

CHAPTER 153.

OPTOMETRY.

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153.01 Practice defined. 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. [1943 c. 273]

Note: A corporation, in employing licensed and registered optometrists to assist in its business of serving its customers by adjusting glasses to their eyes, furnishing certain devices and machines to be used by such employe, and selling lenses to persons on prescriptions written by such employe, did not violate ch. 153, Stats. 1937, regulating the practice of optometry, although the corporation itself was not licensed to practice optometry. State ex. rel. Harris v. Kindy Optical Co., 235 W 498, 292 NW 283.

Advertising to sell eyeglasses to fit the needs of the public, which requires, under ch. 153, the services of a person licensed to practice optometry or medicine, does not

involve mere "merchandising" of glasses, and in any event such advertising may be prohibited by statute where it tends to deceive and mislead the public. Ritholz v. Johnson, 246 W 442, 17 NW (2d) 590.

Corporation cannot practice optometry under ch. 153, Stats. 1935. 24 Atty. Gen. 472.

Although osteopaths are permitted to practice optometry without license, pursuant to this section, this does not authorize use of "drops" in eyes as aid in refraction, since that is not included in optometry but constitutes practice of medicine. Osteopaths may not use drugs for any purpose except incidentally to practice of surgery. 30 Atty. Gen. 246.

153.02 Licenses; exemptions. (1) No person shall practice optometry within the meaning of this chapter without a license so to do and a valid certificate of registration issued by the Wisconsin board of examiners in optometry.

(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. [1943 c. 273]

Note: Displaying of illustration of pair of glasses or of eye without wording or lettering on same violates 153.01, Stats. 1931. 20 Atty. Gen. 773.

Peddler traveling from house to house selling glasses, even though they be simple lenses, violates 153.01, Stats. 1935. 26 Atty. Gen. 54.

Exemption of physicians and surgeons applies to osteopathic physicians and surgeons. 30 Atty. Gen. 4.

Ch. 273, laws of 1943, repealing and recreating ch. 153, Stats., relating to practice of optometry, does not have effect of abolishing present board of examiners in optometry, provisions relating to board membership under 153.02 (1), Stats. 1941, being identical in effect with provisions of 153.03 (1), Stats. 1943. 32 Atty. Gen. 213.

153.03 Board of examiners. (1) The Wisconsin board of examiners in optometry shall consist of 5 members, appointed by the governor for terms of 5 years, whose duty it shall be to carry out the purposes and enforce the provisions of this chapter. Each shall have been a resident of this state actively engaged in the practice of optometry for at least 5 years immediately preceding appointment. Each shall make and file oath of office. The board shall fix the compensation of its members at not more than \$8 for each day actually spent in carrying out their official duties, and actual and necessary expenses. The secretary may receive such additional compensation as the board may direct.

(2) The board shall choose annually from its members a president and a secretary, who may severally administer oaths and take affidavits and testimony, certifying thereto under seal of the board. The secretary shall give such bond as the board shall determine. The board shall meet at least once every 6 months at the state capitol, and may in addition thereto hold meetings at such other times and places as it deems necessary upon call of its officers. The secretary shall keep a full record of its proceedings which shall be open to inspection at reasonable times. The board shall have a seal.

(3) The secretary of the board shall on or about January 1 each year report its proceedings to the governor, including an account of moneys received and disbursed.

(4) The board shall make such rules and regulations not inconsistent with the provisions of this chapter as it may deem necessary for the conducting of examinations of applicants and for the activities and procedure of the board.

(5) The board, whenever it is deemed necessary, shall have the power to engage the services of persons to assist in carrying out and enforcing the provisions of this chapter and to fix the compensation of such persons, which compensation shall be paid in the same manner as the per diem and expenses of members of the board are paid.

(6) It shall be the duty of the president or the secretary of the board to 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. [1943 c. 273]

153.04 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 board of examiners at a time and place fixed by the 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 co-ordination of the eyes, and subjective and objective optometry, the principles of lens construction and adjustment and such other subjects as the board shall deem necessary. In case of failure at any examination the applicant shall have the privilege of taking subsequent examinations upon the payment of a fee of \$10 for each examination, at any meeting of the board. [1943 c. 273]

153.05 Qualification for examination. (1) No person shall be examined by the board (a) until he or she shall have paid \$25 in advance to the secretary of the board, which shall be refunded only if, for reasons of sickness or other good cause, he should be unable to complete the examination; (b) unless he shall present proof, satisfactory to the board, that he is at least 21 years of age, of good moral character, has a high school education or has had a preliminary education equivalent to at least 4 years in a high school; (c) has graduated from an accredited college of optometry approved and recognized by the board maintaining a course of study not less than 4 academic years, each academic year consisting of 36 weeks of classroom work, or an aggregate of 4,000 hours of actual instruction in such college.

(2) Any person who has been admitted to practice optometry in another state, having substantially similar requirements, may be issued a certificate in the discretion of the board upon passing an examination to be conducted under the direction of the board in anatomy and physiological optics and upon the payment of \$25 and the 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. [1943 c. 273]

153.06 Registration. (1) Persons practicing optometry shall annually, before January 1 of each year, register with the board and pay a fee of \$3. To such persons the board shall issue certificates of registration which shall cease to be valid on December 31 of the year for which issued. In case of the failure of any person to so register the board, in its discretion, may permit such person to register at a later date upon request and payment of \$10 within one year from the date of default.

(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. [1943 c. 273; 1943 c. 375 s. 60; 1943 c. 553 s. 30]

Note: A revisor's bill (ch. 448, laws of 1923) amending a provision regulating the practice of optometry that "every person, firm, or corporation" shall display in a conspicuous place, at the entrance of its place of business, the name of each person employed therein in the practice of optometry, so as to read, instead, that "everyone" etc., did not change the substance of such provision. State ex rel. Harris v. Kindy Optical Co., 285 W 498, 292 NW 283.

153.07 Revocation. The 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 the provisions of this chapter after 10 days' notice in writing by the board. [1943 c. 273]

153.08 Unprofessional conduct. Unprofessional conduct shall include, among other things, but 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 "steerers" to obtain optometric business, or the public solicitation of optometric patronage by the holder of the certificate, or (d) splitting or dividing any fee for optometric service with any person, except an associate licensed optometrist. [1943 c. 273]

Note: Optometrist who advertises his professional services over name of deceased optometrist without indicating that he is successor of former optometrist is probably guilty of unprofessional conduct under 153.06 (4), Stats. 1933. Services of optometrist should not be advertised by optometrist describing himself as optician. 23 Atty. Gen. 486.

Board of optometry cannot by "rule" add to or change meaning of "unprofessional conduct." Advertisement of prices of frames in such manner as to deceive public into belief that price is for complete optical service is "unprofessional conduct" under 153.06, Stats. 1931. 21 Atty. Gen. 1111.

153.09 Procedure for revocation of a license. (1) The 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 president or secretary of the board shall have the right to administer oaths to witnesses and to issue subpoenas for the compulsory attendance of such witnesses at such hearings and take testimony under oath. 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 board's files. The person complained against may within 60 days after notice in writing of the board's action, by registered mail, mailed to his last-known address, proceed to review such action of the board by writ of certiorari, brought in the circuit court of Dane county; but the action of the board shall stand until otherwise directed.

(2) Upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the board, in its discretion, may reinstate any license or registration by it suspended or revoked. [1943 c. 273]

153.10 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. [1943 c. 273]

Note: In an action by an optical firm to enjoin the enforcement of this section, regulating price advertising of eyeglasses and optometric service, wherein the complaint sets out the facts which the plaintiff claims make the statute unconstitutional as applied to its business, but of which business the court has no knowledge nor any satisfactory method of informing itself by resort to encyclopedias, etc., an answer should be filed setting up the facts which the defendants claim warranted the enactment of the statute, and if there is a dispute as to the facts they should be ascertained by a judicial investigation in the trial court, which

will not bind either that court or the supreme court as to the facts so found, but which will furnish them with relevant information. Ritholz v. Johnson, 244 W 494, 12 NW (2d) 738.

Where some of the advertising of a firm operating optical stores is shown actually to result in defrauding the public, 153.10 as a whole will not be held void, nor will all prosecutions for enforcement of it be enjoined, although some of the firm's advertising may not contravene the statute, especially in view of the severability clause in 153.12. Ritholz v. Johnson, 246 W 442, 17 NW (2d) 590.

153.11 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 such fine and imprisonment. [1943 c. 273]

153.12 Construction; severability. 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. If any section of this chapter, or any part thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of any other section or part thereof. [1943 c. 273]