SPONSOR: Sen. Bushweller & Sen. Poore & Rep. Brady
Sens. Pettyjohn, Richardson, Sokola, Townsend; Reps. Bennett, Bolden, Dukes, Spiegelman, Viola

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 143

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PROFESSION AND OCCUPATION OF OPTOMETRY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 21, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2101. Definition of practice of optometry.

~~(a) The "practice of optometry" is a learned profession and the same privileges, powers and duties shall attach thereto as the other learned professions. For purpose of this chapter, the "practice of optometry" is defined as the examination, measurement (by subjective or objective means), diagnosis, treatment and prevention of conditions of the human eye, lid, adnexa 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 the dispensing of contact lenses which must be dispensed in accordance with a written, current contact lens prescription from a licensed physician or optometrist, which includes such information as the Board shall specify by rule or regulation. The practice of optometry also includes the determination of refractive error and/or visual, muscular, or anatomical anomalies of the eye; the use of prescription of pharmaceutical agents for the diagnosis and treatment of ocular disease; the removal of superficial foreign bodies from the human eye and its appendages (appendages shall include cornea, conjuctiva lid, adnexa or lacrimal system); and the providing of vision, developmental and perceptual therapy, and shall include the utilization of any method or means which the optometrist is educationally qualified to provide as established by the Delaware State Board of Examiners in Optometry; provided that the "practice of optometry" does not include surgery or the use of narcotics, or therapeutic lasers.~~

(a) "Practice of optometry" means the examination or measurement by any subjective or objective means including automated or testing devices for the diagnosis, treatment, and prevention of conditions of the human eye, lid, adnexa, and visual system as outlined below.

(1) "Practice of optometry" includes all of the following:

a. Use, adapting, and fitting of all types of lenses or devices except as provided in paragraph (a)(2) of this subsection.

b. Dispensing of any type of contact lenses that must be dispensed in accordance with a written, current contact lens prescription from a licensed physician or optometrist, including information that the Board may specify by rule or regulation.

c. Determination of refractive error or visual, muscular, or anatomical anomalies of the eye.

d. Provision or prescription of vision therapy, low vision rehabilitation, or developmental or perceptual therapy.

(2) A license to practice optometry includes the utilization of any method or means which the optometrist is educationally qualified to provide, as established by the Delaware State Board of Examiners in Optometry and:

a. Includes performance of minor procedures on the surface of the skin of the ocular adnexa, of the cornea and conjunctiva of the globe and lid that can be performed safely with topical anesthesia and that would not require the use of injections or penetration of the globe, and the cutting or closure of human tissue by suture or staple, glue, adhesive, soldering, or cauterization. Also excludes anterior corneal stromal puncture, collagen cross-linking, post-surgical pterygium or conjuctival graft gluing of amniotic membranes, mechanical polishing of the corneal basement membrane, or any procedure that requires full or partial thickness incision of the sclera or cornea. Such minor procedures include removal of superficial foreign body of the external eye conjunctiva; removal of conjunctival nonperforating foreign bodies; removal of a foreign body with or without slit lamp; superficial corneal scraping for diagnostic purposes; epilation of trichiasis by forceps; expression of conjunctival follicles; closure of lacrimal punctum by plug; intense pulsed light therapy; thermal treatment of eyelid margin for dry eye and blepharitis such as Lipiflow; and dilation of lacrimal punctum, with or without irrigation except on infant and toddler patients.

b. Prohibits surgery.

c. Prohibits the use of ophthalmic lasers or other modalities in which tissue is burned, vaporized, cut, or otherwise irreversibly altered by thermal, light-based, electromagnetic, radiation, chemical, ultrasound, infusion, cryotherapy, or similar means, excluding the use of pharmaceutical agents described in paragraph (a)(3) of this section.

d. Procedures must meet the standard of care as if performed by a physician.

(3) "Practice of optometry", as it relates to pharmaceutical agents, means as follows:

a. Includes the use of pharmaceutical agents for the diagnosis and treatment of diseases, disorders, and conditions of the eye and adnexa based on the licensing requirement that satisfies the requirement for graduate level coursework that includes general and ocular pharmacology as follows:

1. Prescription for controlled substances.

A. Schedule II controlled substances containing Hydrocodone, with a limitation on maximum 72 hour supply.

B. Schedules III, IV, & V controlled substances, with a limitation on maximum 72 hour supply.

2. Prescription for the use of an oral steroid with a limitation not to exceed a single 6-day methylprednisolone dose pack.

b. Includes the use of an epinephrine auto-injector to counteract anaphylaxis.

c. Excludes prescription for oral immuno-suppressives except for the use of oral steroids reference 7(b).

d. Excludes the prescription of oral antifungals.

e. Excludes the prescription of oral antimetabolites.

f. Excludes the prescription of any substance delivered intravenously or by injection.

g. Excludes any medication used solely for the treatment of systemic conditions outside the scope of an optometrist.

~~(b) For purposes of this chapter, the classifications of the "practice of optometry" shall be defined as:~~

~~(1) Nondiagnostically certified optometrist shall be permitted to practice optometry as defined in subsection (a) of this section. However, a nondiagnostically certified optometrist may not utilize any diagnostic or therapeutic pharmaceutical agent or remove superficial foreign bodies from the eye and its appendages.~~

~~(2) Diagnostically certified optometrists shall be permitted or perform the duties of a nondiagnostically certified optometrist. In addition, a diagnostically certified optometrist may use the following drug groups:~~

~~a. Topical anesthetics.~~

~~b. Mydriatics.~~

~~c. Cycloplegics.~~

~~d. Mioties.~~

~~(3) Therapeutically certified optometrists shall be permitted to perform the duties of a diagnostically certified optometrist. In addition, a therapeutically certified optometrist may use and/or prescribe the following pharmaceutical agents for the treatment of ocular diseases and conditions:~~

~~a. Topical and oral administration:~~

~~1. Antihistamines and decongestants.~~

~~2. Antiglaucoma.~~

~~3. Analgesics (noncontrolled).~~

~~4. Antibiotics.~~

~~b. Topical administration only:~~

~~1. Autonomics.~~

~~2. Anesthetics.~~

~~3. Anti-infectives, including antivirals and antiparasitics.~~

~~4. Anti-inflammatories.~~

(b) For purposes of this chapter, the term “diagnostically certified optometrists” applies only to those currently licensed in the category and if that license lapses, the licensee could only re-license by meeting current licensing requirements in § 2107 of this title. The duties of a non-diagnostically certified optometrist are limited to those that do not utilize therapeutic pharmaceutical agents or perform procedures that require subsequent treatment with therapeutic pharmaceutical agents.

(c) In administering this chapter, the State Board shall, by rule or regulation, specify those acts, services, procedures and practices which constitute the "practice of optometry" within the definitions of this section and consistent with having submitted proof of graduate level coursework that includes general and ocular pharmacology.

§ 2102. Board of Examiners in Optometry; appointment; qualifications; terms of office; vacancies; suspension or removal; unexcused absences; compensation.

(b) The Board shall consist of 5 members appointed by the Governor, who are residents of this State: 3 ~~therapeutically certified~~ duly licensed optometrists engaged in the actual practice of optometry and 2 public members. ~~However, any current Board member who is not therapeutically certified as of June 30, 1994, shall serve out the remainder of the term.~~ Said public members: Shall not be or ever have been licensed as an optometrist, ophthalmologist or optician; shall not be a member of the immediate family of an optometrist, ophthalmologist or optician; shall not have been employed by an optometrist, ophthalmologist or optician; shall not have had a material financial interest in the providing of goods and services to those licensed in this chapter; shall not have been engaged in any activity directly related to optometry; and shall not have been licensed in any health-related field or be licensed to practice law.

§ 2107. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as an optometrist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree of "doctor of optometry" from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

(2) Has achieved the passing score on a nationally recognized, written, standardized examination in ~~optometry,~~ optometry that includes diagnosis, treatment, and management of ocular disease, approved by the Division of Professional ~~Regulation; in addition all applicants must pass a nationally recognized standardized test on diagnosis, treatment and management of ocular disease approved by the Division~~ Regulation. The examination in this section must be administered at least once each year.

~~§ 2108. Examinations.~~

~~(a) Any optometrist licensed prior to July 10, 1975, may not use diagnostic pharmaceutical agents until the optometrist shall have completed a course in pharmacology as it relates to the use of diagnostic drugs in the practice of optometry, given by an institution accredited by a regional or professional accrediting organization which is recognized by the Delaware State Board of Examiners in Optometry.~~

~~(b) Each diagnostically certified optometrist licensed when this act becomes effective and desiring to be certified in the use and prescription of therapeutic pharmaceutical agents for the treatment of eye disease shall:~~

~~Pass a nationally recognized, standardized test on the diagnosis, treatment and management of ocular diseases that is approved by the State Division of Professional Regulation and complete 40 hours of clinical experience in the treatment and management of ocular disease supervised by a therapeutically certified optometrist, M.D. or D.O.~~

§ 2109. Reciprocity.

The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry issued by another jurisdiction and who has practiced for a minimum of 5 years in such other jurisdiction with standards of licensure which are equal to or greater than those of this chapter and grant a license by reciprocity to such applicant. The applicant shall contact the National Practitioner Data Bank, requesting that verification be sent to the Board regarding that applicant's licensure status. In addition, the applicant shall contact each jurisdiction where that applicant currently is licensed or has been previously licensed or otherwise authorized to practice optometry and request that a certified statement be provided to the Board stating whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved.

~~Applicants from jurisdictions which have the same basic qualifications for licensure as this State, but that do not have essentially comparable or higher standards to qualify for "therapeutic" licensing, shall be required to meet the conditions of § 2108(a) and (b) of this title.~~

§ 2110. Internship requirements; temporary licenses.

Every applicant, except those applicants who qualify for licensure by reciprocity, shall be required to complete a Board-approved 6-month internship in optometry. The internship shall be completed after the applicant has passed all parts of the national, written, standardized examination in optometry, which is approved by the Division, including the examination on the treatment and management of ocular disease (TMOD), approved by the Division.

~~All newly licensed optometrists shall be required to be therapeutically certified. Their 6-month internship should be done with a therapeutically certified optometrist, M.D. or D.O...However, if a therapeutically certified optometrist, M.D. or D.O. is not available, the intern may do an internship with a nontherapeutically certified optometrist provided, the intern complete an additional l00 hours of clinical experience in the treatment and management of ocular disease, supervised by a therapeutically certified optometrist, M.D. or D.O. during their internship and pass a nationally recognized standardized test on diagnosis, treatment and management of ocular disease that is approved by the Division of Professional Regulation. A therapeutically certified optometrist is not to be held to any lesser standard of care than is applicable to a physician prescribing the same therapeutic agents. In any case where the prescribing of therapeutic drugs is an issue, the testimony of an ophthalmologist practicing in Delaware shall be admissible.~~

The Board may grant temporary licenses to any candidate successfully passing the written examinations. The temporary license shall be issued only for the duration of the internship.

§ 2111. Certification and registration for successful applicants.

All persons successfully passing the examinations for licensure as required by the chapter shall be registered in the Board Register, which shall be kept by the Division of Professional Regulation, as licensed to practice optometry and shall also receive an endorsement of such registration. ~~Any optometrist who shows proof of qualifying for therapeutic drug use and prescription as described in § 2108 of this title shall receive an endorsement to such certificate stating that the optometrist is certified in therapeutic drug use and prescription for the treatment of ocular disease. Notwithstanding the requirements of § 2108 of this title, an optometrist holding a Delaware certificate or license who is a licensed Delaware M.D. or D.O. shall qualify for the endorsement as described in this section. The certificate of endorsement, if any, shall be signed by the President and Secretary of the Board and shall be filed as provided in this chapter.~~

§ 2112. Issuance and renewal of licenses.

The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as an optometrist and who pays the fee established under § 2105 of this title.

Each license shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation and proof that the licensee has met the continuing education requirements established by the Board.

The Board, in its rules and regulations, shall determine the period of time within which a licensed optometrist may still renew that licensed optometrist's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

An optometrist currently holding an active diagnostic license may not utilize therapeutic pharmaceutical agents or perform procedures that require subsequent treatment with therapeutic pharmaceutical agents. An optometrist holding an active diagnostic license may renew such license under the terms determined by the Board in the rules and regulations.

The 6 month internship for Delaware optometric licensure may not be completed under the supervision of a diagnostic optometrist.

A diagnostically licensed optometrist may convert to an unrestricted license by completing the requirements set forth in the rules and regulations.

A lapsed diagnostic license may not be reactivated.

§ 2121. Continuing education requirements.

~~(a) Each optometrist licensed in this State shall be required to submit proof acceptable to the Board that the optometrist has completed 12 hours of optometric education or such other scientific educational lectures, symposiums or courses during each biennial license renewal period.~~

~~(b) Optometrists who are authorized to use and prescribe therapeutic pharmaceutical agents shall be required to attend 12 additional hours of courses in ocular pharmacology, diagnosis or treatment of ocular disease approved by the Board in each biennial license renewal period. All therapeutically certified optometrists must submit to the Board a copy of current cardio-pulmonary resuscitation (CPR) certification.~~

§ 2122. Prescription requirements.

(a) No written prescription shall be prescribed if it does not contain the following information clearly written, clearly hand printed, electronically printed, or typed:

(1) The name, address and phone number of the prescriber;

(2) The name and strength of the drug prescribed;

(3) The quantity of the drug prescribed;

(4) The directions for use of the drug;

(5) Date of issue.

(b) Optometrists who apply for a provider identifier number for controlled substances shall do so as outlined by the Division of Professional Regulation.

(c) A completed application must provide proof of graduate level coursework that includes general and ocular pharmacology.

(d) Controlled substances registration must include both of the following:

(1) Optometrists must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

(2) Optometrists must register biennially with the Office of Controlled Substances in accordance with § 4732 of Title 16.

§ 2123. Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every optometrist to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation, in writing, information that the licensee reasonably believes indicates that any other optometrist licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every individual to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation, in writing, information that the licensee reasonably believes indicates that any other optometrist licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(c) Every individual to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting individual reasonably believes indicates that an individual certified and registered to practice optometry in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under this section must be filed within 30 days of becoming aware of such information. An individual reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, if the individual acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

SYNOPSIS

Delaware's optometry statute has not been updated since it was enacted in 1994. Significant changes in educational curriculum for optometrists have occurred since 1994, providing training on state of the art treatments and use of pharmaceuticals. In 2015, the original Senate Bill No. 143 was introduced to address the substantial development of new diagnostics, therapies, treatments, and medication over the last 20 years.

Doctors of optometry examine, diagnose, treat, and manage diseases, injuries, and disorders of the visual system, the eye, and associated structures, as well as identify related systemic conditions affecting the eye. In addition, optometrists provide treatment for low vision rehabilitation, provide vision therapy, prescribe for spectacle lenses, contact lenses, prescribe medications, and perform minor procedures.

This Act clarifies certain practices, procedures, and pharmacology performed by optometrists and those prohibited. In addition, optometrists must meet all federal and state applicable requirements to prescribe limited treatment of acute pain with controlled substances.

This Act authorizes Delaware's Board of Examiners in Optometry ("Board"), just like other professional boards under the Division of Professional Regulation, to have the appropriate authority to review, propose, and, after required public hearing and comment, adopt changes in regulation reflecting diagnostics, technologies, and requirements of continuing education.

This Substitute Act is the result of the Joint Sunset Committee's 2016 review of the Board, and differs from the original Senate Bill No. 143 by:

(1) Further delineating excluded and included minor procedures with additional clarifying language.

(2) Adding boilerplate "duty to report" language which is consistent with regulations the Board adopted in September 2015.

Author – Sen. Bushweller