

MAINE STATE LEGISLATURE

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Chapter 76.

Registration of Optometrists.

Sec. 1. Board of registration in optometry; appointment; tenure; vacancies; removals.—The state board of registration and examination in 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. (R. S. c. 69, § 1. 1947, c. 333, § 1.)

Sec. 2. 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 the provisions of 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 \$10 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 \$200. 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, as aforesaid, 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. The board shall from time to time establish and record, in a record kept for that purpose, a schedule of the minimum requirements which must be complied with by applicants for examination before they can be examined or receive a certificate. In like manner the board shall establish and put on record a schedule of the minimum requirements and rules for the recognition of schools of optometry, so as to keep the requirements of proficiency up to the average standard of other states. The board shall make such rules and regulations, not inconsistent with law, as may be necessary to govern the practice of optometry; but no rule or requirement shall be made that is unreasonable or that contravenes any provision of this chapter. (R. S. c. 69, § 2. 1947, c. 333, § 2. 1949, c. 336, § 1.)

See c. 16, § 2, re bond of state officials; c. 18, § 31, re fees, fund for payment of expenses of board, etc.

Sec. 3. Examination; fees; registration.—Except as provided in section 8, 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 examina-

tions 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 the sum of \$15 and, if he shall successfully pass said examination, shall pay to said board a further sum of \$10 on the issuance to him of a certificate. 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 also receive a certificate of such registration to be signed by the president and secretary of said board. (R. S. c. 69, § 3. 1947, c. 333, § 3. 1949, c. 336, § 2.)

Sec. 4. Annual report.—The board shall make an annual report of its proceedings to the governor on or before the 1st Monday in July of each year, which shall contain an account of all moneys received and disbursed by them. (R. S. c. 69, § 4. 1949, c. 336, § 3.)

See c. 16, § 5, re uniform fiscal year.

Sec. 5. License fee.—Every registered optometrist shall annually, before the 1st day of April, pay to the board the sum of \$5 as a license renewal fee for such year; and in case of default in such payment by any person his certificate may be revoked by the board. (R. S. c. 69, § 5. 1949, c. 336, § 4.)

Sec. 6. Practice of optometry defined.—The practice of optometry is defined as any 1 or any combination of the following practices:

I. The examination of the human eye, without the use of drugs, medicines or surgery to ascertain the presence of defects or abnormal conditions which can be corrected by the use of ophthalmic lenses, prisms or ocular exercises;

II. The employment of objective or subjective mechanical means to determine the accommodative or refractive states of the human eye or the range of power of vision of the human eye;

III. The prescription or adaptation, without the use of drugs, medicines or surgery, of lenses, prisms or ocular exercises to correct defects or abnormal conditions of the human eye or to adjust the human eye to the conditions of special occupation and the fitting, bending and adjusting of spectacles and eyeglasses with ophthalmic lenses for the betterment of vision;

IV. The replacement or duplication of an ophthalmic lens without a prescription from a person authorized under the laws of this state to practice either optometry or medicine. The provisions of this subsection shall not be construed so as to prevent an optical mechanic from doing the merely mechanical work in such a case.

An ophthalmic lens within the meaning of this and the following section shall be any lens which has a spherical, cylindrical or prismatic power or value, or any lens ground pursuant to a prescription. (R. S. c. 69, § 6.)

Cited in *State v. Corriveau*, 131 Me. 79, 159 A. 327.

Sec. 7. Practice without registration. — No person shall practice optometry in this state unless he shall first obtain a certificate of registration from the board; but the provisions of this chapter shall not apply to persons authorized under the laws of this state to practice medicine within this state, nor to resident merchants so long as they shall sell spectacles only, that do not contain ophthalmic lenses. (R. S. c. 69, § 7. 1949, c. 336, § 5.)

See c. 66, §§ 1-8, re practice of medicine.

Sec. 8. Certificates to optometrists licensed in other states; exceptions; fee.—Upon application and the payment of the sum of \$50 said board

may issue, without the prescribed examination, to persons practicing optometry in those states which, in the opinion of the board, maintain a standard in the requirements of the practice of optometry equal to the standard of this state, a certificate to practice in this state, which certificate shall be filed in the same manner as that issued to residents of the state; provided, however, that such certificate shall be issued only to the residents of such states as allow similar privileges to residents of this state. (R. S. c. 69, § 8. 1949, c. 336, § 6.)

Sec. 9. Certificates displayed. — 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. Whenever practicing the profession of optometry outside of, or away from said office, he shall deliver to each person so fitted with glasses, a statement, which shall contain his signature, home post-office address and the number of his certificate of registration. (R. S. c. 69, § 12. 1949, c. 336, § 8.)

Sec. 10. Certificate refused, suspended or revoked.—The board may refuse to issue or refuse to renew, or may suspend or revoke any certificate of registration for any 1 or more of the following causes:

- I. Conviction of felony as evidenced by a certified copy of the record of the court convicting;
- II. Continued practice of optometry by a person knowingly having a contagious or infectious disease;
- III. Gross malpractice;
- IV. Advertising by means of false or deceptive statements;
- V. Peddling from door to door;
- VI. Habitual drunkenness or habitual addiction to the use of morphine or cocaine or habit forming drugs;
- VII. Practicing under a name other than that given in the certificate of registration.

No certificate 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. (R. S. c. 69, § 14. 1947, c. 333, § 4.)

Sec. 11. Penalty.—Whoever engages in the practice of optometry in this state, without first having been duly registered as provided in sections 7 and 8, shall be deemed guilty of a misdemeanor and shall be punished by 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. (R. S. c. 69, § 15. 1947, c. 333, § 5. 1949, c. 336, §§ 10, 11.)

Sec. 12. Corporate practice of optometry; violation of rules of the board. — No person who shall receive a certificate of registration or license to practice optometry in this state shall assign, lease, sublet, give or grant unto any person, copartnership, firm or corporation the right or privilege to practice optometry, directly or indirectly, under said registration and 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, which enables any such person, copartnership, firm or corporation to engage, either directly or indirectly, in the practice of optometry in this state; and any optometrist, registered under the provisions of this chapter, guilty of such conduct or of violation of the

provisions of this section or of willfully violating any of the rules and regulations of the board promulgated as provided in this chapter, shall be punished by having his certificate and registration to practice optometry in this state suspended or revoked; provided that 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. (1949, c. 336, § 12.)

Sec. 13. Appeal. — A person whose certificate has been suspended or revoked may secure judicial review thereof by commencing, within 30 days after the decision of the board, an action in the superior court of Kennebec county against the board for the review of its decision. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the board or upon such person as the board may designate together with as many copies of the petition as there are members of the board and the party so served shall forthwith mail one such copy to each such board member. With its answer, the board shall certify and file with said court the original or a certified copy of all documents and papers and transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceeding under this section, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. An appeal may be taken from the decision of the superior court of Kennebec county to the supreme judicial court for the state of Maine, in the same manner, but not inconsistent with the provisions hereof, as is provided in civil cases. It shall not be necessary, in any judicial proceedings under this section, to enter exceptions to the rulings of the board and no bond shall be required for entering such an appeal. Upon the final determination of such judicial proceedings, the board shall enter an order in accordance with such determination. Pending such final determination and the entry of such order in accordance therewith, the action of the board in suspending or revoking the certificate of the petitioner shall be stayed by such an appeal. (1949, c. 336, § 12. 1951, c. 79.)