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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 7. Optometry [3000 - 3167] (*Chapter 7 added by Stats. 1937, Ch. 423.*)

ARTICLE 5. Revocation and Suspension [3090 - 3112] (*Article 5 added by Stats. 1937, Ch. 423.*)

3090. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, including those who hold a retired license, a license with a retired volunteer designation, an inactive license issued pursuant to Article 9 (commencing with Section 700) of Chapter 1, or a temporary license, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

(Amended by Stats. 2021, Ch. 219, Sec. 3. (SB 509) Effective September 22, 2021.)

3090.5. The board may revoke a license issued to a licensee upon a decision, made in a proceeding as provided in Section 3092, that contains a finding of fact of either of the following:

- (a) The licensee has engaged in an act of sexual abuse, misconduct, or relations with a patient, as described in paragraph (2) of subdivision (m) of Section 3110.
- (b) The licensee has been convicted of a crime described in paragraph (3) of subdivision (m) of Section 3110.

(Added by Stats. 2013, Ch. 516, Sec. 17. (SB 305) Effective January 1, 2014.)

3091. (a) The board may deny an optometrist license to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

- (1) Practice limited to a supervised, structured environment in which the licensee's activities shall be supervised by another optometrist licensed by the board.
- (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
- (3) Continuing medical or psychiatric treatment.
- (4) Ongoing participation in a specified rehabilitation program.
- (5) Enrollment and successful completion of a clinical training program.
- (6) Abstinence from the use of alcohol or drugs.
- (7) Restrictions against engaging in certain types of optometry practice.
- (8) Compliance with all provisions of this chapter.
- (9) Any other terms and conditions deemed appropriate by the board.

(b) The board may modify or terminate the terms and conditions imposed on the probationary license if the licensee petitions for modification or termination of terms and conditions of probation. A licensee shall not petition for modification or termination of terms

and conditions until one year has passed from the effective date of the decision granting the probationary license.

(Added by Stats. 2005, Ch. 393, Sec. 6. Effective January 1, 2006.)

3092. All proceedings against a licensee for any violation of this chapter or any of the regulations adopted by the board, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Attorney General's office.

(Added by Stats. 2005, Ch. 393, Sec. 7. Effective January 1, 2006.)

3093. Before setting aside the revocation or suspension of any optometrist license, the board may require the applicant to pass the regular examination given for applicants for an optometrist license.

(Amended by Stats. 2013, Ch. 473, Sec. 11. (SB 821) Effective January 1, 2014.)

3094. In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining that conduct on application of the board, the Attorney General, the district attorney of the county, or on application of 10 or more persons holding licenses issued under this chapter.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Added by renumbering Section 3131 by Stats. 2005, Ch. 393, Sec. 37. Effective January 1, 2006.)

3095. In accordance with Section 125.9, the board may establish a system for the issuance of citations, and the assessment of administrative fines, as deemed appropriate by the board.

(Added by renumbering Section 3135 by Stats. 2005, Ch. 393, Sec. 38. Effective January 1, 2006.)

3096. (a) A licensee may be ordered to undergo a professional competency examination if, after investigation and review by the Board of Optometry, there is reasonable cause to believe that the licensee is unable to practice optometry with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following:

- (1) A single incident of gross negligence.
- (2) A pattern of inappropriate prescribing.
- (3) An act of incompetence or negligence causing death or serious bodily injury.
- (4) A pattern of substandard care.

(b) The results of a competency examination shall be admissible as direct evidence and may be considered relevant in any subsequent disciplinary or interim proceeding against the licensee taking the examination, and, assuming those results are determined to be relevant, shall be considered together with other relevant evidence in making a final determination.

(Added by renumbering Section 3090.1 by Stats. 2005, Ch. 393, Sec. 5. Effective January 1, 2006.)

3097. The sending of a solicitor from house to house or the soliciting from house to house by the holder of an optometrist license constitutes a cause to revoke or suspend his or her license.

(Added by renumbering Section 3096 by Stats. 2005, Ch. 393, Sec. 10. Effective January 1, 2006.)

3098. When the holder uses the title of "Doctor" or "Dr." as a prefix to his or her name, without using the word "optometrist" as a suffix to his or her name or in connection with it, or, without holding a diploma from an accredited school of optometry, the letters "Opt. D." or "O.D." as a suffix to his or her name, it constitutes a cause to revoke or suspend his or her optometrist license.

(Amended by Stats. 2013, Ch. 473, Sec. 12. (SB 821) Effective January 1, 2014.)

3099. No optometrist shall advertise or otherwise hold himself or herself out to be a specialist in eye disease and the treatment thereof.

(Added by renumbering Section 3096.5 by Stats. 2005, Ch. 393, Sec. 11. Effective January 1, 2006.)

3100. The holding out as having a special knowledge of optometry, as defined in this chapter, by the holder of a license, constitutes a cause to revoke or suspend his or her license.

(Added by renumbering Section 3099 by Stats. 2005, Ch. 393, Sec. 15. Effective January 1, 2006.)

3101. It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be an optometrist without having at the time of so doing a valid unrevoked license from the board.

(Added by renumbering Section 3128 by Stats. 2005, Ch. 393, Sec. 34. Effective January 1, 2006.)

3102. It is unlawful to advertise as being free or without cost the furnishing of optometric services where these services are contingent upon payment or other exchange of consideration for goods or other services offered by the provider, unless that contingency is fully disclosed in the same advertisement.

(Amended by Stats. 2006, Ch. 302, Sec. 4. Effective January 1, 2007.)

3103. It is unlawful to include in any advertisement relating to the sale or disposition of goggles, sunglasses, colored glasses, or occupational eye-protective devices, any words or figures that advertise or have a tendency to advertise the practice of optometry.

This section does not prohibit the advertising of the practice of optometry by a licensed optometrist in the manner permitted by law.

(Amended by Stats. 2013, Ch. 473, Sec. 13. (SB 821) Effective January 1, 2014.)

3104. The employing of what are known as “cappers” or “steerers” to obtain business constitutes unprofessional conduct.

(Added by renumbering Section 3100 by Stats. 2005, Ch. 393, Sec. 16. Effective January 1, 2006.)

3105. Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the California State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

(Amended by Stats. 2021, Ch. 630, Sec. 86. (AB 1534) Effective January 1, 2022.)

3106. Knowingly making or signing any license, certificate, or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.

(Amended by Stats. 2013, Ch. 473, Sec. 14. (SB 821) Effective January 1, 2014.)

3107. It is unlawful to use or attempt to use any license or certificate issued by the board that has been purchased, fraudulently issued, counterfeited, or issued by mistake, as a valid license or certificate.

(Amended by Stats. 2013, Ch. 473, Sec. 15. (SB 821) Effective January 1, 2014.)

3108. When the holder is suffering from a contagious or infectious disease, it constitutes a cause to suspend his or her license during the period of continuance of that disease.

(Added by renumbering Section 3097 by Stats. 2005, Ch. 393, Sec. 14. Effective January 1, 2006.)

3109. Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked license as an optometrist or from any company or corporation constitutes unprofessional conduct. Except as provided in this chapter, no optometrist may, singly or jointly with others, be incorporated or become incorporated when the purpose or a purpose of the corporation is to practice optometry or to conduct the practice of optometry.

The terms “accepting employment to practice optometry” as used in this section shall not be construed so as to prevent a licensed optometrist from practicing optometry upon an individual patient.

Notwithstanding the provisions of this section or the provisions of any other law, a licensed optometrist may be employed to practice optometry by a physician and surgeon who holds a license under this division or by a health care service plan pursuant to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(Amended by Stats. 2021, Ch. 630, Sec. 87. (AB 1534) Effective January 1, 2022.)

3110. The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

- (b) Gross negligence.
- (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.
- (d) Incompetence.
- (e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.
- (f) Any action or conduct that would have warranted the denial of a license.
- (g) The use of advertising relating to optometry that violates Section 651 or 17500.
- (h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.
- (i) Procuring his or her license by fraud, misrepresentation, or mistake.
- (j) Making or giving any false statement or information in connection with the application for issuance of a license.
- (k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist, in which event the record of the conviction shall be conclusive evidence thereof.
- (l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.
- (m) (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.

(2) Committing any act of sexual abuse, misconduct, or relations with a patient. The commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that licensee provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.

(3) Conviction of a crime that requires the person to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee.
- (n) Repeated acts of excessive prescribing, furnishing, or administering of controlled substances or dangerous drugs specified in Section 4022, or repeated acts of excessive treatment.
- (o) Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.
- (p) The prescribing, furnishing, or administering of controlled substances or drugs specified in Section 4022, or treatment without a good faith prior examination of the patient and optometric reason.
- (q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.
- (r) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.
- (s) The practice of optometry without a valid, unrevoked, unexpired license.
- (t) The employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.
- (u) Permitting another person to use the licensee's optometry license for any purpose.
- (v) Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.
- (w) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of

Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board may consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.

(x) Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the licensee is unable to provide the documents within this time period for good cause.

(y) Failure to refer a patient to an appropriate physician and surgeon if an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician and surgeon.

(Amended by Stats. 2017, Ch. 549, Sec. 8. (AB 443) Effective January 1, 2018.)

3111. It is unprofessional conduct and a violation of this chapter for a person licensed under this chapter to violate, attempt to violate, assist in the violation of, or conspire to violate the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, or any regulation adopted pursuant to those provisions.

(Added by Stats. 2006, Ch. 564, Sec. 2. Effective January 1, 2007.)

3112. (a) An optometrist shall not knowingly provide optometric services to any patient who scheduled their appointment for optometry services through any individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the California State Board of Optometry as required by Section 2564.90.

(b) An optometrist shall not knowingly enter into a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with any individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the California State Board of Optometry as required by Section 2564.90.

(Added by Stats. 2021, Ch. 630, Sec. 88. (AB 1534) Effective January 1, 2022.)