CHAPTER 484

DISPENSING OF OPTICAL DEVICES AND HEARING AIDS

PART I

PREPARING AND DISPENSING OF EYEGLASSES AND
OTHER OPTICAL DEVICES (ss. 484.001-484.018)

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484.001 Purpose; legislative findings; intent.—

(1) The Legislature finds that the practice of opticianry by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about opticians and that the consequences of a wrong choice could seriously endanger their health and safety. The only way to protect the public from the incompetent practice of opticianry is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

(2) The sole purpose of enacting this part is for the protection of the public health, safety, and welfare.

History.--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 1, 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.002 Definitions.--As used in this part:

(1) "Department" means the Department of Health.

(2) "Board" means the Board of Opticianry.

(3) "Opticianry" means the preparation and dispensing of lenses, spectacles, eyeglasses, contact lenses, and other optical devices to the intended user or agent thereof, upon the written prescription of a licensed allopathic or osteopathic physician or optometrist who is duly licensed to practice or upon presentation of a duplicate prescription. The selection of frame designs, the actual sales transaction, and the transfer of physical possession of lenses, spectacles, eyeglasses, contact lenses, and other optical devices subsequent to performance of all services of the optician shall not be considered the practice of opticianry; however, such physical possession shall not be transferred until the optician has completed the fitting of the optical device upon the customer. The practice of opticianry also includes the duplication of lenses accurately as to power, without prescription. A board-certified optician qualified and operating under rules established by the board may fill, fit, adapt, or dispense any soft contact lens prescription. Such optician may fill, fit, adapt, or dispense any extended wear or hard contact lens prescription to the extent authorized to do so by the prescribing allopathic or osteopathic physician or optometrist.

(4) "Optician" means any person licensed to practice opticianry pursuant to this part.

(5) "Direct supervision" means supervision where the licensee remains on the premises while all work is being done and gives final approval to any work performed by an employee.

(6) "Board-certified optician" means an optician licensed in this state who:

(a) Has passed the National Contact Lens Registry Examination;

(b) Has successfully completed a board-approved course of at least 20 contact hours covering the competencies required in fitting, adapting, and dispensing of contact lenses;

(c) Has met any other requirements established by the board to assure competence in the fitting, adapting, and dispensing of contact lenses;

(d) Has completed the application form and remitted a nonrefundable application fee set by the board not to exceed $100; and

(e) Has been issued a certificate by the department.

(7) "Optical establishment" means any establishment in the state which offers, advertises, and performs opticianry services for the general public.

(8) "Contact lenses" means a prescribed medical device intended to be worn directly against the cornea of the eye to correct vision conditions, act as a therapeutic device, or provide a cosmetic effect.

(9) "Optical dispensing" means interpreting but not altering a prescription of a licensed physician or optometrist and designing, adapting, fitting, or replacing the prescribed optical aids, pursuant to such prescription, to or for the intended wearer, duplicating lenses, accurately as to power without a prescription, and duplicating nonprescription eyewear and parts of eyewear. "Optical dispensing" does not include selecting frames, transferring an optical aid to the wearer after an optician has completed fitting it, or providing instruction in the general care and use of an optical aid, including placement, removal, hygiene, or cleaning.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 83, ch. 83-329; ss. 2, 11, 12, ch. 86-254; s. 27, ch. 88-205; s. 57, ch. 89-162; s. 29, ch. 91-220; s. 4, ch. 91-429; s. 1, ch. 94-192; s. 177, ch. 94-218; s. 138, ch. 98-166; s. 117, ch. 2001-277.*

484.003 Board of Opticianry; membership; appointment; terms.--

(1) The Board of Opticianry is created within the Department of Health and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be licensed opticians. The remaining two members must be residents of the state who never have been licensed as opticians and who are in no way connected with the practice of opticianry. At least one member of the board must be 60 years of age or older.

(3) Members shall be appointed for terms of 4 years.

History.--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 99, ch. 83-218; ss. 11, 12, ch. 86-254; s. 24, ch. 87-172; s. 4, ch. 91-429; s. 2, ch. 94-192; s. 178, ch. 94-218; s. 139, ch. 98-166.

484.004 Board headquarters.--The board shall maintain its official headquarters in the City of Tallahassee.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429.*

484.005 Authority to make rules.--The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part conferring duties upon it. Such rules shall include, but not be limited to, rules relating to:

(1) A standard of practice for opticians licensed pursuant to this part.

(2) Minimum equipment which shall be utilized to prepare, fit, measure, and dispense lenses, spectacles, eyeglasses, contact lenses, and other optical devices allowed under the practice of opticianry.

(3) Procedures for transfer of prescription files upon the going out of business of an optician, corporation, or other person.

(4) A standard of practice for filling prescriptions for contact lenses and fitting, adapting, and dispensing contact lenses.

History.--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 3, 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 156, ch. 98-200.

484.006 Certain rules prohibited.--

(1) No rule or policy of the board shall prohibit any optician from offering a discount in any form or manner in conjunction with the practice of opticianry or from advertising, either directly or indirectly by any means whatsoever, any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses, or other opticianry service.

(2) No rule or policy of the board shall prohibit any optician from practicing jointly with optometrists or allopathic or osteopathic physicians licensed in this state.

(3) No rule or policy of the board shall prohibit the sale of spectacles for reading purposes; toy glasses; goggles or sunglasses consisting of plano white, plano colored, or plano tinted glasses; or readymade nonprescription glasses; nor shall anything in this part be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any person engaged in the manufacturing or sale of plastic or glass artificial eyes.

(4) No rule or policy of the board shall prohibit any optician licensed under this part from engaging in the practice of opticianry with, or in the employ of, any partnership, corporation, lay body, organization, group, or individual.

(5) No rule or policy of the board shall prohibit the location of offices or branch offices by an optician.

(6) No rule or policy of the board shall prohibit the practice of opticianry under a trade name or service mark.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 118, ch. 2001-277.*

484.007 Licensure of opticians; permitting of optical establishments.--

(1) Any person desiring to practice opticianry shall apply to the department, upon forms prescribed by it, to take a licensure examination. The department shall examine each applicant who the board certifies:

(a) Has completed the application form and remitted a nonrefundable application fee set by the board, in the amount of $100 or less, and an examination fee set by the board, in the amount of $325 plus the actual per applicant cost to the department for purchase of portions of the examination from the American Board of Opticianry or a similar national organization, or less, and refundable if the board finds the applicant ineligible to take the examination;

(b) Is not less than 18 years of age;

(c) Is a graduate of an accredited high school or possesses a certificate of equivalency of a high school education; and

(d)1. Has received an associate degree, or its equivalent, in opticianry from an educational institution the curriculum of which is accredited by an accrediting agency recognized and approved by the United States Department of Education or the Council on Postsecondary Education or approved by the board;

2. Is an individual licensed to practice the profession of opticianry pursuant to a regulatory licensing law of another state, territory, or jurisdiction of the United States, who has actively practiced in such other state, territory, or jurisdiction for more than 3 years immediately preceding application, and who meets the examination qualifications as provided in this subsection;

3. Is an individual who has actively practiced in another state, territory, or jurisdiction of the United States for more than 5 years immediately preceding application and who provides tax or business

records, affidavits, or other satisfactory documentation of such practice and who meets the examination qualifications as provided in this subsection; or

4. Has registered as an apprentice with the department and paid a registration fee not to exceed $60, as set by rule of the board. The apprentice shall complete 6,240 hours of training under the supervision of an optician licensed in this state for at least 1 year or of a physician or optometrist licensed under the laws of this state. These requirements must be met within 5 years after the date of registration. However, any time spent in a recognized school may be considered as part of the apprenticeship program provided herein. The board may establish administrative processing fees sufficient to cover the cost of administering apprentice rules as promulgated by the board.

(2) The department may permit an applicant who has satisfied all requirements of subsection (1) to take the examination and shall issue a license to practice opticianry to any candidate who successfully completes the examination.

(3) Any person desiring to operate an optical establishment shall apply to the department, upon forms prescribed by the department, for a permit. The department shall issue a permit to each applicant who:

(a) Has completed the permit form and remitted a nonrefundable application fee set by the department in an amount not to exceed $500.

(b) Has identified the optical establishment by name, street and mailing address, and telephone number.

(c) Has identified the owner of the optical establishment by name, street and mailing address, and telephone number and, in the case of a partnership, corporation, association, or entity, has identified a registered agent or other person to receive service of papers or other documents or perform other duties as specified by the department.

(4)(a) A permit issued to an optical establishment is for that establishment only, is valid for as long as that establishment operates at that location, and is not transferable to another owner or location by any means, including, but not limited to, any sale of a corporation, partnership, sole proprietorship, or other business entity.

(b) The owner of a permitted optical establishment shall notify the department within 30 days after a change in ownership of the establishment and at the same time return the permit to the department for cancellation. Upon any change in ownership of an optical establishment, the new owner of the establishment shall file for a new permit and shall pay the prescribed permit fee.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 82, ch. 83-329; ss. 4, 11, 12, ch. 86-254; s. 28, ch. 88-205; s. 58, ch. 89-162; s. 59, ch. 89-374; s. 4, ch. 91-429; s. 156, ch. 92-149; s. 3, ch. 94-192; s. 154, ch. 99-397.*

484.008 Renewal of license.--

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed $350.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board may by rule prescribe continuing education, not to exceed 20 hours biennially, as a condition for renewal of a license or certificate. The criteria for such programs or courses shall be approved by the board. All education programs which contribute to the advancement, extension, or enhancement of professional skills and knowledge, whether conducted by a nonprofit or a profitmaking entity, are eligible for approval. The board may establish by rule an application fee not to exceed $200 for anyone seeking approval to provide continuing education courses and may provide by rule for a fee not to exceed $200 for renewal of providership.

(4) The board may excuse any licensee or group of licensees from the continuing education requirement, until the licensee or group of licensees is capable of fulfilling the continuing education requirement, if an unusual circumstance, emergency, or hardship prevented the licensee or group of licensees from complying with such requirement.

History.*--ss. 1, 5, ch. 79-275; s. 4, ch. 80-291; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 1, ch. 87-335; s. 29, ch. 88-205; s. 59, ch. 89-162; s. 4, ch. 91-429; s. 246, ch. 94-119.*

484.009 Inactive status.--

(1) A license that has become inactive may be reactivated under s. 484.008 upon application to the department. The board shall prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.

(2) The board shall promulgate rules relating to licenses which have become inactive and for the renewal of inactive licenses. The board shall prescribe by rule a fee not to exceed $200 for the reactivation of an inactive license and a fee not to exceed $50 for the renewal of an inactive license.

History.*--ss. 1, 5, ch. 79-275; s. 360, ch. 81-259; ss. 2, 3, ch. 81-318; s. 114, ch. 83-329; ss. 11, 12, ch. 86-254; s. 60, ch. 89-162; s. 4, ch. 91-429; s. 247, ch. 94-119.*

484.011 Supportive personnel.--No person other than a licensed optician may engage in the practice of opticianry, except that a licensed optician may delegate to nonlicensed supportive personnel those duties, tasks, and functions which fall within the purview of s. 484.002(3). All such delegated acts shall be performed under the direct supervision of a licensed optician, who shall be responsible for all such acts performed by persons under her or his supervision.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 35, ch. 82-179; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 447, ch. 97-103.*

484.012 Prescriptions; filing; duplication of prescriptions; duplication of lenses.--

(1) Any prescription written by a duly licensed allopathic or osteopathic physician or optometrist for any lenses, spectacles, eyeglasses, contact lenses, or other optical devices shall be kept on file for a period of 2 years with the optical establishment that fills such prescription. However, the licensed optician may maintain a copy of the prescription.

(2) Upon request by the intended user of the prescribed lenses, spectacles, eyeglasses, contact lenses, or other optical devices, or by an agent of the intended user, the optician who fills the original prescription shall duplicate, on a form prescribed by rule of the board, the original prescription. However, for medical reasons only, the prescribing allopathic or osteopathic physician or optometrist may, upon the original prescription, prohibit its duplication. Any duplication shall be considered a valid prescription to be filled for a period of 5 years from the date of the original prescription, except that a contact lens prescription shall be considered a valid prescription to be filled for a period of 2 years from the date of the original prescription.

(3) Nothing in this part shall be construed to prohibit a licensed optician from accurately duplicating lenses as to power without a prescription.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 5, 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 119, ch. 2001-277.*

484.013 Violations and penalties.--

(1) It is unlawful for any person:

> (a) To make a false or fraudulent statement, either for herself or himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board.
>
> (b) To prepare or dispense lenses, spectacles, eyeglasses, contact lenses, or other optical devices when such person is not licensed as an optician in this state.
>
> (c) To prepare or dispense lenses, spectacles, eyeglasses, contact lenses, or other optical devices without first being furnished with a prescription as provided for in s. 484.012.

(2) It is unlawful for any person other than an optician licensed under this part to use the title "optician" or otherwise lead the public to believe that she or he is engaged in the practice of opticianry.

(3) It is unlawful for any optician to engage in the diagnosis of the human eyes, attempt to determine the refractive powers of the human eyes, or, in any manner, attempt to prescribe for or treat diseases or ailments of human beings.

(4) It is unlawful for any person to open or operate, either alone or with any other person or persons, an optical establishment which does not have the permit required by this part.

(5)(a) Except as otherwise provided in paragraph (b), a person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who knowingly violates paragraph (1)(c) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 6, 11, 12, ch. 86-254; s. 115, ch. 91-224; s. 4, ch. 91-429; s. 4, ch. 94-192; s. 448, ch. 97-103; s. 120, ch. 2001-277.*

484.014 Disciplinary actions.--

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Procuring or attempting to procure a license by misrepresentation, bribery, or fraud or through an error of the department or the board.

(b) Procuring or attempting to procure a license for any other person by making or causing to be made any false representation.

(c) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by federal or state law, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records shall include only those which the person is required to make or file as an optician.

(d) Failing to make fee or price information readily available by providing such information upon request or upon the presentation of a prescription.

(e) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(f) Fraud or deceit, or negligence, incompetency, or misconduct, in the authorized practice of opticianry.

(g) Practicing with a revoked, suspended, inactive, or delinquent license.

(h) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(i) Violation of any provision of s. 484.012.

(j) Conspiring with another licensee or with any person to commit an act, or committing an act, which would coerce, intimidate, or preclude another licensee from lawfully advertising her or his services.

(k) Willfully submitting to any third-party payor a claim for services which were not provided to a patient.

(l) Failing to keep written prescription files.

(m) Willfully failing to report any person who the licensee knows is in violation of this part or of rules of the department or the board.

(n) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

(o) Gross or repeated malpractice.

(p) Permitting any person not licensed as an optician in this state to fit or dispense any lenses, spectacles, eyeglasses, or other optical devices which are part of the practice of opticianry.

(q) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, in a court of this state or other jurisdiction, a crime which relates to the ability to practice opticianry or to the practice of opticianry.

(r) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of Florida law or rules regulating opticianry.

(s) Being unable to practice opticianry with reasonable skill and safety by reason of illness or use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. An optician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of opticianry with reasonable skill and safety to her or his customers.

(t) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

(3) The board shall not reinstate the license of an optician it has deemed unqualified until such time as it is satisfied that the optician has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of opticianry.

(4) A permitholder under this part shall be subject to the provisions of this section which shall be enforced by the department.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 7, 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 248, ch. 94-119; s. 5, ch. 94-192; s. 449, ch. 97-103; s. 140, ch. 98-166; s. 198, ch. 2000-160; s. 46, ch. 2000-318; s. 49, ch. 2001-277; s. 24, ch. 2005-240.*

484.015 Authority to inspect.--Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours an establishment of any kind in the state in which lenses, spectacles, eyeglasses, contact lenses, and any other optical devices are prepared or dispensed, for the purposes of:

(1) Determining if any provision of this part, or any rule promulgated under its authority, is being violated;

(2) Securing samples or specimens of any lenses, spectacles, eyeglasses, contact lenses, or other optical devices, after paying or offering to pay for such sample or specimen; or

(3) Securing such other evidence as may be needed for prosecution under this part.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 8, 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 122, ch. 2001-277.*

484.017 Reciprocity.--In order to ensure that opticians licensed in this state may be licensed in other states, the board may enter into reciprocity agreements with other states.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429.*

484.018 Exceptions.--

(1) Nothing in this part shall be construed to prevent a person licensed in this state as a physician or as an optometrist from performing those services she or he is licensed to perform.

(2) Nothing in this part shall be construed to mean that an employee of a licensed physician or a licensed optometrist shall be required to secure a license under this part, so long as the employee is working exclusively for, and under the direct supervision of, the licensed physician or optometrist and does not hold herself or himself out to the public generally as an optician.

(3) Nothing in this part shall be construed to mean that a practitioner licensed under chapter 458, chapter 459, or chapter 463 shall be required to secure a permit under this part for the operation of an optical establishment.

History.*--ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 6, ch. 94-192; s. 450, ch. 97-103.*