

CHAPTER 449

OPTOMETRY EXAMINING BOARD

449.01	Definitions; discrimination prohibited	449.08	Unprofessional conduct
449.02	Licenses; exemptions	449.09	Procedure for revocation of a license
449.03	Rule-making; enforcement	449.10	Prohibited advertising
449.04	Examination	449.11	Penalties
449.05	Qualification for examination	449.12	Interpretation
449.06	Registration	449.13	Wisconsin Vision Services, Inc.
449.07	Revocation	449.15	Service insurance corporations for optometric care

449.01 Definitions; discrimination prohibited. (1) **OPTOMETRY.** The practice of optometry is defined as follows: The employment of any means other than drugs to determine the visual efficiency of human eyes or the measurement of the powers or defects of vision; the furnishing, using or employment of any means or device designed or calculated to aid in the selection or fitting of spectacles or eyeglasses; and the adaptation of lenses, prisms and mechanical therapy to aid the vision of any person.

(2) **DISPENSING OPTICIANS.** A dispensing optician is one who practices optical dispensing. The practice of optical dispensing comprises the taking of necessary facial measurements and the processing, fitting and adjusting of mountings, frames, lenses and kindred products in the filling of prescriptions of duly licensed physicians or optometrists for ophthalmic lenses. Duplications, replacements or reproductions not requiring optometric service may be done without prescription. Nothing herein contained shall change the responsibility of physician to patient, or optometrist to patient.

(3) **DISCRIMINATION PROHIBITED.** Any agency of the state, county, municipality or school district shall accept the optometric services, as defined in sub. (1), of optometrists licensed under this chapter, on the same basis as those of any other person authorized by law to render such services.

(4) In this chapter, "examining board" means optometry examining board.

No one other than a licensed optometrist or a licensed physician or surgeon may fit contact lenses 60 Atty. Gen. 371.

449.02 Licenses; exemptions. (1) No person shall practice optometry within the meaning of this chapter without a license to do so and a valid certificate of registration issued by the examining board, except that a dispensing optician need not be so licensed for the practice of optical dispensing.

(2) This section shall not apply to physicians and surgeons duly licensed as such in Wisconsin nor shall this section apply to the sale of spectacles containing simple lenses of a plus power only at an established place of business incidental to other business conducted therein, without advertising other than price marking on the spectacles, if no attempt is made to test the eyes. The term "simple lens" shall not include bifocals.

449.03 Rule-making; enforcement. (1) No rule made by the examining board shall expand the practice of optometry or affect the practice of dispensing opticians, nor shall the examining board enact rules which forbid the employment of an optometrist or declare such employment unprofessional conduct, or prohibit the operation of an optometric department by optometrists in a mercantile establishment.

(2) The chairman or the secretary of the examining board shall cause actions to be instituted for violations of this chapter. The district attorney of the county in which the offense has been committed shall promptly prosecute upon being informed thereof from any source.

Under (1), the board is prohibited from enacting rules which affect the practice of dispensing opticians or forbidding the employment of an optometrist or declaring such employment unprofessional conduct *Feinberg v Hasler*, 63 W (2d) 268, 217 NW (2d) 334

Board does not have rule-making power to allow unlicensed personnel to engage in the practice of optometry under the direct supervision of a licensed optometrist or licensed physician or surgeon. 60 Atty. Gen. 371.

449.04 Examination. Licenses to engage in the practice of optometry shall be issued only to persons who successfully pass an examination conducted under the direction of the examining board at a time and place fixed by the examining board. Such examination shall relate to such matters as are essential to the practice of optometry, and shall include anatomy, physiology, pathology of the eyes and its appendages,

normal and abnormal refractive, accommodative and muscular conditions and coordination of the eyes, and subjective and objective optometry, the principles of lens construction and adjustment and such other subjects as the examining board deems necessary. In lieu of its own examination the examining board may accept, in whole or in part, the certificate of the national board of examiners in optometry. In case of failure at any examination the applicant shall have the privilege of taking subsequent examinations upon the payment of a fee of \$25 for each examination, at any meeting of the examining board.

449.05 Qualification for examination. (1) No person shall be examined by the board:

(a) Until he has paid \$50 if a resident or \$75 if a nonresident to the department. Such fee shall be refunded only if, for sickness or other good cause, he is unable to complete the examination;

(b) Unless he presents proof, satisfactory to the examining board, that he is at least 18 years of age and is of good moral character;

(c) Unless he has graduated from an accredited college of optometry approved and recognized by the examining board; and

(d) Unless he has had 5 years' approved training in optometry, of which at least 3 years must have been in an accredited school or college of optometry.

(2) Any person who has been admitted to practice optometry in another state, having substantially similar requirements and granting equal privileges to residents of Wisconsin, may be issued a certificate in the discretion of the examining board upon passing an examination in pathology and practical optometry, payment of \$100 and production of a certificate showing that he has passed an examination in such other state and satisfactory evidence that he has actually practiced there for 5 years.

History: 1971 c 213 s 5

449.06 Registration. (1) Persons practicing optometry shall annually, before January 1, register with the department and pay a fee of not to exceed \$50 as fixed by the examining board. The examining board shall grant certificates of registration expiring the following December 31. The examining board may permit persons to register later than January 1 but before the following December 31 upon payment of not to exceed \$75 as fixed by the examining board.

(2) Every practicing optometrist shall display in a conspicuous place, at the entrance of his office, the name of the person so practicing therein and shall keep his certificate of registration conspicuously displayed in his place of business so that it can easily be seen and read.

449.07 Revocation. (1) The examining board, by order, may deny, suspend or revoke any license or certificate of registration if the licensee or registrant (a) obtained the license or certificate through error or fraud; (b) is grossly incompetent; (c) is habitually drunk or addicted to the use of habit-forming drugs; (d) has been convicted in a court of competent jurisdiction, either within or without this state, of any violation of any law governing the practice of optometry or of any felony, a certified copy of the record of conviction to be conclusive evidence of such conviction; (e) has obtained or sought to obtain anything of value by fraudulent representation in the practice of optometry; (f) is guilty of immoral or unprofessional conduct; (g) continued practice, knowingly having an infectious or contagious disease; or (h) if the applicant or registrant maintains a professional connection or association with any other person continuing to violate this chapter after 10 days' notice in writing by the examining board.

(2) The examining board may, without further notice or process, suspend or revoke the license or certificate of registration of an optometrist who fails within 60 days after the mailing of notice in writing, sent by registered mail to the optometrist's last-known address, to register and pay the fee due for that year. A license or certificate of registration may be reinstated, in the discretion of the examining board, by the payment of \$75 within one year from such suspension or revocation. If application for reinstatement is not made within one year from the date of suspension or revocation, the optometrist shall be required to demonstrate that the optometrist is still qualified to practice by taking an examination in such optometric subjects as may be required by the examining board. The fee for such examination and reinstatement of license or certificate of registration shall be \$100.

History: 1975 c 39, 199

449.08 Unprofessional conduct. (1) Unprofessional conduct includes without limitation because of enumeration:

(a) Any conduct of a character likely to deceive or defraud the public;

(b) Loaning of an optometric license or certificate to anyone;

(c) The employment of "cappers" or "steers" to obtain optometric patronage, or the public solicitation of optometric patronage, or the public solicitation of optometric patronage by the holder of the certificate;

(d) Splitting or dividing any fee for optometric service with any person, except an associate licensed optometrist; or

449.08 OPTOMETRY EXAMINING BOARD

3790

(e) Engaging in conduct unbecoming a person licensed to practice.

(2) Unprofessional advertising includes without limitation because of enumeration:

(a) Advertising professional superiority or the performance of professional services in a superior manner;

(b) Advertising definite or indefinite prices or credit terms, directly or indirectly, or by inference;

(c) Advertising by means of neon or flickering signs, or containing as a part thereof the representation of an eye or eyeglasses or any part thereof or contact lenses or any part of the human head;

(d) No optometrist shall display any sign or advertise by the use of any name other than the name under which he is licensed to practice optometry in this state. This shall not preclude the use of a predecessor optometrist's name by his successor for a period of 6 months after taking over the predecessor's practice.

(e) The use of any office sign larger than 600 square inches in size over-all or containing letters over 6 inches in size. Such office signs may contain only the name of the duly licensed optometrists practicing therein, their titles and office hours. No optometrist or association of optometrists shall use more than 3 signs at any one location. If more than one sign is used no single sign shall exceed 300 square inches;

(f) Any printed advertisement larger than 20 square inches in size. Such printed advertisement may contain only the names of the duly licensed optometrists, their titles, office hours, location or place of practice, telephone numbers, and any one specialty.

An optometrist-employee of a dispensing optician cannot be charged with conduct violative of the board's nonadvertising rule when he has no proprietary interest in the employer's business and no control over its advertising program. *Feinberg v. Hasler*, 63 W (2d) 268, 217 NW (2d) 334

449.09 Procedure for revocation of a license. (1) The examining board may make investigations and conduct hearings in regard to the conduct of any licensed optometrist or any person who, it has reason to believe, is acting or has acted in such capacity within the state. The person complained against shall have notice in writing of the charges and specifying a date not less than 10 days after the service of the notice for a hearing and he shall have opportunity to confront witnesses against him, and to produce testimony. A stenographic record of the proceedings shall be taken and a transcript shall be made for the department's files. The person complained against may within 60 days after notice in writing of the examining board's action, by registered mail, mailed to his last-known address, proceed to review such action of the

examining board by writ of certiorari, brought in the circuit court of Dane county; but the action of the examining board shall stand until otherwise directed.

(2) Upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the examining board may reinstate any license or registration by it suspended or revoked.

449.10 Prohibited advertising. It shall be unlawful for any person to advertise either directly or indirectly by any means whatsoever any definite or indefinite price or credit terms on lenses, frames, complete glasses or any optometric services; to advertise in any manner that will tend to mislead or deceive the public; to solicit optometric patronage by advertising that he or some other person or group of persons possess superior qualifications or are best trained to perform the service; or to render any optometric service pursuant to such advertising.

The prohibition against advertising by "any person" applies to unions and other associations who, in conjunction with optical companies, advertise glasses or other ophthalmic devices to their membership. Constitutionality of the law discussed 60 Atty. Gen. 335.

449.11 Penalties. Any person not lawfully authorized to practice optometry, who shall practice optometry or shall hold himself out as a practitioner thereof, or who shall impersonate another practitioner or who shall violate any provisions of this chapter, or any rule or regulation made under authority thereof, shall be punished for the first offense by a fine not less than \$50 nor more than \$200, or by imprisonment for not more than 3 months, or both. And for a subsequent offense by a fine not less than \$200 nor more than \$500 or by imprisonment for not less than 3 nor more than 6 months, or both.

449.12 Interpretation. This chapter is passed in the interests of public health, safety and welfare and its provisions shall be liberally construed to carry out its objects and purposes.

449.13 Wisconsin Vision Services, Inc. The Wisconsin Vision Services, Incorporated, is continued with the general powers of a domestic nonstock corporation. It may take by purchase or gift and hold real and personal property. It may adopt, alter and enforce bylaws and rules for the admission and expulsion of members, the election of officers and the management of its affairs.

449.15 Service insurance corporations for optometric care. The Wisconsin vision services, incorporated, may establish a service

insurance corporation for optometric care under ch. 613.

History: 1975 c. 223.