

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1107

S. P. 361

In Senate, February 26, 1973

Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Hichens of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Revise the Laws Relating to the Practice of Optometry.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 32, c. 35-A, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 35-A, to read as follows:

CHAPTER 35-A

OPTOMETRISTS

SUBCHAPTER I

GENERAL PROVISIONS

§ 2561. Definitions

The practice of optometry is defined as any one or any combination of the following practices:

1. Eye examination. The diagnostic examination of the eye and related structures to ascertain defects or abnormalities and to detect the presence of eye diseases;
2. Functional examination. The determination of the accommodative or refractive states of the human eye and evaluation of visual functions;
3. Correctional treatment. The correction of vision problems without the use of drugs, medicine or surgery by prescribing or adapting ophthalmic lenses, including contact lenses, and other optical aids, and by using other corrective procedures to preserve, restore or improve vision;

4. Fitting of eyeglasses. The fitting, bending and adjusting of eyeglasses with ophthalmic lenses, except that this subsection shall not be considered as the practice of optometry providing the fitting, bending and adjusting is by order of and under the responsibility of an optometrist or ophthalmologist;

5. Replacement of lens. The replacement or duplication of an ophthalmic lens without a written prescription from a person licensed under the laws of this State to practice either optometry or medicine.

An ophthalmic lens within the meaning of this section shall be any spectacle lens or contact lens which has a spherical, cylindrical or prismatic power or value of any lens ground pursuant to a written prescription.

SUBCHAPTER II

BOARD OF OPTOMETRY

§ 2565. Appointment; tenure; vacancies; removal

The State Board of Optometry, as heretofore established and hereinafter in this chapter called the "board," shall consist of 5 persons appointed by the Governor, with the advice and consent of the Council. They shall have been resident optometrists, engaged in the actual practice of optometry in this State for a period of at least 5 years prior to their appointment. They shall be appointed for terms, as the terms of the present members expire, so that eventually the term of one member shall expire each year, and each shall hold office for a term of 5 years and until his successor is appointed and qualified. Any vacancy in said board shall be filled by the appointment of a person, qualified as aforesaid, to hold office during the unexpired term of the member whose place he fills. Any member of said board may be removed from office, for cause, by the Governor with the advice and consent of the Council. The board shall have a common seal.

§ 2566. Officers; compensation; meetings; rules and regulations

The board shall annually elect from its members a president and a secretary who shall be treasurer. They shall severally have authority, during their term of office, to administer such oaths and take such affidavits as are required by this chapter, certifying thereto under their hand and the seal of the board. The treasurer shall receive all fees, charges and assessments payable to the board, and account for and pay over the same according to law. The board shall meet at least once in each year at Augusta, and, in addition thereto, whenever and wherever the president and secretary thereof shall call a meeting. A majority of said board shall constitute a quorum.

The members of the board shall each receive \$25 for each day actually engaged in the duties of his office, and actual expenses incurred in connection therewith, except that the secretary of said board shall receive an annual salary of \$500. Any year in which the income of the board, from examination fees and annual license fees collected under this chapter, plus any unexpended balances on hand, is not sufficient to pay members of the board, available funds shall be prorated, except that the secretary's compensation shall have prior claim to available funds.

The secretary shall keep a full record of the proceedings of said board, which shall be open to public inspection at all reasonable times.

§ 2567. Records; rules and regulations

The board shall keep and maintain the following books and records:

1. Standards for admission. The board shall from time to time establish and record, in a record kept for that purpose, a schedule of minimum requirements which must be complied with by applicants for examination before they can be examined or receive a certificate. These qualifications shall include requirements that the applicant:

- A. Be at least 21 years of age,
- B. Be of good moral character,
- C. Be a citizen of the United States,
- D. Have succeeded in an examination as described in section 2572.

2. Standards for renewal. The board shall, from time to time, establish and record in a record kept for that purpose, a schedule of minimum requirements for renewal of licenses of previously licensed practitioners. These qualifications shall include:

A. In all cases the board shall be satisfied that the applicant has previously complied with the provisions of subchapter IV or, in the case of an applicant whose license has been suspended under subchapter IV, until he has given satisfactory proof of an intent to comply in the future with such rules.

3. Standards for minimum eye examination. In a like manner the board shall establish and put on record a schedule for a competent professional eye examination which standards shall include:

- A. History of visual problems and care;
- B. Visual acuity of each eye uncorrected and with best correction;
- C. Examination for any abnormal condition or significant characteristics of internal and external ocular tissues;
- D. Advice for medical referral when indicated;
- E. Objective and subjective refraction of the eyes;
- F. Cover test or muscle balance tests; or both.

Each optometrist shall maintain a complete record of all eye examinations given. Each optometrist shall include in his examination record the findings under paragraphs A through F, as well as any prescriptions or programs of corrective procedure. Such information shall be available from the optometrist for a period of not less than 10 years.

4. Minimum prescription requirements. In a like manner the board shall establish and put on record the minimum requirements for optometric prescriptions which shall include:

A. For ophthalmic lenses, other than contact lenses:

- (1) Dioptic power of spheres, cylinders and prisms, axis of cylinders and position of base of prisms;
- (2) Designation of pupillary distance;
- (3) Type and form of lenses;
- (4) Description of type, and placements of reading segments in multifocal lenses;
- (5) Placement of optical centers for distance-seeing and near-point seeing;
- (6) Name of patient, date of prescription and name and office location of prescriber.

B. For contact lenses:

- (1) Base curve, peripheral curve, intermediate curve;
- (2) Power;
- (3) Size of lens;
- (4) Size of optical zone;
- (5) Thickness;
- (6) Edge shape;
- (7) Color;
- (8) Form.

C. All prescriptions shall be reduced to writing and placed on file as provided in subsection 3.

5. Rules and regulations. The board shall make such rules and regulations, not inconsistent with law, as may be necessary to govern the practice of optometry, including provisions which shall:

A. Govern the time, place and manner of conducting state board examinations in optometry, and the manner and form in which applications for such examination shall be filed;

B. Establish fees for registration and licensing under subchapter III;

C. Govern the ethical practice of optometry;

D. Make such other rules and regulations as shall be necessary for the proper performance of its duties.

§ 2568. Annual report

The board shall make an annual report of its proceedings to the Governor on or about the first Monday in July of each year, which shall contain an account of all moneys received and disbursed by it.

SUBCHAPTER III REGISTRATION

§ 2571. Registration required

No person shall practice optometry in this State unless he shall first obtain a certificate of registration from the board, but this chapter shall not apply to persons already licensed to practice medicine within this State.

§ 2572. Examination; fees; registration

Except as provided in section 2574, every person before beginning the practice of optometry in this State shall pass an examination before the board. At the discretion of the board such examination may consist of tests in basic sciences; in anatomy and physiology of the eye; pathology; practical, theoretical and physiological optics; practical and theoretical optometry; and such other phases of optometric knowledge and skill as the board may deem essential. Any person, having signified to said board his desire to be examined, shall appear before the board at such time and place as they may designate and, before such examination, shall pay to said board a sum not in excess of \$100, as established by the board. All persons successfully passing such examination shall be registered, in a record which shall be kept by the secretary of said board, as licensed to practice optometry and shall receive a certificate of such registration issued by said board.

§ 2573. Licensing

1. Annual renewal. Every registered optometrist practicing in the State shall annually, before the first day of April, pay to the board a license renewal fee not in excess of \$100 as established by the board under section 2567, for each office location.

2. Nonactive license. Every registered optometrist not practicing within the State shall, upon payment of an annual license renewal fee not in excess of \$100 as established by the board, be issued a nonactive license renewal certificate. Said fee shall be payable to the board before the first day of April of each year. Should a holder of such a nonactive license renewal certificate desire to practice within the State, he shall so notify the board in writing, including a statement of his proposed office location, and except as hereinafter provided, he shall forthwith be issued an active license certificate by the board.

3. Examination. Every registered optometrist holding a nonactive license renewal certificate for a period of 3 years or more, who desires an active license certificate, shall be required to submit to a practical examination conducted by the board. If the results of such examination are satisfactory, he shall then be issued an active license certificate authorizing him to practice in this State. Said active license certificate shall be renewed annually as provided in subsection 1.

4. Default. In case of default in payment of any license renewal fees by any registered optometrist, his certificate may be revoked by the board under this subchapter IV.

§ 2574. Reciprocity

1. Application. Upon application and payment of a sum not in excess of \$100 as established by the board by section 2567, any person practicing optometry under the laws of another state may be granted a license to practice in this State providing:

A. Such person holds an original license obtained by examination and has practiced continuously for the immediate past 5 years in the state in which he is presently licensed.

B. The educational requirements of the original licensing state were equivalent to those of this State at the time such person commenced said practice.

C. Such person must not have previously failed the examination given by the board of optometry of this State.

D. Such person has furnished a letter from the president of the state board and the president of the district or regional optometric association, if such organization exists, in the state in which he is practicing attesting to his character and professional ethics. Each letter shall be submitted directly by the writer to the secretary of the board.

E. Such person has submitted an affidavit to the effect that he intends to practice in this State within one year of the receipt of his license.

F. The state from which such person is applying for reciprocity allows similar reciprocal licensing for optometrists registered in this State.

2. Examination. Any person applying for a reciprocal license under the terms of this section may at the discretion of the board be required to submit to a practical examination with regard to professional and technical proficiency.

3. Issuance of reciprocity licenses. The issuance of reciprocity licenses will be at the sole discretion of the board.

4. Revocation. A reciprocity of license shall be revoked by the board if the applicant does not establish a practice in this State within one year after receipt of his license. A reciprocity license shall be revoked upon the removal from this State of any optometrist so certified.

§ 2575. Display of certificates

Every person to whom a certificate of registration and current certificate of annual license renewal are granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

§ 2576. Educational programs

All optometrists now or hereafter licensed in the State of Maine shall be required to take annual courses in subjects related to the practice of the profession of optometry, to the end that the utilization and application of new techniques, scientific and technical advances and the achievements of research will assure comprehensive vision care to the public. The length of study shall be determined by the board, but in no event shall it exceed 20 hours in any calendar year. Attendance must be at a course or courses approved by the board and is to be certified to the board upon a form provided by the board and shall be submitted by each optometrist at the time he makes application to the board for the renewal of his license and shall accom-

pany the annual renewal fee. The board is authorized to use up to $\frac{1}{2}$ of its annual renewal fees for the purpose of contracting with institutions of higher learning, professional organizations or qualified individuals for the providing of educational programs approved by the board. In no instance may the board require a greater number of hours of study than are available at approved courses held within the State of Maine, and the board shall be permitted to waive this requirement in cases of illness or undue hardship. If an applicant for a renewal of license fails to comply with this provision and no action has been taken by the board to waive the requirements because of the causes specified, then the board shall not renew the license, except that in its discretion, it may renew the license conditionally, with the provision that within 6 months the applicant shall fulfill the requirements.

SUBCHAPTER IV

REVOCATION, REFUSAL OR SUSPENSION OF CERTIFICATE

§ 2581. Revocation, refusal or suspension of certificate

The board shall refuse to issue or renew, or the Administrative Hearing Commissioner, as designated by Title 5, chapters 301 to 307, may suspend or revoke any certificate of registration for any one or more of the following causes:

1. General grounds. General grounds as described in section 2582.
2. Unprofessional conduct. Unprofessional conduct as described in section 2583.
3. Unauthorized associations. Unauthorized associations as described in section 2584.

No certificate shall be revoked or suspended for any of the foregoing causes unless the accused has been given at least 10 days' notice in writing of the charge against him and has been afforded the opportunity for a public hearing before the Administrative Hearing Commissioner.

§ 2582. General grounds

The sanctions of section 2581 may be imposed on any of the following general grounds:

1. Equipment. If such person fails to have and maintain the essential equipment and instruments for performance proper to the sphere of ophthalmic practice which he holds himself out to the public as practicing.
2. Location. If such person practices in or on premises where any materials other than those necessary to render his services are dispensed to the public.
3. False name. If such person practices under a name other than that given in the certificate of registration.
4. False representation. If such person represents himself to the public as something other than an optometrist, by which shall be meant as an op-

tician, eye physician or by any other designation which would confuse the nature of his licensed practice. The following titles however shall be considered lawful.

John Doe, O. D., Optometrist;

John Doe, O. D.;

John Doe, Optometrist;

Dr. John Doe, Optometrist;

Doctor John Doe, Optometrist.

5. Fraud in practice. If such person is guilty of fraud or deceit in his practice.

6. Felony conviction. If such person has been convicted of a felony as evidenced by a certified copy of the record of the court convicting.

7. Inebriety and drug addiction. If such person is an habitual inebriate or is addicted to the use of narcotic, hallucinogenic or habit forming drug.

8. Disease. If such person practices optometry while knowingly infected with a contagious or infectious disease.

9. Incompetence. If such person is guilty of gross professional incompetence.

10. Fraud in application for practice. If such person has been guilty of fraud or deceit in the answering of any question required to be answered as to his qualification for the purpose of being admitted to examination or acquiring a certificate to practice optometry.

11. Solicitation and peddling. If such person engages in house to house solicitation for the purpose of fitting, selling or peddling spectacles, eye-glasses, or lenses, or in any way otherwise peddles his services.

12. Maintaining an unauthorized additional office. If such person maintains more than one office to practice optometry without the prior written approval of the board. The board shall not authorize more than one principal office and one additional office.

13. Failure to display certificate. If such person fails to display his certificate of registration as required by section 2575.

§ 2583. Unprofessional conduct

The sanctions of section 2581 may be imposed for any of the following conduct, deemed unprofessional on the part of a holder of a certificate of registration to practice optometry:

1. Fraud. The obtaining of any fee by fraud or misrepresentation, or the practice of any deception or fraud upon a patient.

2. Practice outside optometry. Offering health services outside the field of optometry and more particularly by prescribing, selling or dispensing hearing aids.

3. Solicitation. The employment of solicitors for, or the solicitation of practice directly or indirectly, but the following shall nevertheless be considered lawful:

Telephone listings that use no bold type or display form; professional cards that contain only the optometrist's name, title, address, telephone number, practice limited to a specialty or office hours; announcements in newspapers or direct mail of opening or closing a practice provided same be in keeping with size, style, frequency and duration deemed ethical by other health practices of the community; and informational lettering on doors, windows and signs that conforms to size and style used by other health practices of the community.

4. Advertising. The advertisement of prices, free services, credit terms, or superior professional skills or services or the making of any form of specific guarantee.

5. Fee splitting. The splitting or dividing of any fee with any person not an associate as provided in section 2584, or the giving or acceptance of any rebates from an optician or ophthalmic dispenser.

6. Minimum examination. Failure to provide patients with a sufficient minimum examination as determined by the board under section 2567, subsection 3, or failure to comply with the standards established under section 2567, subsection 4 for optometric prescriptions.

§ 2584. Unauthorized associations

An optometrist shall practice only in an individual capacity under his own name or in association with a licensed practitioner of optometry or of another of the healing arts and sciences. The following shall be deemed unauthorized associations subject to the sanctions of section 2581:

1. Associations. Association in practice with any person, corporation or partnership not licensed to practice optometry or another of the healing arts;

2. Hiring. The employment, hiring, procuring or inducing of a person not licensed to practice optometry to perform any of the practices of optometry as defined in section 2461, except as a technician acting upon the order and under the responsibility of an optometrist or an ophthalmologist without assuming evaluation or interpretation of examination findings or corrective treatment;

3. Aiding unauthorized practice. The aiding and abetting in the practice of optometry of any person not licensed to practice in this State;

4. Loan of certificate. The lending, leasing or in any other manner placing of one's certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this State;

5. Mercantile employment. The practice of optometry as a full or part-time employee of any mercantile establishment or directly or indirectly encouraging one's optometric services to be promoted as part of any mercantile or commercial establishment. In this prohibition shall be included the practice of optometry as a lessee of a commercial or mercantile establishment involved in the selling of spectacles, frames, mounting, lenses or other optical devices;

6. Continuing unauthorized associations. The continuance of an optometrist directly or indirectly in the employ of or in association with any optometrist after knowledge that such optometrist is engaged in the violation of the provisions of this chapter.

§ 2585. Corporate practice of optometry

No registered optometrist, under this chapter, shall associate himself in any way with any person not a registered optometrist nor any copartnership, firm or corporation for the promotion of any commercial practice for profit or division of profit. Any optometrist registered under this chapter guilty of such conduct or violation of this section shall be punished by having his certificate and registration to practice optometry in this State suspended or revoked. No certificate of registration shall be suspended or revoked for any of the foregoing causes unless the person accused has been given at least 10 days' notice in writing of the charge against him and afforded a public hearing before the board.

§ 2586. Succession in practice

An optometrist taking over an established practice shall clearly indicate that he is responsible individually for the practice, but he shall be permitted to use the term: "succeeded by," "successor to," or "succeeding" for a period not exceeding 2 years.

§ 2591. Penalties

Whoever engages in the practice of optometry in this State, without first having been duly registered as provided in sections 2571 and 2574, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$200. To open an office for the purpose of practicing optometry or to announce to the public in any way an intention to practice optometry in any county in the State shall be prima facie evidence of engaging in the practice of optometry within the meaning of this section.

§ 2592. Fraudulent acts

It shall be unlawful for any person to falsely impersonate a licensed optometrist of like or different name, or to buy or sell or fraudulently obtain a diploma or certificate of registration issued to another. Whoever violates this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$200.

§ 2593. Referrals by optical firms prohibited

It shall be unlawful for any person engaged in the business of manufacturing, selling or dispensing any ophthalmic materials to influence in any man-

ner or attempt to influence any patron in the choice of an optometrist or physician for the purpose of examining, treating, dispensing or prescribing ophthalmic materials for such patrons. Any violation of this section shall constitute a misdemeanor punishable by a fine of not more than \$100.

§ 2594. Public aid ocular services

All agencies, commissions, clinics and bureaus administering relief, public assistance, public welfare assistance, social security, health insurance or health services under the laws of this State may accept the service of licensed optometrists for any service covered by their licenses relating to any persons receiving benefits from said agencies or commissions and shall pay for such services in the same way as practitioners of other professions may be paid for similar services. None of said governmental agencies, or their agents, officials or employees thereof, including the public schools, in the performance of their duties shall in any way show discrimination among licensed ocular practitioners.

Whoever violates or fails to comply with this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both.

§ 2595. Solicitation

It shall be unlawful for any person, firm, partnership, company or corporation to solicit eye examinations or visual services, or to advertise the sale of eyeglasses, spectacles, lenses, frames, mountings, prisms or any other optical appliances or devices commonly included in the prescription of optometrists or physicians by newspaper, radio, window display, television, telephone directory display advertisement or any other means of advertisement; or to use any method or means of baiting, persuading or enticing the public into buying eyeglasses, spectacles, lenses, frames, mountings, prisms or other optical appliances or devices for visual correction. This section shall not render any advertising media liable for publishing any advertising furnished them by a vendor of said commodity or material; nor shall anything in this section prevent ethical educational publicity or advertising by legally qualified health groups that does not violate presently existing laws of Maine, nor prevent the proper use of ethical professional notices. Nothing in this section shall prohibit the advertisement or sale of sunglasses equipped with non-prescriptive lenses, industrial glasses or goggles with nonprescriptive lenses used for industrial eye protection, when sold as merchandise at any established place of business and when the selection of these is at the discretion of the purchaser.

The term "window display" as used in this section shall not prevent the display of ophthalmic frames in windows.

This section is passed in the interest of public health, safety and welfare, and its provisions shall be literally construed to carry out its objects and purposes.

Whoever violates any provision of this section shall be punished for the first offense by a fine of not less than \$50 nor more than \$200, or by im-

prisonment for not more than 3 months, or by both, or for a subsequent offense, by a fine of not less than \$200 nor more than \$500, or by imprisonment for not less than 3 months, nor more than 6 months, or by both.

Sec. 2. R. S., T. 32, c. 35, repealed. Chapter 35 of Title 32 of the Revised Statutes is repealed.

STATEMENT OF FACT

By this bill, the Legislature intends to correct defects in the present optometry law as set forth by the Supreme Judicial Court in its decision in **Small vs. Maine Board of Registration and Examination in Optometry**, 293 A2d 786 (Me. 1972). In essence the Court criticized the present law in 3 areas:

1. The rule-making power delegated to the board is unconstitutionally broad. (293 A2d at 788-789)
2. The provisions of present 32 MRSA § 2452 are obliquely and awkwardly worded and make enforcement of its prohibitions on corporate practice extremely difficult. (293 A2d at 789-790)
3. The definition of the practice of optometry does not clearly distinguish the functions which must be performed by an optometrist from those which may be performed by an "optical mechanic." (293 A2d at 790-791)

Because of the sweeping nature of these criticisms, it was felt that the entire prior law should be repealed and replaced with a more detailed and comprehensive chapter on optometric practice.

1. The Court held the delegation of rule making and enforcing power to the board to be too broad because the board and not the Legislature was determining what conduct constituted improper practice. In analyzing the faults of the present law, the Court cited with approval the Virginia statute regulating the practice of optometry. (Va. Code §§ 54-388, 390). The broad outlines of this statute, plus certain of its specific provisions have been incorporated in the present bill.

Violations of optometric practice are now classed in 3 categories: General grounds, unprofessional conduct and unauthorized associations. The first 2 generally incorporate the prior prohibitions of 32 MRSA § 2556, plus the prior rules and regulations of the board. Certain additions have been taken from the Virginia law, e.g. on the loan of a certificate, and there are other changes from the prior combination of statutory and rule-defined prohibitions, but these are generally minor in scope. An exception are new provisions defining competent professional examinations and prescriptions. These were felt to be necessary additions for effective protection of the public health.

2. To correct the deficiencies of the corporate practice section, the present bill incorporates a provision forbidding mercantile association (Draft § 2564 (5)), plus a provision prohibiting a commercial arrangement on referrals (Draft § 2572), together with a restatement of the prior corporate practice section (32 MRSA § 2452; Draft § 2565). In essence, the present bill does not seek to change the scope of the prior law, but to redefine it in response to the court's criticisms.

3. The definition of what constitutes optometric practice remains in Section 2451. The basic provisions have been tightened up to provide a better distinction between the diagnostic and correctional work of an optometrist, and the mechanical work of an optician.

Certain other changes in the prior law should be noted. It was felt that in addition to more clearly setting forth legislatively prohibited conduct, the actual function and power of the board (whose name is changed to "Board of Optometry") should be specifically delineated. Section 2503 of the bill, therefore, establishes the board's function with regard to regulation of general aspects of optometric practice and more clearly sets forth the legitimate areas of its discretion.

Otherwise, provisions of the prior law have been retained, although perhaps reshuffled in order to obtain organizational clarity.