

Article 17.

Dispensing Opticians.

§ 90-234. Necessity for certificate of registration.

On and after the first day of July, 1951, no person or combination of persons shall for pay, or reward, either directly or indirectly, practice as a dispensing optician as hereinafter defined in the State of North Carolina without a certificate of registration issued pursuant to the provisions of this Article by the North Carolina State Board of Opticians hereinafter established. (1951, c. 1089, s. 1.)

§ 90-235. Definition.

Within the meaning of the provisions of this Article, the term "dispensing optician" defines one who prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their professions, and in accordance with such prescriptions interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye. The services and appliances related to ophthalmic dispensing shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon prescription issued by a physician or an optometrist; but duplications, replacements, reproductions or repetitions may be done without prescription, in which event any such act shall be construed to be ophthalmic dispensing, the same as if performed on the basis of a written prescription. (1951, c. 1089, s. 2.)

§ 90-236. What constitutes practicing as a dispensing optician.

Any one or combination of the following practices when done for pay or reward shall constitute practicing as a dispensing optician: Interpreting prescriptions issued by licensed physicians and/or optometrists; fitting glasses on the face; servicing glasses or spectacles; measuring of patient's face, fitting frames, compounding and fabricating lenses and frames, and any therapeutic device used or employed in the correction of vision, and alignment of frames to the face of the wearer, provided, however, that the provisions of this section shall not apply to students and apprentices. (1951, c. 1089, s. 3; 1977, c. 755, s. 1.)

§ 90-236.1. Requirements for filling contact lens prescriptions.

No person, firm or corporation licensed or registered under this Article shall fill a prescription or dispense lenses, other than spectacle lenses, unless the prescription specifically states on its face that the prescriber intends it to be for contact lenses and includes the type and specifications of the contact lenses being prescribed. No person, firm or corporation licensed under this Article shall fill a prescription beyond the expiration date stated on the face thereof.

Any person, firm or corporation that dispenses contact lenses on the prescription of a practitioner licensed under Articles 1 or 6 of this Chapter shall, at the time of delivery of the lenses, inform the recipient both orally and in writing that he return to the prescriber for insertion of the lens, instruction on lens insertion and care, and to ascertain the accuracy and suitability of the prescribed lens. The statement shall also state that if the recipient does not return to the prescriber after delivery of the lens for the purposes stated above, the prescriber shall not be responsible for any damages or injury resulting from the prescribed lens, except that this sentence does not apply if the dispenser and the prescriber are the same person.

Prescriptions filled pursuant to this section shall be kept on file by the prescriber and the person filling the prescription for at least 24 months after the prescription is filled.

Any person, firm or corporation dispensing, furnishing or supplying contact lenses in interstate commerce or at retail to recipients in this State, other than a practitioner licensed under Article 1 or Article 6 of this Chapter, is deemed a "dispensing optician" under G.S. 90-235 and is subject to the provisions of this Article. (1981, c. 600, s. 1; 1985, c. 748.)

§ 90-237. Qualifications for dispensing opticians.

In order to be issued a license as a registered licensed optician by the North Carolina State Board of Opticians, the applicant:

- (1) Shall not have violated this Article or the rules of the Board.
- (2) Shall be at least 18 years of age and a high school graduate or equivalent.
- (2a) Shall be of good moral character.
- (3) Shall have passed an examination conducted by the Board to determine his or her fitness to engage in the business of a dispensing optician.
- (4) Shall have completed a six-month internship by working full time under the supervision of a licensed optician, optometrist, or physician trained in ophthalmology, in order to demonstrate proficiency in the areas of measurement of the face, and fitting and adjusting glasses and frames to the face, lens recognition, lens design, and prescription interpretation. (1951, c. 1089, s. 4; 1977, c. 755, s. 2; 1981, c. 600, s. 2; 1997-424, s. 1.)

§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.

The North Carolina State Board of Opticians is created. The Board's duty is to carry out the purposes and enforce the provisions of this Article. The Board shall consist of seven members appointed by the Governor as follows:

- (1) Five licensed dispensing opticians, each of whom shall serve three-year terms;
- (2) Two residents of North Carolina who are not licensed as dispensing opticians, physicians, or optometrists, who shall serve three-year terms.

Each member of the Board shall serve until the member's successor is appointed and qualifies. No person shall serve on this Board for more than two complete consecutive terms. Before beginning office, each member of the Board shall take all oaths prescribed for other State officers in the manner provided by law, which oaths shall be filed in the office of the Secretary of State. The Governor may remove any member of the Board for good cause shown, may appoint members to fill unexpired terms, and must make optician appointments from a list of three nominees for each vacancy submitted by the Board as a result of an election conducted by the Board each year and open to all licensees. In naming candidates for election, the Board must ensure that its candidates reflect the composition of the State with regards to gender, ethnic, racial, and age composition. If the Board fails to fulfill its requirements under this section, the Governor may appoint a licensed optician to fill a vacancy on the Board. (1951, c. 1089, s. 5; 1979, c. 533; 1981, c. 600, s. 3; 1997-424, s. 7; 2007-525, s. 13.)

§ 90-239. Organization, meetings and powers of Board.

Within 30 days after appointment of the Board, the Board shall hold its first regular meeting, and at said meeting and annually thereafter shall choose from among its members a chairman,

vice-chairman, a secretary and a treasurer. The Board may combine the offices of secretary and treasurer. The Board shall make such rules and regulations not inconsistent with the law as may be necessary to the proper performance of its duties, may employ agents to carry out the purposes of this Article, and each member may administer oaths and take testimony concerning any matter within the jurisdiction of the Board, and a majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the time and place of meeting to be designated by the chairman. Special meetings may be called by the chairman or upon request of three members. The secretary of the Board shall keep a full and complete record of its proceedings, which shall at all reasonable times be open to public inspection. (1951, c. 1089, s. 6; 1981, c. 600, ss. 4-7.)

§ 90-240. Examination.

(a) Applicants to take the examination for dispensing opticians shall be high school graduates or the equivalent who have done one of the following:

- (1) Successfully completed a two-year course of training in an accredited school of opticianry with a minimum of 1600 hours.
- (2) Completed two and one-half years of apprenticeship while registered with the Board under a licensed dispensing optician, with time spent in a recognized school credited as part of the apprenticeship period.
- (3) Completed two and one-half years of apprenticeship while registered with the Board under the direct supervision of an optometrist or a physician specializing in ophthalmology, provided the supervising optometrist or physician elects to operate the apprenticeship under the same requirements applicable to dispensing opticians.

(a1) Applicants to take the examination for dispensing opticians who are graduates from an accredited college or university with a four-year degree or comparable degree in a health-related field shall satisfy one of the following:

- (1) The requirements of subdivision (1) of subsection (a) of this section.
- (2) Successful completion of two years of apprenticeship while registered with the Board under a health care professional identified in subdivision (2) or (3) of subsection (a) of this section. The Board may adopt rules specifying the colleges, universities, and coursework that meet the accreditation requirements of this subsection.

(b) The examination shall be confined to such knowledge as is reasonably necessary to engage in preparation and dispensing of optical devices and shall include the following:

- (1) The skills necessary for the proper analysis of prescriptions;
- (2) The skills necessary for the dispensing of eyeglasses and contact lenses; and
- (3) The processes by which the products offered by dispensing opticians are manufactured.

(c) The examination shall be given at least twice each year at sites and on dates that are publicly announced 60 days in advance.

(d) Each applicant shall, upon request, receive his or her examination score on each section of the examination.

(e) The Board shall include as part or all of the examination, any nationally prepared and recognized examination, and will periodically review and validate any exam in use by the Board. The Board will credit an applicant with the score on any national test successfully completed in the three years immediately preceding the date the applicant is scheduled to take the North Carolina

examination, to the extent that such test is included in the North Carolina examination. The Board shall adopt rules designating the nationally prepared and recognized examinations that will satisfy and serve as credit for parts or all of the North Carolina examination.

(f) Completion of the six-month internship required of all applicants under G.S. 90-237(4) may, at the election of the applicant, occur before or after the applicant sits for the examination as provided in this section, so long as the applicant has met the minimum qualifications for examination under subsection (a) or (a1) of this section at the time the internship commences. (1951, c. 1089, s. 7; 1977, c. 755, s. 3; 1981, c. 600, s. 8; 2016-117, s. 3(a).)

§ 90-241. Waiver of written examination requirements.

(a) The Board shall grant a license without examination to any applicant who:

- (1) Is at least 18 years of age.
- (2) Is of good moral character.
- (3) Holds a license in good standing as a dispensing optician in another state.
- (4) Has engaged in the practice of opticianry in the other state for four years immediately preceding the application to the Board.
- (5) Has not violated this Article or the rules of the Board.

(b) The Board shall grant admission to the next examination and grant license upon attainment of a passing score on the examination to a person who has worked, in a state that does not license opticians, in opticianry for four years immediately preceding the application to the Board performing tasks and taking the curriculum equivalent to the North Carolina apprenticeship, and who meets the requirements of G.S. 90-237(1) through (3).

(c) Any person desiring to secure a license under this section shall make application therefor in the manner and form prescribed by the rules of the Board and shall pay the fee prescribed in G.S. 90-246.

(d) Repealed by Session Laws 1997-424, s. 2. (1951, c. 1089, s. 8; 1977, c. 755, s. 4; 1979, c. 166, ss. 2, 3; 1981, c. 600, s. 9; 1997-424, s. 2.)

§ 90-242. Repealed by Session Laws 1981, c. 600, s. 10.

§ 90-243. Registration of places of business, apprentices.

The Board may adopt rules requiring, as a condition of dispensing, the registration of places of business where ophthalmic dispensing is engaged in, and for registration of apprentices and interns who are working under direct supervision of a licensed optician. The Board may also require that any information furnished to it as required by law or regulation be furnished under oath. (1951, c. 1089, s. 10; 1967, c. 691, s. 49; 1979, c. 166, s. 1; 1981, c. 600, s. 11.)

§ 90-244. Display, use, and renewal of license of registration.

(a) Every person to whom a license has been granted under this Article shall display the same in a conspicuous part of the office or establishment wherein he is engaged as a dispensing optician. The Board may adopt regulations concerning the display of registrations of places of business and of apprentices and interns.

(b) A license issued by the Board automatically expires on the first day of January of each year. A license shall be reinstated without penalty from January 1 through January 15 immediately following expiration. After January 15, a license shall be reinstated by payment of the renewal fee

and a penalty of fifty dollars (\$50.00). Licenses that remain expired two years or more shall not be reinstated. (1951, c. 1098, s. 11; 1981, c. 600, s. 12; 1997-424, s. 3.)

§ 90-245. Collection of fees.

The administrator for the Board is hereby authorized and empowered to collect in the name and on behalf of this Board the fees prescribed by this Article and shall turn over to the State Treasurer all funds collected or received under this Article, which funds shall be credited to the North Carolina State Board of Opticians, and said funds shall be held and expended under the supervision of the Director of the Budget of the State of North Carolina exclusively for the administration and enforcement of the provisions of this Article. Nothing in this Article shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from the fees collected under the provisions of this Article and received by the State Treasurer in the manner aforesaid. (1951, c. 1089, s. 12; 1981, c. 884, s. 9; 2016-117, s. 3(b).)

§ 90-246. Fees.

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the Board is hereby authorized to charge and collect the following fees:

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| (1) | Each examination | \$300.00 |
| (2) | Each initial license | \$100.00 |
| (3) | Each renewal of license | \$150.00 |
| (4) | Each license issued to a practitioner of another state to practice in this State | \$300.00 |
| (5) | Each registration of an optical place of business | \$ 75.00 |
| (6) | Each application for registration as an opticianry apprentice or intern, and renewals thereof | \$ 35.00 |
| (7) | Repealed by Session Laws 1997-424, s. 4. | |
| (8) | Each registration of a training establishment | \$ 35.00 |
| (9) | Each license verification | \$ 15.00 |
| (10) | Each registration of an optician in charge | \$ 50.00 |
| (11) | Late fee for restoration of an expired license within the first year after expiration | \$ 75.00 |
| (12) | Late fee for restoration of an expired license within the second year after expiration | \$150.00 |
| (13) | Restoration fee for an inactive license within the second year | \$100.00. |

(1951, c. 1089, s. 13; 1977, c. 755, s. 5; 1981, c. 600, s. 13; 1989, c. 673, s. 1; 1997-424, s. 4; 2016-117, s. 3(c).)

§ 90-247. Repealed by Session Laws 1981, c. 600, s. 14.

§ 90-248. Compensation and expenses of Board members and secretary.

Each member of the Board shall receive for his or her services for time actually in attendance upon Board meetings and affairs of the Board only, the amount of per diem provided by G.S. 138-5 and shall be reimbursed for subsistence, mileage and necessary expenses incurred in the discharge

of such duties at the same rates as set forth in G.S. 138-6 and G.S. 138-7. (1951, c. 1089, s. 15; 1953, c. 894; 1965, c. 730; 1969, c. 445, s. 6; 1981, c. 600, s. 15.)

§ 90-249. Powers of the Board.

(a) The Board shall have the power to make rules, not inconsistent with this Article and the laws of the State of North Carolina, with respect to the following areas of the business of opticianry in North Carolina:

- (1) Misrepresentation to the public.
- (2) Baiting or deceptive advertising.
- (3) Continuing education of licensees.
- (4) Location of registrants in the State.
- (5) Registration of established optical places of business, but no rule restricting type or location of a business may be enacted.
- (6) Requiring photographs for purposes of identification of persons subject to this Article.
- (7) Content of licensure examination and reexamination.
- (8) Revocation, suspension, and reinstatement of licenses, probation, and reprimands of licensees, and other penalties.
- (9) Fees within the limits of G.S. 90-246.
- (10) Accreditation of schools of opticianry.
- (10a) Designation of accredited colleges, universities, and coursework that satisfy the qualifications for examination pursuant to G.S. 90-240(a1).
- (11) Registration and training of apprentices and interns.
- (12) Licenses and examinations pursuant to G.S. 90-241.

(b) through (d) Repealed by Session Laws 1997-424, s. 5. (1951, c. 1089, s. 16; 1953, c. 1041, s. 19; 1973, c. 1331, s. 3; 1977, c. 755, s. 6; 1981, c. 600, s. 16; 1987, c. 827, s. 1; 1997-424, s. 5; 2016-117, s. 3(d).)

§ 90-249.1. Disciplinary actions.

(a) The Board may suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

- (1) Offering to practice or practicing as a dispensing optician without a license.
- (2) Aiding or abetting an unlicensed person in offering to practice or practicing as a dispensing optician.
- (3) Selling, transferring, or assigning a license.
- (4) Engaging in fraud or misrepresentation to obtain or renew a license.
- (5) Engaging in false or misleading advertising.
- (6) Advertising in any manner that conveys or intends to convey the impression that eyes are examined by persons licensed under this Article or optical places of business registered under this Article.
- (7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, incompetence, or gross misconduct.
- (8) Being convicted of a crime involving fraud or moral turpitude.
- (9) Violating any provision of this Article or the rules adopted by the Board.

(b) In addition or as an alternative to taking any of the actions permitted in subsection (a) of this section, the Board may assess a licensee a civil penalty of not more than one thousand dollars

(\$1,000) for the violation of any section of this Article. In any case in which the Board is authorized to take any of the actions permitted in subsection (a) of this section, the Board may instead accept an offer in compromise of the charges whereby the accused licensee shall pay to the Board a civil penalty of not more than one thousand dollars (\$1,000). All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(c) In determining the amount of a civil penalty, the Board may consider:

- (1) The degree and extent of harm caused by the violation to public health and safety or the potential for harm.
- (2) The duration and gravity of the violation.
- (3) Whether the violation was willful or reflects a continuing pattern.
- (4) Whether the violation involved elements of fraud or deception.
- (5) Prior disciplinary actions against the licensee.
- (6) Whether and to what extent the licensee profited from the violation.

(d) Any person, including the Board and its staff, may file a complaint with the Board alleging that a licensee committed acts in violation of subsection (a) of this section. The Board may, without holding a hearing, dismiss the complaint as unfounded or trivial. Any hearings held pursuant to this section shall be conducted in accordance with Chapter 150B of the General Statutes. (1997-424, s. 6.)

§ 90-250. Sale of optical glasses.

No optical glass or other kindred products or instruments of vision shall be dispensed, ground or assembled in connection with a given formula prescribed by a licensed physician or optometrist except under the supervision of a licensed dispensing optician and in a registered optical establishment or office. Provided, however, that the provisions of this section shall not prohibit persons or corporations from selling completely assembled spectacles without advice or aid as to the selection thereof as merchandise from permanently located or established places of business. (1951, c. 1089, s. 17.)

§ 90-251. Licensee allowing unlicensed person to use his certificate or license.

Each licensee licensed under the provisions of this Article who shall rent, loan or allow the use of his registration certificate or license to an unlicensed person for any unlawful use shall be guilty of a Class 1 misdemeanor. (1951, c. 1089, s. 18; 1993, c. 539, s. 643; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-252. Engaging in practice without license.

Any person, firm or corporation owning, managing or conducting a store, shop or place of business and not having in its employ and on duty, during all hours in which acts constituting the business of opticianry are carried on, a licensed dispensing optician engaged in supervision of such store, office, place of business or optical establishment, or representing to the public, by means of advertisement or otherwise or by using the words, "optician, licensed optician, optical establishment, optical office, ophthalmic dispenser," or any combination of such terms within or without such store representing that the same is a legally established optical place of business duly licensed as such and managed or conducted by persons holding a dispensing optician's license, when in fact such permit is not held by such person, firm or corporation, or by some person employed by such person, firm or corporation and on the premises and in charge of such optical

business, shall be guilty of a Class 1 misdemeanor. (1951, c. 1089, s. 19; 1981, c. 600, s. 17; 1993, c. 539, s. 644; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 90-253. Exemptions from Article.

Nothing in this Article shall be construed to apply to optometrists, or physicians trained in ophthalmology who are authorized to practice under the laws of this State, or to an unlicensed person working within the practice and under the direct supervision of the optometrist or physician trained in ophthalmology. An apprentice or intern registered with the Board and working under direct supervision of a licensed optician, optometrist or physician trained in ophthalmology will not be deemed to have engaged in opticianry by reason of performing acts defined as preparation and dispensing, provided the apprentice is in compliance with the rules of the Board respecting the training of apprentices.

As used in this section, "supervision" means the provision of general direction and control through immediate personal on-site inspection and evaluation of all work constituting the practice of opticianry and the provision of consultation and instruction by a licensed dispensing optician, except that on-site supervision is not required for minor adjustments or repairs to eyeglasses. (1951, c. 1089, s. 20; 1981, c. 600, s. 18.)

§ 90-254. General penalty for violation.

Any person, firm or corporation who shall violate any provision of this Article for which no other penalty has been provided shall, upon conviction, be fined not more than two hundred dollars (\$200.00) or imprisoned for a period of not more than 12 months, or both, in the discretion of the court.

Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reasons of the violation. The venue for actions brought under this subsection shall be the superior court of any county in which such acts are alleged to have been committed or in the county where the defendants in such action reside. (1951, c. 1089, s. 21; 1981, c. 600, s. 19.)

§ 90-255. Rebates.

It shall be unlawful for any person, firm or corporation to offer or give any gift or premium or discount, directly or indirectly, or in any form or manner participate in the division, assignment, rebate or refund of fees or parts thereof with any ophthalmologist, optometrist, or wholesaler, for the purpose of diverting or influencing the freedom of choice of the consumer in the selection of an ophthalmic dispenser. (1951, c. 1089, s. 23; 1981, c. 600, s. 20.)

§ 90-255.1. Sale of flammable frames.

No person shall distribute, sell, exchange or deliver, or have in his possession with intent to distribute, sell, exchange or deliver any eyeglass frame or sunglass frame which contains any form of cellulose nitrate or other highly flammable materials. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. (1971, c. 239, s. 1; 1993, c. 539, s. 645; 1994, Ex. Sess., c. 24, s. 14(c).)