

Chapter 78**OPTOMETRIST PRACTICE ACT AMENDMENTS****Original House Bill No. 39**

AN ACT relating to optometry; amending optometrists' scope of practice; prohibiting an optometrist from performing specified procedures; amending optometrists' drug prescribing authority; directing the application of optometry related fees and assessments; directing the board of examiners in optometry to determine continuing education requirements; amending membership on the board of examiners in optometry; repealing provisions that define unlawful conduct; repealing obsolete provisions related to volunteer licensing; requiring rulemaking; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-23-101(a)(ix), (b), by creating a new subsection (c) and by renumbering (c) through (f) as (d) through (g), 33-23-102, 33-23-104, 33-23-106(a), 33-23-109(a) and (c), 33-23-113, 33-23-114, 33-23-115(a) and (b) and 35-17-106(a)(iii) are amended to read:

33-23-101. Definitions; authorized scope of practice; prohibited procedures; exceptions.

(a) As used in this act:

(ix) "This act" means W.S. 33-23-101 through ~~33-23-117~~ 33-23-116.

(b) ~~The practice of optometry is the employment of any means other than the use of therapeutic lasers or surgery for diagnosing and treating ocular pathology and for the measurement of the powers or range of human vision or the determination of the accommodative and refractive status of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof occurs when a person employs primary human eye care procedures, including:~~

(i) The examination, diagnosis and treatment of abnormal conditions and diseases of the eye, its adnexa and visual system;

(ii) Measuring the powers and range of vision of the eye to determine the accommodative and refractive state and general function of the eye;

(iii) The adaptation, sale, prescribing and dispensing of frames and ophthalmic lenses in all their forms;

(iv) Ordering and performance of diagnostic laboratory or imaging tests;

(v) The prescribing and administration of pharmaceutical agents, as provided in W.S. 33-23-102;

(vi) Preoperative and postoperative care for those procedures excluded from the practice of optometry under subsection (c) of this section;

(vii) Any laser procedure as set forth by the board's rules and not excluded under subsection (c) of this section.

(c) The following ophthalmic procedures shall be excluded from the authorized practice of optometry:

- (i) The following general procedures:
 - (A) Administration of general anesthesia;
 - (B) Surgery performed with general anesthesia.
- (ii) The following laser procedures:
 - (A) Corneal procedures;
 - (B) Procedures of the vitreous chamber of the eye for the purpose of treating any retinal or macular disease;
 - (C) Retinal procedures.
- (iii) The following nonlaser procedures:
 - (A) Surgery related to removal of an eye from a living person;
 - (B) Surgery of the bony orbit, including orbital implants;
 - (C) Incisional or excisional surgery of the extraocular muscles;
 - (D) Surgery of the eyelid for suspected malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis or tarsorrhaphy;
 - (E) Incisional or excisional surgery of the lacrimal system other than probing or related procedures;
 - (F) Surgery requiring full thickness conjunctivoplasty with graft or flap;
 - (G) Pterygium surgery;
 - (H) Surgery requiring full thickness incision or excision of the cornea or sclera, other than paracentesis, in an emergency requiring immediate reduction of pressure inside the eye;
 - (J) Corneal transplants;
 - (K) Surgery requiring incision of the iris or ciliary body, including diathermy or cryotherapy;
 - (M) Surgical extraction of the crystalline lens;
 - (N) Surgical intraocular implants;
 - (O) Surgery requiring removal of the vitreous;
 - (P) Procedures of the vitreous chamber of the eye for the purpose of treating any retinal or macular disease, including intra-vitreous injection;
 - (Q) Surgery requiring manipulation of the retina;
 - (R) Intravenous injections.

~~(c)~~(d) The provisions of this chapter do not prevent a physician from treating or fitting glasses to the human eye, or a physician or optometrist from filling

prescriptions or orders. Nor do the provisions of this chapter prevent the replacing, duplicating or repairing of ophthalmic lenses or the frames or fittings thereof by persons qualified to write or fill prescriptions or orders under the provisions of this act, nor prevent the doing of the merely mechanical work upon such lenses or upon the frames or fittings thereof.

(d)(e) It is unlawful for any person to dispense, replace or duplicate ophthalmic lenses or any contact lenses without a prescription or order from a physician or optometrist. A contact lens prescription shall specifically state that it is intended for contact lenses and include the type and specification of the contact lenses being prescribed. An optometrist shall provide, at no additional cost to the patient, a written copy of his contact lens prescription. The prescription shall only be released after the contact lenses have been adequately fitted and no more follow-up visits are necessary to assure the contact lenses fit the patient. The essential information necessary to duplicate the prescription shall be defined by rules adopted by the board. All contact lens prescriptions shall have an expiration date after which it shall be unlawful to fill such prescription. The prescribing optometrist shall not be liable for any injury or condition to a patient resulting from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing optometrist. Any person may file a complaint with the board seeking disciplinary action concerning any violation of this subsection. The board shall investigate or cause to be investigated and shall resolve a complaint on its own motion or upon receipt of a written complaint as provided by W.S. 33-23-110. No person shall improperly fill a contact lens prescription or fill an expired prescription.

(e)(f) The provisions of this chapter do not prohibit the sale of goggles, sunglasses, colored glasses or occupational eye-protective devices if they do not have refractive values, nor do the provisions of this act prohibit the sale of complete ready-to-wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors.

(f)(g) Nothing in this act shall prevent an optometrist from using assistants in his practice under his general supervision as defined in board rule.

33-23-102. Optometrist's use of certain drugs; limitation.

An optometrist shall be allowed to administer and prescribe pharmaceutical agents related to the practice of optometry for the treatment of ocular disease, excluding the following categories of oral medications: immunosuppressives, steroids, anti-fungals, sedative-hypnotics, and schedule I and II narcotics. No medication shall be given by injection. Oral anti-glaucoma medications may be administered for a period not to exceed forty-eight (48) hours. An optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician utilizing the same pharmaceutical agents for examination or

treatment but allowing for the prescribing of hydrocodone or hydrocodone containing pharmaceutical agents regardless of schedule.

33-23-104. Board of examiners in optometry; created; composition; designation; duties generally; appointment; qualifications and terms of members; vacancies; oath.

The Wyoming state board of examiners in optometry is created to carry out the purposes and enforce the provisions of this act. The board shall consist of ~~three (3) five (5)~~ members appointed by the governor. ~~In 2005, one (1) board member shall be appointed for a term of three (3) years, one (1) board member shall be appointed for a term of two (2) years and one (1) board member shall be appointed for a term of one (1) year. Thereafter, and shall include three (3) licensed optometrists, one (1) member of the public and one (1) licensed health care professional other than a licensed optometrist.~~ The terms of the office of the members appointed shall be three (3) years or until their successors have qualified. Each member of the board shall be a resident of the state of Wyoming and each optometrist member of the board shall have been engaged in the actual practice of optometry in the state for at least one (1) year prior to appointment. The governor shall make all appointments to fill vacancies caused by death, resignation or removal. The governor may remove any member as provided in W.S. 9-1-202. The members of the board, before entering upon their duties, shall take and subscribe to the oath required to be taken by state officers and shall file the oath in the office of the secretary of state.

33-23-106. Board of examiners in optometry; compensation of members; disposition of funds.

(a) Each member of the board may receive as compensation the sum paid each day to members of the state legislature for each day spent in board meetings and per diem and mileage as provided in W.S. 33-1-302(a)(vii). Expenses shall be paid from the fees, ~~finer~~ and assessments received under the provisions of this act. All fees, ~~finer~~, assessments and other monies, except fines and penalties, received under the provisions of this act, may be used for meeting the expenses of the board and in carrying out the provisions of this act. In no event shall any expenses be charged against the state.

33-23-109. Examinations; licensure; qualifications; reciprocity.

(a) Any applicant for licensure under this act is required to pass the examination series administered by the National Board of Examiners in Optometry, or its successor agency, ~~and or~~ any other examination specified by the board in rule. The applicant shall be a graduate of an optometric school or college accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States Department of Education (USDE) or the Council on Higher Education Accreditation (CHEA), or their successor agencies. Examinations

shall cover subjects designated by the board. ~~Any currently licensed person intending to employ diagnostic or therapeutic pharmaceutical agents in his practice is required to complete and pass a board approved course pertaining to the use of those agents.~~

(c) In addition to ~~subsections (a) and (b) satisfying the requirements under subsection (a)~~ of this section, an applicant for licensure under this act shall provide the board fingerprints and other information necessary for a criminal history record background check as provided under W.S. 7-19-201.

33-23-113. Advertising and display of license requirements.

(a) An advertisement for the practice of optometry shall identify the license held pursuant to this act. The advertisement shall be free from deceptive or misleading information.

(b) To communicate to the patient the license held pursuant to this act, a licensee shall:

(i) Wear a photo identification name tag during patient encounters. The photo identification name tag shall include a photograph of the licensee, the licensee's name, and the license held pursuant to this act. The name tag shall be of a sufficient size for a patient to read the contents of the tag and shall be worn in a manner so as to be visible and apparent to the patient;

(ii) ~~Every person holding a license to practice optometry in the state of Wyoming shall~~ Display the license certificate issued by the board, in its entirety, in a conspicuous place in his office, wherein the practice of optometry is conducted;

(iii) Comply with these requirements in each practice setting.

(c) A licensee who enters into a collaborative practice agreement with a medical doctor or doctor of osteopathy shall conspicuously post in each office the regularly scheduled hours the medical doctor or doctor of osteopathy intends to be physically present in the office.

33-23-114. Continuing education courses required.

All optometrists shall take courses of study in subjects relating to the practice of the profession of optometry for the utilization and application of new techniques, scientific and clinical advances, and achievements of research which will assure expansive and comprehensive care to the public. The board shall ~~prescribe the length of study. Attendance shall be at a course or courses approved by the board. Attendance at any course or courses of study is to be certified to the board upon a form provided by the board and submitted by each optometrist to determine the requirements for continuing education pursuant to rules promulgated by the board.~~ The board may use up to one-half (1/2) of its annual renewal fees for the purposes of contracting with institutions of higher learning, professional organizations, or qualified individuals to

provide educational programs that meet this requirement. The board may also treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the programs of continuing education. ~~In no instance may the board require a greater number of hours of study than are available at approved courses held within this state. The board shall require three (3) hours of continuing education related to the responsible prescribing of controlled substances every two (2) years. The board may waive the requirements of this section in cases of certified illness or undue hardship.~~

33-23-115. Penalty; injunction; civil penalty; jury trial.

(a) Any person who violates any provision of ~~W.S. 33-23-101 through 33-23-117~~ this act is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00) or imprisoned not more than six (6) months in the county jail, or both.

(b) Any person aggrieved by a violation of ~~W.S. 33-23-101 through 33-23-117~~ this act, the Wyoming state board of examiners of optometry, the attorney general or the district or county attorney may institute suit in the county in which a violation of ~~W.S. 33-23-101 through 33-23-117~~ this act occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed ten thousand dollars (\$10,000.00) per violation, plus costs.

35-17-106. Election to be covered by federal immunity.

(a) The state of Wyoming elects to be immediately covered by the immunity granted by the Health Care Quality Improvement Act of 1986, P.L. 99-660, Title IV adopted by Congress in 1986, to the extent authorized, as of the effective date of this section for all health care professional review bodies as defined in the act, for the applicable division of the department of health in its duties under W.S. 33-36-101 through 33-36-115 related to emergency medical services and for:

(iii) The state board of examiners in optometry, W.S. 33-23-101 through ~~33-23-117~~ 33-23-116;

Section 2. W.S. 33-23-109(b), 33-23-111(b) and 33-23-117 are repealed.

Section 3. The Wyoming state board of examiners in optometry shall promulgate any rules necessary to implement this act.

Section 4.

(a) Except as provided in subsection (b) of this section, this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(b) Sections 1 and 2 of this act are effective July 1, 2021.

Approved April 2, 2021.