

## STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

H.P. 1258 - L.D. 1956

**An Act to Amend the Laws Governing Optometrists****Be it enacted by the People of the State of Maine as follows:**

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

28.

State Board of Optometry

\$35/Day

32 MRSA §2415

§19201

**Sec. 2.** 10 MRSA §8001-A, sub-§6, as enacted by PL 1989, c. 450, §5, is repealed and the following enacted in its place:

**6. State Board of Optometry.** Optometry, State Board of:

**Sec. 3.** 24-A MRSA §4314, sub-§1, ¶A, as enacted by PL 2001, c. 408, §1 and affected by §2, is amended to read:

A. "Eye care provider" means a participating provider who is an optometrist licensed to practice optometry pursuant to Title 32, chapter ~~34-A~~ 151, or an ophthalmologist licensed to practice medicine pursuant to Title 32, ~~chapter 48~~ chapter 36, 48 or 145.

**Sec. 4.** 32 MRSA c. 34-A, as amended, is repealed.

**Sec. 5.** 32 MRSA §2594-A, last ¶, as amended by PL 1993, c. 600, Pt. A, §184, is further amended to read:

When the delegated activities are part of the practice of optometry as defined in chapter ~~34-A~~ 151, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine or otherwise may perform only as a technician within the established office of a physician and may act solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision.

**Sec. 6.** 32 MRSA §3270-A, last ¶, as amended by PL 1993, c. 600, Pt. A, §205, is further amended to read:

When the delegated activities are part of the practice of optometry as defined in chapter ~~34-A~~ 151, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine, or otherwise may perform only as a technician within the established office of a physician, and otherwise acting solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board, and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision.

**Sec. 7. 32 MRSA §3300-E**, as reallocated by RR 2015, c. 1, §36, is amended to read:

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

A physician licensed pursuant to ~~section 3275~~ chapter 36, 48 or 145 may not issue a prescription for ophthalmic lenses, as defined in section ~~2411~~ 19101, subsection ~~40~~ 18, solely in reliance on a measurement of the eye by a kiosk, as defined in section ~~2411~~ 19101, subsection ~~9~~ 13, without conducting an eye examination, as defined in section ~~2411~~ 19101, subsection ~~8~~ 11.

**Sec. 8. 32 MRSA c. 151** is enacted to read:

**CHAPTER 151**

**OPTOMETRISTS**

**SUBCHAPTER 1**

**GENERAL PROVISIONS**

**§19101. Definitions**

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

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

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

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

**4. Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

**5. 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.

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

**7. Department.** "Department" means the Department of Professional and Financial Regulation.

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

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

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

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

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

**13. In person.** "In person" means, with regard to a visit between a licensee and a patient, that the licensee and the patient are physically in the same room.

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

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

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

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

**18. Nonlegend agent.** "Nonlegend agent" means a pharmaceutical drug for which a prescription is not required.

**19. Ophthalmic lens.** "Ophthalmic lens" means:

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

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

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

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

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

**21. Optometrist-patient relationship.** "Optometrist-patient relationship" means the relationship that begins when:

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

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

C. The individual agrees to receive ocular or health care services from the licensee and there has been an in-person encounter between the licensee and the individual, unless the standard of care requires that an individual be seen without an in-person visit, such as in an emergent situation as reasonably determined by the licensee.

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

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

**23. Pharmaceutical agent.** "Pharmaceutical agent" means any diagnostic and therapeutic substance 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.

**24. Practice of optometry.** "Practice of optometry" means one or a combination of the following practices:

A. The examination, diagnosis, treatment and management of diseases, injuries and disorders of the eye and associated structures, as well as identification of related systemic conditions affecting the eye without the use of invasive surgery or tissue-altering lasers; and

B. The provision, 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 definition prevents an individual or person from merely doing the mechanical work associated with adapting, fitting, bending, adjusting, providing, replacing or duplicating of eyeglasses with ophthalmic lenses.

**25. Provider.** "Provider" means an individual licensed as an optometrist under this chapter or an individual licensed as an osteopathic physician or medical doctor under chapter 36, 48 or 145 who has also completed a residency in ophthalmology.

**26. Successor licensee.** "Successor licensee" means a licensee with no fewer than 5 years of licensed optometry experience, who is willing and able to assume responsibility

for a licensee's practice on a temporary or permanent basis when the licensee is unwilling or unable to practice optometry pursuant to this chapter.

**27. Therapeutic pharmaceutical.** "Therapeutic pharmaceutical" means a pharmaceutical agent required to diagnose, prevent, manage or treat abnormal ocular conditions or diseases.

**28. Treatment and management of ocular disease.** "Treatment and management of ocular disease" means the examination given by the National Board of Examiners in Optometry.

## **SUBCHAPTER 2**

### **BOARD OF OPTOMETRY**

#### **§19201. Members of State Board of Optometry: appointment; tenure; vacancies; removal**

The State Board of Optometry, as established by Title 5, section 12004-A, subsection 28, consists of 6 individuals appointed by the Governor. Five of the appointees must be licensed therapeutic advanced glaucoma optometrists engaged in the actual practice of optometry in this State for a period of at least 5 years prior to their appointment. 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.

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

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

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

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

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

**4. Budget.** The duty to submit to the commissioner the board's budgetary requirements in the same manner as is provided in Title 5, section 1665. The commissioner shall in turn transmit these requirements to the Department of Administrative and Financial Services, Bureau of the Budget without revision, alteration or 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 chapter.

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

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

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

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

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

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

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

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

**3. Accessibility to public; provide information.** 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 that the commissioner requires to ensure that the board is operating administratively within the requirements of this chapter.

#### **§19204. Rulemaking authority**

The board shall adopt rules that are necessary for the implementation of this chapter. The rules may include, but need not be limited to, requirements for licensure, license renewal and license reinstatement as well as practice setting standards that apply to

individuals licensed under this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### SUBCHAPTER 3

#### LICENSURE

##### §19301. Requirements for licensure

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

- A. Be a graduate of a learning institution accredited by the ACOE;
- B. Pass all examinations required by the board; and
- C. Satisfy all other requirements set forth in this chapter.

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

##### §19302. 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.

##### §19303. Licensure by endorsement

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

- A. The license applicant is in good standing in all jurisdictions in which the license applicant holds or has held a license. For purposes of this paragraph, "good standing" means that the license applicant does not have a complaint, allegation or investigation pending, does not have a license that is suspended or subject to practice restrictions and has never surrendered a license or had a license revoked;
- B. Cause for denial of a license does not exist under section 19402 or under any other applicable law;
- C. The license applicant pays the fee, if any, pursuant to section 19202, subsection 3 and Title 10, chapter 901; and
- D. The license applicant passes a jurisprudence examination.

2. Rules. The board shall adopt rules to implement this section.

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

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

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

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

(1) An optometrist who holds a therapeutic advanced glaucoma license may dispense drug samples at no charge and may use and prescribe any therapeutic pharmaceutical, for ocular conditions including for the treatment of glaucoma. An optometrist with a therapeutic advanced glaucoma license may prescribe 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.

(2) Nothing in this paragraph 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 21 United States Code, Section 812;

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

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

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

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

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

B. The therapeutic advanced license includes all the rights and responsibilities of licensees with therapeutic and diagnostic license levels described in paragraphs C and D but excludes the right to treat glaucoma. An optometrist who holds a therapeutic advanced license may provide drug samples at no charge for and may use and prescribe any therapeutic pharmaceutical agent, except for the treatment of glaucoma unless the requirements of paragraph A 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 a therapeutic advanced 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, or any drug that had previously been identified as a schedule III, IV or V drug that has now been reclassified as a schedule I or II drug.

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

- (1) Identified as controlled substances in schedules I and II as described in 21 United States Code, Section 812;
- (2) Administered exclusively by subdermal injection, intramuscular injection, intravenous injection, subcutaneous injection or retrobulbar injection, except injections for the emergency treatment of anaphylactic shock; and
- (3) Used for the specific treatment of a systemic disease unless the pharmaceutical agent is used specifically for an ocular disease.

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

The board may not issue new therapeutic advanced licenses.

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

The board may not issue new therapeutic licenses.

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

The board may not issue new diagnostic licenses.

### **§19305. Licensing**

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

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

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

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

### **§19306. Display of license**

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

**§19307. Continuing education**

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

**§19308. Standard of care**

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

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

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

- A. A history of the patient's ocular and medical care;
- B. A record of the entrance visual acuity of each eye;
- C. A physical examination of each eye in an in-person clinical setting by the licensee in accordance with any requirements and restrictions imposed by this chapter and in accordance with the standard of care;
- D. An assessment of the examination results;
- E. A treatment and management plan;
- F. If performing a refraction, the performance of an objective and subjective refraction, when practicable; and
- G. Such other standards or requirements as may be established by the board.

**§19310. Record keeping**

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

**§19311. Operation of kiosks**

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

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

2. Enforcement. In addition to the disciplinary actions available to the board under section 19402, 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 subsection 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.

A. 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.

B. If, upon reviewing an allegation under paragraph A, 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, the use of a kiosk or the issuance of a prescription arising out of kiosk use, the board shall investigate.

C. 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, chapter 375, subchapter 4 or 5.

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

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

F. The board, upon finding, after notice and an opportunity for a hearing, that a person has violated any requirement related to a kiosk, the use of a kiosk or the issuance of a prescription arising out of kiosk use without meeting the minimum standards for an eye examination under section 19309, 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.

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

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

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

**3. Attorney General may initiate action.** Nothing in this section 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 of this section occurred.

**4. Prescription filled based in part on measurements from kiosk.** It is neither a violation of this section 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.

**§19312. Minimum prescription requirements**

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

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

B. An ophthalmic 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.

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

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

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

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

G. A person may not dispense spectacle lenses or contact lenses to an individual without a valid prescription from a provider issued after an eye examination performed by the provider, except that a licensee 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.

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

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

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

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

D. 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 Maine Board of Pharmacy pursuant to Title 32, section 13751 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 copy of that prescription for a period of 5 years.

## **SUBCHAPTER 4**

### **INVESTIGATIONS**

#### **§19401. Investigations**

1. Board may investigate complaints. The board may investigate a complaint, on its own initiative or upon receipt of a written complaint, regarding noncompliance with or violation of this chapter or of rules adopted by the board, including but not limited to complaints against any person, whether or not licensed under this chapter, related to actions or activities involving a kiosk or telehealth.

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

A. To a designated complaint officer;

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

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

3. Notice to licensee; response; dismissal. 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 parties.

#### **§19402. Disciplinary actions**

1. Forms of disciplinary action; grounds. The board may deny or refuse to renew a license or suspend or revoke a license and may impose other discipline for any of the following reasons.

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

B. Any gross negligence, incompetence, misconduct or violation of an applicable code of ethics or standard of practice while engaged in the practice of optometry;

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

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

E. Any violation of the rules of the board;

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

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

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

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

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

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

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

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

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

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

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

Q. Practicing optometry under a name other than that named in the license. Licensees practicing in association with other licensed optometrists or physicians as authorized by this chapter 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;

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

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

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

**2. Complaint resolution and imposition of disciplinary action by board.** The board may resolve a complaint through consent agreements or may, following a hearing, impose one or more of the forms of disciplinary actions in subsection 1 upon a licensee or a license applicant for violations of subsection 1 for violations of this chapter, Title 10, chapter 901 or any other applicable law.

## SUBCHAPTER 5

### PRACTICE RESTRICTIONS

#### §19501. Association

1. Association. 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 with a physician.

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

#### §19502. Corporate practice of optometry

A licensed optometrist may not associate with an individual who is not a licensed optometrist or 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.

## SUBCHAPTER 6

### TELEHEALTH

#### §19601. Definitions

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

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

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

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

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

5. Telemonitoring. "Telemonitoring" means the use of information technology to remotely monitor a patient's health status via electronic means, allowing the licensee to

track the patient's health data over time. Telemonitoring may be synchronous or asynchronous.

**§19602. Telehealth services permitted**

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

**§19603. Confidentiality**

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

**§19604. Professional responsibility**

All laws and rules governing professional responsibility, unprofessional conduct and generally accepted standards of practice that apply to a licensee also apply to that licensee while providing telehealth services.

**§19605. Rulemaking**

The board shall adopt rules governing telehealth services by a person licensed under this chapter in accordance with section 19204. These rules must establish standards of practice and appropriate restrictions for the various types and forms of telehealth services.

**SUBCHAPTER 7**

**PRACTICE STATUS CHANGES**

**§19701. Succession in practice**

1. **Optometrist taking over established 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.

2. **Written directive identifying successor licensee.** A licensee who is closing a practice shall no later than 30 days prior to closure create and maintain a written directive identifying a successor licensee who is willing to assume the responsibility of the licensee's practice, to maintain continuity of treatment, to transfer medical information and to ensure patient health and safety.

**§19702. Closing practice**

A licensee who is unwilling or unable to operate a practice pursuant to this chapter shall notify the board as soon as practicable and in no event later than 30 days before closure of the practice if there is no successor licensee.



1 21 NCAC 42D .0102 is adopted with changes as published in 37.22 NCR 2129-2130 as follows:

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3 **21 NCAC 42D .0102      FUNCTION OPTOMETRIC ASSISTANT; OPTOMETRIC TECHNICIAN**

4 ~~(a) For the purposes of this Rule, "paraoptometric personnel" means an optometric assistant, optometric technician,~~  
5 ~~or similarly titled position who qualifies by training and experience to perform duties of an administrative, technical,~~  
6 ~~or clinical nature and is directed and supervised by a licensed optometrist. Optometric assistants and optometric~~  
7 ~~technicians are employees of an optometric practice or where optometry is practiced who have successfully completed~~  
8 ~~the testing and certification process for Certified Paraoptometric Assistant and Certified Paraoptometric Technician~~  
9 ~~respectively by the American Optometric Association.~~

10 ~~(b) Paraoptometric personnel shall perform his or her functions within the scope of his or her training, as directed by~~  
11 ~~and assigned by an optometrist, so long as those functions are at the specific direction and under the supervision of~~  
12 ~~the licensee. Optometric assistants and optometric technicians may be delegated duties and responsibilities of an~~  
13 ~~administrative, technical, or clinical nature so long as such are within the scope of their education, training, experience,~~  
14 ~~and certification, and so long as such activities are directed and appropriately supervised by a licensed optometrist.~~  
15 ~~The supervising optometrist is responsible for all activities undertaken by the optometric assistant and optometric~~  
16 ~~technician.~~

17 ~~(c) In practices or situations where there is no on-site optometrist present, an optometric technician must be present~~  
18 ~~during all patient interactions with the remote optometrist.~~

19  
20 *History Note      Authority G.S. 90-115 1(6), 90-117 5;*  
21 *Eff February 1, 1976,*  
22 *Readopted Eff. May 30, 1978,*  
23 *Amended Eff. June 1, 1989; September 30, 1981;*  
24 *Pursuant to G S 150B-21.3A, rule is necessary without substantive public interest Eff May 23,*  
25 *2015,*  
26 *Amended Eff March 1, 2023.*  
27 *Amended Eff December 1, 2023*  
28  
29