
3 by endorsement to a license applicant who presents proof of licensure by another
4 jurisdiction of the United States or a territory of the United States as long as the other
5 jurisdiction or territory maintains substantially equivalent license requirements for the
6 licensed profession or occupation and as long as:

7 A. The license applicant is in good standing in all jurisdictions in which the license
8 applicant holds or has held a license. For purposes of this paragraph, "good standing"
9 means that the license applicant does not have a complaint, allegation or investigation
10 pending, does not have a license that is suspended or subject to practice restrictions and
11 has never surrendered a license or had a license revoked;

12 B. Cause for denial of a license does not exist under Title 10, section 8003, subsection
13 5-A, paragraph A or under any other law;

14 C. The license applicant pays the fee, if any, pursuant to Title 10, section 8003,
15 subsection 2-A, paragraph D and section 19202, subsection 3; and

16 D. The license applicant passes a jurisprudence examination.

17 **2. Rules.** The board shall adopt rules to implement this section. Rules adopted
18 pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375,
19 subchapter 2-A.

20 **§19304. Levels of licensure and license requirements for use of pharmaceutical agents**

21 **1. Pharmaceutical agents or drug samples.** Only an optometrist licensed under this
22 section may use or dispense pharmaceutical agents or drug samples.

23 **2. Levels of licensure.** The following are the levels of licensure.

24 A. The board may only issue a therapeutic advanced glaucoma license for a new
25 licensee except that a licensee who meets requirements established by the board by rule
26 may apply for a therapeutic advanced glaucoma license.

27 (1) An optometrist who holds a therapeutic advanced glaucoma license may
28 dispense drug samples at no charge and may use and prescribe any therapeutic
29 pharmaceutical, for ocular conditions including for the treatment of glaucoma. An
30 optometrist with a therapeutic advanced glaucoma license may prescribe any drug
31 identified in schedules III, IV and V as described in 21 United States Code, Section
32 812, for any purpose associated with ocular conditions and diseases except for oral
33 chemotherapeutic agents, oral immunosuppressive agents and oral
34 immunostimulant agents.

35 (2) Nothing in this paragraph may be construed to permit the optometric use of
36 pharmaceutical agents that are:

37 (a) Controlled substances identified in schedules I and II as described in 21
38 United States Code, Section 812;

39 (b) Administered exclusively by subdermal injection, intramuscular injection,
40 intravenous injection, subcutaneous injection or retrobulbar injection, except
41 injections for the emergency treatment of anaphylactic shock; and

1 (c) For the specific treatment of a systemic disease unless the pharmaceutical
2 agent is used specifically for an ocular disease.

3 (3) Notwithstanding any other provision of this chapter, an optometrist with a
4 therapeutic advanced glaucoma license may provide drug samples at no charge for
5 nonlegend agents, and dispense, prescribe and administer nonlegend agents.

6 (4) An optometrist who is licensed and practiced under the laws of another state
7 and is not authorized to independently treat glaucoma in that state must meet the
8 requirements in the rules established by the board.

9 (5) A therapeutic advanced glaucoma license includes all the rights and
10 responsibilities of licensees with therapeutic advanced, therapeutic and diagnostic
11 license levels described in paragraphs B to D but allows for the treatment of
12 glaucoma.

13 B. The therapeutic advanced license includes all the rights and responsibilities of
14 licensees with therapeutic and diagnostic license levels described in paragraphs C and
15 D but excludes the right to treat glaucoma. An optometrist who holds a therapeutic
16 advanced license may provide drug samples at no charge for and may use and prescribe
17 any therapeutic pharmaceutical agent, except for the treatment of glaucoma unless the
18 requirements of paragraph A have been met, including any drug identified in schedules
19 III, IV and V as described in 21 United States Code, Section 812, for any purpose
20 associated with ocular conditions and diseases except for oral chemotherapeutic agents,
21 oral immunosuppressive agents and oral immunostimulant agents, and except that an
22 optometrist who has received a therapeutic advanced license may prescribe one 5-day
23 supply of any analgesic identified in schedules III, IV and V as described in 21 United
24 States Code, Section 812, or any drug that had previously been identified as a schedule
25 III, IV or V drug that has now been reclassified as a schedule I or II drug.

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

28 (1) Identified as controlled substances in schedules I and II as described in 21
29 United States Code, Section 812;

30 (2) Administered exclusively by subdermal injection, intramuscular injection,
31 intravenous injection, subcutaneous injection or retrobulbar injection, except
32 injections for the emergency treatment of anaphylactic shock; and

33 (3) Used for the specific treatment of a systemic disease unless the pharmaceutical
34 agent is used specifically for an ocular disease.

35 Notwithstanding any other provision of this chapter, an optometrist with a therapeutic
36 advanced license may provide drug samples at no charge for nonlegend agents and may
37 dispense, prescribe and administer nonlegend agents.

38 The board may not issue new therapeutic advanced licenses.

39 C. The therapeutic license includes all the rights and responsibilities of licensees with
40 a diagnostic license level described in paragraph D. An optometrist who holds a
41 therapeutic license may provide drug samples at no charge for and may use topical
42 therapeutic pharmaceuticals for any purpose associated with ocular conditions and
43 diseases, except for the treatment of glaucoma.

1 The board may not issue new therapeutic licenses.

2 D. The diagnostic license level does not permit treatment of eye pathology. A licensee
3 who holds a diagnostic license may use pharmacologic agents only for diagnosing eye
4 disease.

5 The board may not issue new diagnostic licenses.

6 **§19305. Licensing**

7 1. Annual renewal. An optometrist licensed by the board shall pay annually, before
8 the first day of April, to the board a license renewal fee not in excess of \$600, as established
9 by the board under section 19202.

10 2. Late fee. A license may be renewed up to 90 days after the date of expiration upon
11 payment of a late fee as established by the board, in addition to the annual renewal fee.

12 A. A licensee who fails to renew a license for more than 90 days but fewer than 2 years
13 after the date of expiration, may reinstate the license without taking any examination
14 required by the board by filing a new application for renewal, providing evidence of
15 all continuing education credits due and paying the late fee and renewal fee.

16 B. An individual who fails to renew a license for 2 years or more from the date of
17 expiration may obtain a new license by satisfying all the requirements for licensure in
18 this chapter.

19 **§19306. Display of license**

20 A licensee in active practice shall display the license in a public area of the office where
21 the licensee practices.

22 **§19307. Continuing education**

23 As a condition of renewal of a license to practice, a license applicant must complete
24 continuing education during the licensing cycle prior to application for renewal. The board
25 may prescribe by rule the content and types of continuing education activities that meet the
26 requirements of this section.

27 **§19308. Standard of care**

28 A licensee shall be held to the same standard of care in diagnosis, treatment and
29 management of patient care as that degree of skill and proficiency commonly exercised by
30 a physician with a specialty in eye care in this State. A licensee shall ensure that the services
31 provided are consistent with the licensee's scope of practice, including the licensee's
32 education, training, experience, ability, licensure and certification.

33 **§19309. Minimum standards for eye examination**

34 1. Minimum standards. The following are minimum standards for an eye
35 examination:

36 A. A history of the patient's ocular and medical care;

37 B. A record of the entrance visual acuity of each eye;

38 C. A physical examination of each eye;

39 D. An assessment of the examination results;

40 E. A treatment and management plan; and

1 F. Such other standards or requirements as may be established by the board.

2 **§19310. Record keeping**

3 An optometrist shall maintain complete records of all eye care provided, as well as any
4 prescriptions or programs of corrective procedure. This information for each patient must
5 be kept and be available for a period of not fewer than 10 years.

6 **§19311. Operation of kiosks**

7 The following provisions govern the operation of kiosks by any person.

8 **1. Minimum standards for eye examination.** Ownership and operation of a kiosk,
9 including use of a kiosk by any person, must comply with the minimum standards for an
10 eye examination under section 19309.

11 **2. Enforcement.** In addition to the disciplinary actions available to the board under
12 section 19402, the board has the following powers of enforcement for violations of this
13 chapter that relate in any way to kiosks, their use or the issuance of prescriptions arising
14 out of their use. Nothing in this subsection may be construed to apply to enforcement for
15 violations by physicians who are governed by the Board of Licensure in Medicine or the
16 Board of Osteopathic Licensure.

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

20 B. If, upon reviewing an allegation under paragraph A, the board determines there is
21 a reasonable basis to believe a violation of this chapter or attempted violation of this
22 chapter has occurred in relation to a kiosk, the use of a kiosk or the issuance of a
23 prescription arising out of kiosk use, the board shall investigate.

24 C. The board may hold adjudicatory hearings and administer oaths and order testimony
25 to be taken at a hearing or by deposition conducted pursuant to Title 5, chapter 375,
26 subchapter 4 or 5.

27 D. The board may proceed with an action if the board determines that a violation in
28 relation to a kiosk, the use of a kiosk or the issuance of a prescription arising out of
29 kiosk use has occurred.

30 E. The board is not required to wait until human harm has occurred to initiate an
31 investigation under this subsection.

32 F. The board, upon finding, after notice and an opportunity for a hearing, that a person
33 has violated any requirement related to a kiosk, the use of a kiosk or the issuance of a
34 prescription arising out of kiosk use without meeting the minimum standards for an
35 eye examination under section 19309, may impose an administrative fine of not more
36 than \$10,000 for each violation or attempted violation and may issue an order requiring
37 reimbursement of the reasonable costs to the board of investigation and hearing.

38 G. The board shall advise the Attorney General of the failure of a person to pay a civil
39 penalty imposed following an adjudicatory hearing or to reimburse costs to the board
40 of investigation and hearing imposed under this subsection. The Attorney General may
41 bring an action in a court of competent jurisdiction for the failure to pay any amount

1 imposed under this subsection, including the reasonable costs of investigation and
2 hearing.

3 H. The board may request that the Attorney General file a civil action seeking an
4 injunction or other appropriate relief to enforce this section. For violations of this
5 section, a court may impose a fine of not more than \$20,000 for each violation.

6 I. The board may adopt rules to implement, administer and enforce this section. Rules
7 adopted pursuant to this paragraph are routine technical rules under Title 5, chapter
8 375, subchapter 2-A.

9 **3. Attorney General may initiate action.** Nothing in this section prohibits the
10 Attorney General from initiating an action without referral or request from the board if the
11 Attorney General determines there is a reasonable basis to believe a violation of this section
12 occurred.

13 **4. Prescription filled based in part on measurements from kiosk.** It is neither a
14 violation of this section nor grounds for professional discipline or liability for an
15 optometrist to fill a prescription for a patient based in part on measurements obtained
16 through a kiosk.

17 **§19312. Minimum prescription requirements**

18 **1. Minimum requirements.** The following are the minimum requirements for
19 prescriptions.

20 A. A prescription must include the name of the patient, the date of the prescription and
21 the name and office location of the prescriber.

22 B. An ophthalmic prescription may not contain an expiration date of more than 2 years
23 from the date of the eye examination by the provider unless the prescription contains a
24 statement made by the provider of the reasons why a longer time frame is appropriate
25 based on the medical needs of the patient.

26 C. For spectacle lenses, a prescription must contain the power for the spectacle lens
27 for each eye and an expiration date.

28 D. For contact lenses, a prescription must include the date of examination, issue date
29 of the prescription, expiration date, postal address of the prescriber, power, base curve
30 or appropriate designation, diameter when appropriate and brand name or material or
31 both.

32 E. For pharmaceutical agents, a prescription must include the patient's name, the date
33 issued, the name of the agent, dosage of drugs, the number of refills, the name of the
34 prescriber, the Maine license number of the prescriber, the National Provider Identifier
35 or federal Drug Enforcement Agency number of the prescriber and the prescriber's
36 directions for usage.

37 Nothing in this paragraph may be construed to restrict the dispensation or sale by an
38 optometrist of contact lenses that contain and deliver pharmaceutical agents authorized
39 under this chapter for use or prescription.

40 F. A person may not make a prescription for spectacle lenses or contact lenses based
41 solely on the diagnosis of a refractive error of the human eye as generated by a kiosk.

1 G. A person may not dispense spectacle lenses or contact lenses to an individual
2 without a valid prescription from a provider issued after an eye examination performed
3 by the provider, except that a licensee may dispense without a prescription spectacle
4 lenses, solely for the correction of vision, that are of uniform focus power in each eye
5 of between plano and +3.25 diopters.

6 **2. Release of contact lens and spectacle prescriptions.** The following provisions
7 govern the release of contact lens and spectacle prescriptions.

8 A. After contact lenses have been properly fitted and the patient released from
9 immediate follow-up care by the optometrist, the optometrist shall provide a copy of
10 the prescription to the patient, at no cost, which must contain the information necessary
11 to properly duplicate the current prescription.

12 B. After the conclusion of an eye examination, the optometrist shall provide a copy of
13 the spectacle prescription to the patient, at no cost, which must contain the information
14 necessary to properly duplicate the current prescription.

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

18 D. The dispensing party may dispense contact lenses only upon receipt of a written
19 prescription, except that an optometrist may fill a prescription of another optometrist
20 or a physician without a copy of the prescription. Mail order contact lens suppliers
21 must be licensed by and register with the Maine Board of Pharmacy pursuant to Title
22 32, section 13751 and are subject to discipline by that board for violations of that
23 board's rules and the laws governing the board. An individual who fills a contact lens
24 prescription shall maintain a copy of that prescription for a period of 5 years.

25 **SUBCHAPTER 4**

26 **INVESTIGATIONS**

27 **§19401. Investigations**

28 **1. Board may investigate complaints.** The board may investigate a complaint, on its
29 own initiative or upon receipt of a written complaint, regarding noncompliance with or
30 violation of this chapter or of rules adopted by the board.

31 **2. Disclosure.** During the pendency of an investigation, a complaint or investigative
32 record may be disclosed:

33 A. To department employees designated by the commissioner;

34 B. To a designated complaint officer;

35 C. By a department employee or complaint officer designated by the commissioner
36 when, and to the extent, deemed necessary to facilitate the investigation;

37 D. To other state or federal agencies when the information contains evidence of
38 possible violations of laws enforced by those agencies;

1 E. When, and to the extent, deemed necessary by the commissioner to avoid imminent
2 and serious harm. The authority of the commissioner to make such a disclosure may
3 not be delegated;

4 F. Pursuant to rules that must be adopted by the department, when it is determined that
5 confidentiality is no longer warranted due to general public knowledge of the
6 circumstances surrounding the complaint or investigation and when the investigation
7 would not be prejudiced by the disclosure; and

8 G. To the person being investigated, upon request. The commissioner may refuse to
9 disclose part or all of any investigative information, including the fact of an
10 investigation, when the commissioner determines that disclosure would prejudice the
11 investigation or cause harm to an individual who is referenced in the complaint. The
12 authority of the commissioner to make such a determination may not be delegated.

13 **3. Notice to licensee; response; dismissal.** The board shall notify the licensee of the
14 content of a complaint filed against the licensee as soon as possible, but not later than 60
15 days from receipt of this information. The licensee shall respond within 30 days. If the
16 licensee's response to the complaint satisfies the board that the complaint does not merit
17 further investigation or action, the matter may be dismissed, with notice of the dismissal to
18 the parties.

19 **§19402. Disciplinary actions**

20 **1. Forms of disciplinary action; grounds.** The board may refuse to issue, suspend,
21 revoke or refuse to renew a license and may impose other disciplinary action as authorized
22 in this subsection for any of the following reasons:

23 A. The practice of fraud, deceit or misrepresentation in obtaining a license from the
24 board, or in connection with services rendered while engaged in the occupation or
25 profession for which the person is licensed;

26 B. Any gross negligence, incompetence, misconduct or violation of an applicable code
27 of ethics or standard of practice while engaged in the occupation or profession for
28 which the person is licensed;

29 C. Conviction of a crime to the extent permitted by Title 5, chapter 341;

30 D. Any violation of the governing law of the board;

31 E. Any violation of the rules of the board;

32 F. Engaging in any activity requiring a license under the board that is beyond the scope
33 of acts authorized by the license held;

34 G. Continuing to act in a capacity requiring a license under the governing law of the
35 board after expiration, suspension or revocation of that license;

36 H. Aiding or abetting any unlicensed practice by a person who is not licensed as
37 required by the board;

38 I. Noncompliance with an order or consent agreement of the board;

39 J. Noncompliance with a document release requirement to provide patient records;

1 K. Failure to produce any requested documents in the licensee's possession or under
2 the licensee's control concerning a pending complaint or proceeding or any matter
3 under investigation;

4 L. Any violation of a requirement imposed pursuant to Title 10, section 8003-G;

5 M. Misuse of alcohol, drugs or substances that has resulted or foreseeably may result
6 in the licensee performing services in a manner that endangers the health or safety of
7 patients or other individuals;

8 N. Professional diagnosis of a mental or physical condition that has resulted or
9 foreseeably may result in the licensee performing services in a manner that endangers
10 the health or safety of patients or other individuals;

11 O. Practicing optometry in or on premises where materials other than those necessary
12 to render optometric services are dispensed to the public;

13 P. Practicing optometry in or in conjunction with any retail store or other commercial
14 establishment where merchandise is displayed or offered for sale;

15 Q. Practicing optometry under a name other than that named in the license. Licensees
16 practicing in association with other licensed optometrists or physicians as authorized
17 by this chapter may practice under a name adopted to denote this association if the
18 names of all optometrists and physicians so associated are stated as they appear on each
19 individual's license whenever the association name is used;

20 R. Practicing optometry as an employee of any person, business or organization not
21 engaged primarily in health care delivery;

22 S. Splitting or dividing a fee with any person or organization in return for solicitation
23 of customers by that person or organization; and

24 T. Giving to or accepting from an optician or ophthalmic dispenser a rebate, monetary
25 compensation, discount or gift.

26 **2. Imposition of disciplinary action by board.** Following a hearing, the board may
27 impose one or more of the forms of disciplinary actions in subsection 1 upon a licensee or
28 a license applicant for violations of subsection 1, and for any basis of violation consistent
29 with Title 10, chapter 901.

30 **SUBCHAPTER 5**

31 **PRACTICE RESTRICTIONS**

32 **§19501. Association**

33 **1. Association.** An optometrist may practice only in an individual capacity under the
34 optometrist's own name or in association with a licensed practitioner of optometry or with
35 a physician.

36 **2. Prohibited mercantile employment.** A licensee may not practice optometry as a
37 full or part-time employee of a mercantile establishment or directly or indirectly encourage
38 one's optometric services to be promoted as part of a mercantile or commercial
39 establishment. This prohibition includes the practice of optometry as a lessee of a

1 commercial or mercantile establishment involved in the selling of spectacles, frames,
2 mounting, lenses or other optical devices.

3 **§19502. Corporate practice of optometry**

4 A licensed optometrist may not associate with an individual who is not a licensed
5 optometrist or a copartnership, firm or corporation for the promotion of a commercial
6 practice for profit or division of profit that enables the individual, copartnership, firm or
7 corporation to engage, either directly or indirectly, in the practice of optometry in this State.

8 **SUBCHAPTER 6**

9 **TELEHEALTH**

10 **§19601. Definitions**

11 As used in this subchapter, unless the context otherwise indicates, the following terms
12 have the following meanings.

13 **1. Asynchronous encounter.** "Asynchronous encounter" means an interaction
14 between a patient and a licensee through a system that has the ability to store digital
15 information, including, but not limited to, still images, video files, audio files, text files and
16 other relevant data, and to transmit such information without requiring the simultaneous
17 presence of the patient and the licensee.

18 **2. Store and forward transfer.** "Store and forward transfer" means the transmission
19 of a patient's records through a secure electronic system to a licensee.

20 **3. Synchronous encounter.** "Synchronous encounter" means a real-time interaction
21 conducted with interactive audio or video connection between a patient and a licensee or
22 between a licensee and another health care provider.

23 **4. Telehealth services.** "Telehealth services" means health care services delivered
24 through the use of information technology and includes synchronous encounters,
25 asynchronous encounters, store and forward transfers and telemonitoring.

26 **5. Telemonitoring.** "Telemonitoring" means the use of information technology to
27 remotely monitor a patient's health status via electronic means, allowing the licensee to
28 track the patient's health data over time. Telemonitoring may be synchronous or
29 asynchronous.

30 **§19602. Telehealth services permitted**

31 A person licensed under this chapter may provide telehealth services as long as the
32 licensee acts within the scope of practice of the licensee's license, in accordance with any
33 requirements and restrictions imposed by this subchapter and in accordance with standards
34 of practice.

35 **§19603. Confidentiality**

36 When providing telehealth services, a licensee shall comply with all state and federal
37 confidentiality and privacy laws.

38 **§19604. Professional responsibility**

