

OPTOMETRY PRACTICE ACT

Section 34-22-1

Definitions.

For the purposes of this chapter, the following terms shall have the respective meanings ascribed by this section:

(1) BOARD. The Alabama Board of Optometry.

(2) HUMAN EYE AND ITS ADJACENT STRUCTURES. The eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lachrymal system.

(3) PHARMACEUTICAL AGENTS. Any diagnostic and therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the human eye and its adjacent structures.

(4) PRACTICE OF OPTOMETRY. The practice of optometry is a learned profession involving the examination, measurement by objective and subjective means, diagnosis, treatment, and prevention of any departure from the normal of the human eyes, their adjacent structures, and visual system. The practice of optometry includes but is not limited to: The adapting and fitting of all types of lenses or devices, including, contact lenses; the determination of refractive error and shape of the eye and visual, muscular, or anatomical anomalies of the eye through the use of any means including the use of any self testing devices and the use of any computerized or automatic refracting device; the determination and prescribing of spectacle or contact lens parameters; the administering and prescription of pharmaceutical agents rational to the diagnosis and treatment of disease of the human eye and its adjacent structures; the removal of superficial foreign bodies from the human eye and its adjacent structures; the providing of developmental and perceptual therapy for the vision system; the utilization of any method or means to diagnose and treat diseases of the human eye and its adjacent structures as determined and approved by the board, subject to the limitations of this chapter; the performance of primary eye care procedures or ordering of laboratory tests rational to the diagnosis and treatment of conditions or disease of the human eye and its adjacent structures as determined and approved by the board, subject to the limitations of this chapter. The practice of optometry shall include the prescribing and administering of narcotic analgesics pursuant to the Alabama Uniform Controlled Substances Act, except for narcotic analgesics classified under Schedule I and II, and any Schedule III pharmaceutical agents that contain Dihydrocodeinone, ("Hydrocodone"). The prescribing or administering of any other Schedule III pharmaceutical agent shall be limited to a prescription, the duration of which does not exceed 96 hours. Notwithstanding any provision of this chapter to the contrary, the practice of optometry shall include the prescribing and administering of pharmaceutical agents which are commonly known as steroids. Optometrists are prohibited from performing injections into the eyeball, cataract surgery, muscle surgery, retinal surgery, radial keratotomy, laser surgery, cryosurgery, or any other invasive surgery. The Alabama Board of

Optometry shall be a certifying board as defined in Section 20-2-2, except as limited by this chapter. The practice of optometry shall include the authority to administer benedryl, epinephrine, or other medication to counteract anaphylaxis or anaphylactic reaction. The use and prescribing of pharmaceutical agents for the treatment of the human eye and its adjacent structures shall be limited to those optometrists approved by the board.

(Acts 1975, No. 1148, p. 2257, §2; Acts 1975, 4th Ex. Sess., No. 124, p. 2818, §1; Acts 1995, No. 95-218, p. 370, §1.)

Section 34-22-2

Objects and purposes of chapter.

The practice of optometry is hereby declared to affect the public health, safety and welfare, and optometry is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry, as defined in this chapter, be limited to qualified persons admitted to practice optometry in the State of Alabama pursuant to the provisions of this chapter. This chapter shall be liberally construed to carry out these objects and purposes.

(Acts 1975, No. 1148, p. 2257, §1.)

Section 34-22-3

Intent of chapter.

It is intended that this chapter shall furnish a complete and exclusive system, of and in itself, for obtaining the right to practice optometry in the State of Alabama and for the regulation of the practice of optometry therein; provided, that it is the intent of the Legislature that this chapter shall not have the effect of repealing any laws not dealing with the profession of optometry and specifically shall not have the effect of repealing Section 34-24-292.

(Acts 1975, No. 1148, p. 2257, §18.)

Section 34-22-4

Limitation on application of chapter.

(a) It is not the intent of this chapter to prevent any school teacher, welfare worker, state, county, municipality, or other public board, body, agency, institution, or official from determining in the course of their official duties the probable need of visual services; provided, that the aforementioned person or agency does not attempt to examine, diagnose, prescribe, or recommend any particular practitioner and complies with the provisions of Section 38-1-2.

(b) A license to practice optometry shall not be required for the sale, preparation, or dispensing of eyeglasses or spectacles in a retail optical dispensary or from a store, shop, or other permanently established place of business with an optical department on prescription of a duly licensed physician skilled in diseases of the eyes or a duly licensed optometrist authorized to practice under the laws of this state. Contact lenses may be sold or dispensed in a retail optical dispensary or other permanently established place of business with an optical department only when authorized by an optometrist or ophthalmologist, the prescription therefor contains all necessary data, and the prescription has not expired. This section shall not be construed as authorizing any optician or other person selling eyeglasses or contact lenses on prescription as authorized above to use any instrumentation or determine any data by performing any type of examination or corneal evaluation necessary for the fitting of contact lenses or to use any drugs in relation thereto.

(c) Nothing in this chapter shall apply in any way to any licensed physician, nor to any physician assistant or ophthalmic assistant program conducted under any accredited state university program, nor to any physician's assistant as defined in Section 34-24-292. Nothing in this chapter shall be construed as preventing an ophthalmologist from using assistants normally used in his or her practice under his or her direct personal supervision in the office in which the ophthalmologist normally actually practices his or her profession and nowhere else.

(Acts 1975, No. 1148, p. 2257, §17; Acts 1975, 4th Ex. Sess., No. 124, p. 2818, §1; Acts 1993, No. 93-153, p. 222, §3; Acts 1995, No. 95-218, p. 370, §1.)

Section 34-22-5

Limited teaching licenses.

The board may, under rules and regulations to be promulgated by the board, issue limited licenses, in the case of teachers, to persons who hold an optometric degree where such persons are not licensed and registered to practice optometry in this state. The dean of any school of optometry within the State of Alabama which has been approved by the board shall be required to annually certify to the board the names and addresses of the members of the faculty of the school who are not licensed and registered to practice optometry in the state and shall be required to promptly notify the board of any change in personnel on the faculty. The board may issue limited licenses to applicants upon the certification of the dean of any school of optometry setting forth that the applicant is a bona fide member of the faculty of the school. The limited license shall be valid so long as the holder thereof remains a member of the faculty of the school and abides by the rules and regulations under which the same is issued. The holder of a limited license shall be subject to all provisions of this chapter regulating the practice of optometry in this state and shall be entitled to perform all services which a person licensed to practice optometry in this state would be entitled to perform, but only as a part of the program of the school and as an adjunct to his or her teaching functions in the school. A fee of one hundred dollars ($100) shall be paid by the applicant to the board for the issuance of a limited license. Limited license holders who are not members of a residency program at a school of optometry shall be subject to the same annual license renewal fees and other requirements as required of holders of regular licenses.

Section 34-22-6

Violations; penalties; assistance in prosecutions; costs and attorney fees; venue.

(a) It shall be unlawful for any person to perform any of the following:

(1) Practice optometry in this state without having a valid, unrevoked, and unexpired license certificate and annual renewal registration certificate as an optometrist.

(2) Use or attempt to use as his or her own a diploma of an optometric school or college or a license of another person, or a forged diploma or license, or any forged or false identification.

(3) Sell or offer to sell a diploma conferring an optometric degree or a license granted pursuant to this chapter or prior optometric practice laws, or to procure each diploma or license with intent that it shall be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom the license was granted, or with fraudulent intent to alter the diploma or license or to use or attempt to use it when it is so altered.

(4) Willfully make any false statements in an application for examination for a certificate to practice optometry or for annual renewal registration.

(5) Use or attempt to use pharmaceutical agents for the treatment of the human eye and its adjacent structures without having approval of the board at the time the treatment is rendered.

(b)(1) Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars ($1,000) and, in addition, may be imprisoned in the county jail for a period not to exceed 12 months and shall be subject to having his or her license revoked or suspended as provided in this chapter.

(2) The board and its members and officers shall assist prosecuting officers in the enforcement of this chapter, and it shall be the duty of the board, its members, and officers, to furnish the proper prosecuting officers with the evidence as they may ascertain necessary to assist them in the prosecution of any violation of this chapter. The board, may for these purposes, make such reasonable expenditures from the funds of the board as it may deem necessary to ascertain and furnish the evidence.

(3) In addition to criminal penalties, any person violating this section may be fined up to one thousand dollars (\$1000) by the board for each violation. The board may sue, if necessary, to collect the fine.

(4) The board is entitled to costs and reasonable attorney fees in any civil action in which it prevails.

(5) Venue for any action brought by the board pursuant to this chapter is the Circuit Court of Montgomery County.

(Acts 1975, No. 1148, p. 2257, §11; Acts 1995, No. 95-218, p. 370, §1.)

Section 34-22-7

Injunctions.

The board may enjoin violations of any provision of this chapter by proceeding in accordance with the provisions of Section 6-6-502.

(Acts 1975, No. 1148, p. 2257, §15.)

Section 34-22-8

Disciplinary action; charges; hearing; judicial procedure; appeals; sanctions; immunity of board, etc., from suit.

(a) Any person, including a licensed optometrist may initiate a charge of violation of the provisions of this chapter or a charge of misconduct by a licensed optometrist by filing with the secretary of the board a written statement under oath of the charge or charges against the accused. If a member of the board files a charge, the member shall not participate in the hearing or disposition of the charge, except to the extent of giving testimony in connection with the charge. The member filing the charge shall not be present during the hearing or deliberation of the charge except to give testimony. A discreet preliminary investigation into the charge or charges shall be made by the board, after which, if the board is reasonably satisfied that the charge or charges are not frivolous, the board shall hear the charge or charges under rules of procedure to be established by the board. A quorum of the board shall be present at all times during the hearing and deliberation and action thereon. A time and place, either within the City of Montgomery, Alabama or the county in which the accused resides for the hearing of the charge or charges shall be fixed by the board as soon as convenient. A copy of the charge or charges, together with a written notice of the time and place of the hearing, and a copy of the rules of procedure adopted by the board for the hearing shall be served on the accused at least 20 days before the date fixed for the hearing, by leaving a copy thereof at his or her last and usual place of residence, by personal service upon the accused, or by forwarding a copy to the accused via United States registered mail, with a return receipt requested, addressed to him or her at his or her last known mailing address, if a resident of the State of Alabama. If the accused is not a resident of Alabama or has departed from the State of Alabama, then notice of the time and place of the hearing shall be published in a newspaper of general circulation in the county where the accused is last known to have resided, three weeks prior to the hearing, setting out the time and place of the hearing. At least five days before the time of the hearing, the accused shall file with the secretary of the board an answer to the written charges together with a list of witnesses which the accused desires to be subpoenaed for the hearing. At the hearing, witnesses may be examined respecting the charge or charges. The board or the accused, or both, may require the attendance

of witnesses, the production of books, records, and papers pertinent to the issues and, either or both may require the secretary of the board to issue a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records, papers, or documents, which shall be directed to the sheriff of the county where the witness resides or is to be found. The subpoena shall be served and returned in the same manner as subpoenas in civil cases in the circuit court are served and returned. If any person is subpoenaed to appear before the board and fails to obey the subpoena without reasonable cause, or if any witness upon any hearing before the board refuses to be sworn, or to be examined, or to produce a book, record, paper, or document, as ordered by the board, this fact shall be certified by the board to the circuit court or the judge thereof in the county where the witness resides, and the witness shall be ordered and directed by the court to appear before the board and testify or produce such books, papers, records, or documents as are ordered by the board. At the hearing, the accused may cross-examine the witnesses against him or her, produce witnesses in his or her defense, appear personally or by counsel, or both, and have the testimony taken down by a stenographer, but the expense of counsel and stenographer shall be borne by the accused. A majority of the quorum of members of the board conducting the hearings shall render a decision on the merits of the charge or charges and, if warranted by the evidence, impose appropriate sanctions.

(b) In all cases of suspension or revocation of licenses or of other disciplinary sanctions imposed by the board, the accused may appeal only to the Circuit Court of Montgomery County, Alabama, notwithstanding any other provision of law to the contrary. Except as otherwise provided herein, judicial review of the orders and decisions of the board shall be governed by the provisions of Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act.

(c) Members of the board, and the members of any committee of optometrists impaneled by the board, and any other optometrist and individual making any report or rendering any opinion, or service, or supplying any evidence or information or offering any testimony to the board in connection with a disciplinary investigation or proceeding as authorized in this chapter shall be immune from suit for any conduct with respect to the investigations, actions, hearings, and proceedings.

(Acts 1975, No. 1148, p. 2257, §10; Acts 1989, No. 89-233, p. 288, §3; Acts 1995, No. 95-218, p. 370, §1.)

Section 34-22-20

Qualifications of applicants; examination; issuance and execution of licenses; use of pharmaceutical agents.

(a) Every person desiring to practice optometry in this state shall be 19 years of age, or over, a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, and of good moral character. The person shall have a minimum of three years of preoptometry, or the equivalent, at an accredited college or university, have completed a course of study in an accredited school or college of optometry which is approved by the board and that requires at least four years of professional study, and have passed all examinations prescribed by the board, which may include the standard examination after completion of the educational requirements.

The board may accept a passing grade on a recognized national examination or a passing grade on a board examination, or both, and may require a passing grade on additional state law examinations. The standard examination may consist of tests in practical, theoretical, and physiological optics, in theoretical and practical optometry, orthoptics, ocular anatomy, physiology, pharmacology, pathology, diagnosis, and treatment of disease of the human eye and its adjacent structures, general anatomy, hygiene, and any other knowledge the board deems essential to the practice of optometry. The standard examination shall be consistent with the established teaching and recognized textbooks of accredited schools or colleges of optometry.

(b) The application to take the standard examination shall be upon the form prescribed and furnished by the board and verified by the oath of the applicant, accompanied by a fee to be determined by the board. The fee shall not be more than five hundred dollars (\$500).

(c) If required, the standard examination shall be held at least once in each year for candidates for examination who have applied to the board at least 30 days before the date prescribed for the holding of the examination.

(d) When an application and accompanying proof are found satisfactory, the board shall notify the applicant to appear for examination at a time and place fixed by the board. An applicant shall submit to the board proof that he or she has passed all examinations required by the board. The applicant shall also submit any protocols for the use of pharmaceutical agents that the board may require. When these requirements have been met by the applicant and approved by the board, the board shall grant to qualified applicants a license and a license certificate, both of which shall bear a serial number, the full name of the licensee, the date of issuance, the seal of the board, and the signature of the president and secretary of the board. A seal of approval by the board of the use of pharmaceutical agents for the treatment of the human eye and any of its adjacent structures shall be affixed to the license certificate. The board may grant a temporary license under the circumstances and conditions, and in the form, as may be prescribed by rules and regulations of the board.

(e) Every license issued, whether permanent or temporary, and every annual registration certificate shall be in the possession of the optometrist to whom it was issued and posted in the office where he or she practices.

(f) Those persons who hold valid licenses to practice optometry in the State of Alabama on October 1, 1994, shall continue to be so licensed after October 1, 1994, subject to this chapter, regardless of whether they are otherwise qualified to secure a license under this chapter. Optometrists licensed under this section may apply to the board, in a manner prescribed by the board, for approval to use pharmaceutical agents for the treatment of disease of the human eye and its adjacent structures. The board shall prescribe requirements to be met by applicants prior to approval by the board including, but not limited to, the requirement that the applicant has successfully completed at least 72 clock hours in the diagnosis and management of disease of the human eye and its adjacent structures within a three-year period preceding application for a license.

(Acts 1975, No. 1148, p. 2257, §6; Acts 1989, No. 89-233, p. 288, §3; Acts 1993, No. 93-153, p. 222, §3; Acts 1995, No. 95-218, p. 370, §1; Act 2005-77, p. 120, §3; Act 2009-33, p. 109, §3; Act 2013-75, p. 157, §3.)

Section 34-22-21

Reciprocity; pharmaceutical agents.

Any person who has successfully passed a standard examination in optometry in any state of the United States or all parts of the examination given by the National Board of Examiners in Optometry and is the holder of a certificate to that effect, issued by the board of that state, or by the national board, and who has a current license to practice optometry in any state in the United States, and has conducted an ethical professional practice of optometry for at least one year, may, at the discretion of the board, and upon the payment of the amount of the regular examination fee, take the standard examination, and upon passing the examination be registered as qualified to practice optometry in this state. Optometrists licensed under this chapter may apply to the board for approval to use pharmaceutical agents for the treatment of disease of the human eye and its adjacent structures. The board shall prescribe rules and regulations setting forth the manner in which the application shall be made and approval shall be given. Licensed pharmacists of this state shall fill those prescriptions as are ordered by licensed optometrists approved by the board to use pharmaceutical agents.

(Acts 1975, No. 1148, p. 2257, §7; Acts 1989, No. 89-233, p. 288, §3; Acts 1995, No. 95-218, p. 370, §1.)

Section 34-22-22

Continuing education requirements; suspension and reinstatement; renewal; registration certificate; waiver of registration and fees.

(a) All registered optometrists licensed in the State of Alabama are required to take annual courses of study in subjects relating to the practice of optometry. The length of study shall be prescribed by the board but shall not exceed 25 clock hours in any calendar year. Licensees approved by the board to use pharmaceutical agents shall be required to take not less than 20 nor more than 25 hours of continuing education, half of which shall be in subjects relating to the diagnosis, treatment, and management of disease of the human eye and its adjacent structures. Attendance shall be at a course or courses approved by the board.

(b) Continuing education requirements shall be completed between October 1 and September 30 of each fiscal year prior to the time for license renewal for the next fiscal year. Upon the failure of any licensee to certify compliance with continuing education requirements for the fiscal year on or before the first day of November, the board shall notify the licensee by registered mail addressed to his or her last address of record that certification has not been received and unless certification is received on or before the first day of January, his or her license and license certificate shall be automatically suspended. If the certification demonstrating compliance with continuing education requirements is not received by the board on or before January 1, the license and license certificate of the licensee which was previously granted shall automatically be suspended. Notwithstanding the foregoing, between October 1 and December 31 of each year, the licensee shall be permitted to complete continuing education requirements which he or she has failed to complete prior to the end of the fiscal year on September 30.

(c) The license and license certificate shall be reinstated only upon the provision of satisfactory evidence to the board, in a form acceptable to the board, that the continuing education requirements for the one fiscal year next preceding the proposed reinstatement have been satisfied and upon the payment of all fees required to be paid under this chapter.

(d) Every licensed optometrist who desires to continue the practice of optometry in the state shall annually, on or before the first day of October, pay to the secretary of the board a renewal fee of one hundred sixty dollars (\$160), for which the licensee shall receive a renewal of the registration. Every licensed optometrist approved by the board to use pharmaceutical agents shall pay an additional fee of one hundred dollars (\$100). The licensee shall sign and verify, either physically or electronically, the accuracy of the registration and certify his or her compliance with the continuing education requirements of the board for renewal on a form provided by the board. Upon submission of the completed form prescribed by the board, together with the aforementioned fee, the licensee shall receive the current annual registration certificate authorizing him or her to continue the practice of optometry in this state for a period of one year.

(e) Any license and license certificate previously granted shall automatically be suspended if the holder fails to secure the annual registration certificate by January 1 each year. Any optometrist whose license is automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate shall be reinstated by the board upon payment of a penalty fee of two hundred dollars (\$200) plus all accrued annual registration fees accompanied with the prescribed form for annual registration of the license.

(f) Upon failure of any licensee to file application for the annual registration certificate and pay the annual registration fee on or before the first day of November each year, the board shall notify the licensee by certified or registered mail addressed to his or her last address of record that the application and fee have not been received and that, unless the application and fee are received on or before the first day of January of the following year, the license and license certificate shall be automatically suspended.

(g) The board may waive annual registration and the payment of fees while any licensee is prevented from practicing optometry by reason of physical disability, temporary active duty with any of the Armed Forces of the United States, or while any licensee is completely retired from the practice of optometry. The waiver of fees shall be effective so long as the disability, temporary active duty, or complete retirement continues.

(h) The board shall promulgate rules for the administration of this section.

(Acts 1975, No. 1148, p. 2257, §8; Acts 1989, No. 89-233, p. 288, §§3, 4; Acts 1995, No. 95-218, p. 370, §1; Acts 1997, No. 97-158, p. 211, §3; Act 2006-549, §1.)

Section 34-22-23

Grounds for revocation or suspension.

Any of the following shall constitute grounds for revocation of license or suspension of license for a definite period of time, for a private or public reprimand, for probation, for the levying and

collection of an administrative fine not to exceed one thousand dollars (\$1,000) per violation, for the institution of any legal proceedings necessary to enforce the provisions of this chapter:

- (1) Fraud, deceit, dishonesty, or misrepresentation, whether knowingly or unknowingly, in the practice of optometry or in obtaining any license, license certificate, annual registration certificate, or other thing of value.
- (2) Incompetency.
- (3) Conviction of a felony or a misdemeanor which involves moral turpitude.
- (4) Gross immorality.
- (5) Habitual drunkenness or addiction to the use of morphine, cocaine or other drugs having similar effect.
- (6) Insanity, as adjudged by a court of competent jurisdiction.
- (7) Directly or indirectly employing, hiring, procuring, or inducing a person, not licensed to practice optometry in this state, to so practice.
- (8) Directly or indirectly aiding or abetting in the practice of optometry any person not duly licensed to practice under this chapter.
- (9) Directly or indirectly employing solicitors, canvassers, or agents for the purpose of obtaining patronage.
- (10) Willfully or repeatedly violating any of the provisions of this chapter.
- (11) Practicing or attempting to practice optometry under a name other than one's own name as set forth on the license certificate.
- (12) Lending, leasing, renting, or in any other manner placing his or her license or license certificate at the disposal or in the service of any person not licensed to practice optometry in this state.
- (13) Soliciting patients by fraudulent or misleading advertising of any kind, nature, or description.
- (14) Failing to comply with the continuing education requirements established by the board pursuant to the provisions of this chapter.
- (15) Practicing optometry in any temporary office, apart from a regularly established office; provided, that a licensed optometrist may establish a branch office if the branch office is duly equipped with the instruments necessary, according to rules and regulations promulgated by the board, to make complete optometric examination; provided further, that the branch office is in personal and direct charge of the optometrist establishing it or a licensed associate.

(16) Practicing optometry as the employee of any person, group, association, or corporation on the basis of any fee splitting or on any basis which has the effect of any such agreement; provided, that the provisions of this subdivision shall not be so construed as to prohibit a licensed optometrist from participating in health maintenance organizations composed of licensed professional practitioners in the health care field, other similar ethical professional health care groups, or in professional associations or professional corporations organized under Alabama law or penalize him or her for participation; provided further, that the provisions of this subdivision shall not be so construed as to prohibit a licensed optometrist from practicing as the partner, employee, or associate of another licensed optometrist or a physician.

(17) Violating any other standards of professional conduct as may be adopted as rules by the board.

(Acts 1975, No. 1148, p. 2257, §9; Acts 1975, 4th Ex. Sess., No. 124, p. 2818, §1; Acts 1989, No. 89-233, p. 288, §3; Acts 1995, No. 95-218, p. 370, §1; Act 2005-77, p. 120, §3.)

Section 34-22-24

Disposition of fees.

All fees received by the board for examinations, annual renewal registrations, or from any other source shall be utilized in regulating the practice of optometry and paying the expenses of the board, including necessary clerk hire, legal expenses, and per diem and expenses of the members of the board as herein provided. Should the funds in the hands of the board at the end of any fiscal year (October 1) be more than two hundred thousand dollars (\$200,000), the excess of this amount shall be paid into the State Treasury to the credit of a special trust fund which shall be spent solely for the purpose of constructing, operating, and maintaining a college of optometry at the University of Alabama, in Birmingham, equipping of facilities, student scholarships and loans, faculty salaries and endowments, continuing education, and research grants.

(Acts 1975, No. 1148, p. 2257, §14; Acts 1989, No. 89-233, p. 288, §3; Act 2001-270, p. 329, §3.)

Section 34-22-40

Creation; composition; terms of office; election of candidates; annual meeting.

(a) In order to accomplish the purposes and to provide for the enforcement of this chapter, there is created the Alabama Board of Optometry. The board may implement and enforce this chapter. On October 10, 1975, the State Board of Optometry as then constituted shall be abolished, but the members thereof shall serve as members of the Alabama Board of Optometry created by this section and shall continue to serve until their present terms of appointment expire, as set out below. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Until October 1, 1992, the Alabama Board of Optometry shall consist of five persons, no two of whom shall reside in the same U.S. Congressional District. On October 1, 1993, two additional members shall be appointed to the

board. The board shall than be composed of seven members, one from each United States Congressional District as follows:

The members shall be persons licensed to practice optometry in this state, each of whom shall be a citizen and resident of this state, who shall have been actively engaged in the practice of optometry for at least five years next preceding the date of their appointment. The term of one member of the board shall expire October 1, 1975, and every fifth year thereafter; the term of one member shall expire October 1, 1976, and every fifth year thereafter; the term of one member shall expire October 1, 1977, and every fifth year thereafter; the term of one member shall expire October 1, 1978, and every fifth year thereafter; the term of one member shall expire October 1, 1979, and every fifth year thereafter; the term of two additional members shall begin on October 1, 1993, and expire October 1, 1998, and every fifth year thereafter. Each member of the board shall be appointed by the Governor from a list of five names of qualified persons certified to him or her by the board.

(b) When the term of any member of the board expires, that person shall continue to serve until his or her successor is appointed and qualified.

(c) For the purpose of preparing the list of five names, the board shall conduct an annual meeting at least 30 days prior to October 1 of each year, at which all optometrists licensed to practice and holding a current annual registration certificate pursuant to this chapter may attend, nominate, and vote. The board may regulate and prescribe the place and hour of the meeting, the method of nomination, and the manner of voting. Each optometrist in attendance may vote for those persons duly nominated, and no cumulative or proxy voting shall be permitted. Each optometrist voting shall vote for five nominees in order for his or her ballot to be valid, and any ballot indicating votes for more or less than five nominees shall be null and void. The five persons receiving the greatest number of votes of those in attendance at the meeting shall be the five persons whose names shall be certified to the Governor for appointment to the board, without substitution. In order for a person to withdraw from the list, the person must do so in writing and present it to the secretary of the board prior to the submission of the list to the Governor, after eliminating the person withdrawing from the list, and the list shall be composed solely of those names remaining. At least 30 days prior to the meeting the board shall mail notices to each optometrist licensed to practice and holding a current annual registration certificate pursuant to this chapter at the address shown on his or her current registration notifying each optometrist of the exact date, place, and hour of the meeting, the purpose of the meeting, and of the right to attend and vote. In the event of a vacancy prior to the next annual meeting, the Governor shall fill the vacancy from the remaining names on the list. The Governor may remove any member for neglect of duty, incompetency, improper or unprofessional conduct, or having his or her license revoked or suspended.

(d) Effective October 1, 1984, no person may serve more than two consecutive terms on the board. Time served on the board prior to October 1, 1984, shall not count toward this limitation.

(Acts 1975, No. 1148, p. 2257, §3; Acts 1984, No. 84-310, p. 691, §1; Acts 1989, No. 89-233, p. 288, §3; Acts 1993, No. 93-153, p. 222, §3; Acts 1997, No. 97-158, p. 211, §3; Act 2009-33, p. 109, §3.)

Section 34-22-41

Officers; meetings; compensation; expenses; disposition of funds; bonds; annual report.

(a) The board shall choose annually one of its members as president, one as vice-president, and one as secretary-treasurer, who each may administer oaths and take affidavits, certifying thereto under their hand and the common seal of the board.

(b) The board shall meet at least once in each year in the City of Montgomery or in a place designated by the president and, in addition thereto, whenever and wherever the president thereof calls a meeting. A majority of the board shall at all times constitute a quorum. The secretary of the board shall keep a full record of the proceedings of the board, which shall at all reasonable times be open to public inspection.

(c) Each member of the board shall be reimbursed at the same per diem and travel allowance amounts paid by law to state employees for each day of attendance upon the business of the board and, in addition thereto, the sum of two hundred fifty dollars (\$250) per diem for each day actually spent by each member upon the business of the board. All expenses and per diem shall be paid out of the receipts of the board under this chapter. The secretary shall receive compensation as fixed by the board and shall be the custodian of all records and the official seal of the board.

(d) All money received by the board shall be deposited to the credit of the board in a bank selected by its members for the use of the board, and the execution and enforcement of this chapter and the payments of salaries, expenses, and other authorized costs shall be paid by checks drawn by the treasurer and countersigned by the president or executive director of the board.

(e) The president, executive director, and treasurer shall give such bonds as the board from time to time directs.

(f) The board shall make an annual report of its proceedings to the Governor on the first Monday of January of each year.

(Acts 1975, No. 1148, p. 2257, §4; Acts 1989, No. 89-233, p. 288, §3; Acts 1993, No. 93-153, p. 222, §3; Acts 1997, 97-158, p. 211, §3; Act 2005-77, p. 120, §3.)

Section 34-22-42

Powers and duties generally.

The board shall exercise and perform, subject to this chapter, each of the following powers and duties:

(1) Conduct examinations at least once each year to ascertain the qualifications and fitness of applicants for licenses to practice optometry.

(2) Prescribe rules and regulations for conducting and administering an examination of applicants for licensing as optometrists and to effectuate this chapter.

- (3) Institute, upon a complaint or petition, hearings of charges against licensed optometrists or other persons as provided in this chapter.
- (4) Institute legal proceedings for violations of this chapter.
- (5) Grant and deny licenses in conformity with this chapter, including applications for approval to use pharmaceutical agents.
- (6) Formulate rules and regulations by which the board shall determine which optometry schools and colleges in or out of the State of Alabama have been duly accredited by a recognized and properly authorized accrediting agency and which accredited schools or colleges shall be approved by the board.
- (7) Establish standards of continuing education which shall be deemed a requisite to the renewal of licenses of applicants who are otherwise qualified to practice optometry in the State of Alabama.
- (8) Keep a register of optometrists containing the names and addresses of all persons to whom license certificates, temporary licenses, approvals for use of pharmaceutical agents, and limited licenses have been issued in the State of Alabama, the date of the issuance, the place or places of business in which each optometrist is engaged, and all renewals, revocations, and suspensions of licenses and certification.
- (9) Administer oaths and affirmations of witnesses, issue subpoenas to compel the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence, and materials in any hearing, investigation, or other proceeding before the board.
- (10) Employ or appoint an executive director, clerical personnel, and legal advisors or counsel to assist in implementing this chapter when there is a need for those services and when funds are available for those purposes. The executive director may be a licensed optometrist in this state, but may not, while serving as the executive director, also serve as a member of the Board of Optometry. The executive director shall not be subject to the state Merit System.
- (11) Prescribe rules and regulations establishing a program of internship as a requisite to application for license, if the board deems such a program advisable.
- (12) Prescribe rules and regulations establishing circumstances and conditions upon which temporary licenses may be issued by the board and the terms and conditions of the temporary licenses.
- (13) Prescribe rules and regulations subject to the limitations of this chapter for the utilization of methods or means of treatment recognized as being within the scope of the practice of optometry.
- (14) Prescribe rules and regulations subject to the limitations of this chapter necessary for the performance of eye care procedures reasonably necessary to the treatment of conditions or diseases of the human eye and its adjacent structures.

(Acts 1975, No. 1148, p. 2257, §5; Acts 1993, No. 93-153, p. 222, §3; Acts 1995, No. 95-218, p. 370, §1.)

Section 34-22-43

Registry, records and office of board.

(a) The secretary of the board shall keep a registry in which shall be entered the names of all persons to whom temporary licenses, limited licenses, license certificates, approvals for the use of pharmaceutical agents, and annual registration certificates have been granted under this chapter, the numbers of the license certificates and annual registration certificates, the dates of granting the same, and other matters of record and shall keep a true and correct copy of the minutes of all board meetings, and the book so provided and kept shall be the official book of records.

(b) A photostatic copy of the records, or a copy of the records certified by the secretary and under the seal of the board, shall be admitted in any of the courts of this state as prima facie evidence of the facts contained in the records and in lieu of the original records.

(c) A certificate under the hand of the secretary and the seal of the board that there is not entered in the record books the name, number of, and date of granting the license certificate or renewal license certificate to a person charged with a violation of any of the provisions of this chapter shall be prima facie evidence of the facts contained therein. The certificates shall be admitted in any of the courts of this state in lieu of the records of the board.

(d) The original books, records, and papers of the board shall be kept at the office of the secretary of the board, which office shall be at a place designated by the board.

(e) Upon the payment of a reasonable fee established from time to time by the board, the secretary of the board shall mail a copy of the most recent registry to any person requesting it.

(Acts 1975, No. 1148, p. 2257, §13; Acts 1989, No. 89-233, p. 288, §3; Acts 1995, No. 95-218, p. 370, §1.)