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CHAPTER 38.

 OPTICIANS

**SECTION 40‑38‑5.** Application of chapter; conflict of laws.

 Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to opticians regulated by the Department of Labor, Licensing and Regulation under this chapter. If there is a conflict between this chapter and Article 1, Chapter 1, Title 40, the provisions of this chapter control.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑10.** Board of Examiners in Opticianry; membership; nominations; terms; removal.

 (A) There is created the South Carolina Board of Examiners in Opticianry which consists of seven members. Five members must be licensed opticians appointed by the Governor upon nomination by all licensed opticians in this State through an election conducted by the board. The Governor may reject any or all of those nominated upon satisfactory showing as to the unfitness of those rejected. If the Governor declines to appoint any of the nominees, additional nominees must be elected and submitted in the same manner as the initial nominees. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. Two members must be members of the general public who do not derive their income or support from any optical or optical‑related business or who are not related to an optician or a person engaged in an optical‑related business. The members from the general public may be nominated by an individual, group, or association and appointed by the Governor in accordance with Section 40‑1‑45.

 (B) The members of the board serve terms of four years and until their successors are appointed and qualify.

 (C) The Governor may remove a member of the board in accordance with Section 1‑3‑240. No member may be removed without first giving the member an opportunity to refute the charges filed against the member, and the member must be given a copy of the charges at the time they are filed.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑20.** Definitions.

 As used in this chapter:

 (1) "Optician" means one who prepares and dispenses lenses, spectacles, eyeglasses, and appurtenances to the intended wearers on prescriptions from licensed physicians or optometrists and in accordance with these prescriptions, mechanically interprets, measures, adapts, fits, and adjusts lenses, spectacles, eyeglasses, and appurtenances to the human face for the aid or correction of visual or ocular anomalies of the human eye;

 (2) "Apprentice" means a qualified person registered by the board who is working under the supervision of a licensed optician, optometrist, or ophthalmologist and who is being trained in the practice of opticianry;

 (3) "Board" means the South Carolina Board of Examiners in Opticianry; and

 (4) "Direct supervision" means, with regard to a supervisee, the licensed optician must be on the premises at all times.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑30.** Unlawful to practice opticianry without license.

 It is unlawful for a person to practice as an optician without being licensed in accordance with this chapter. A person who displays a sign or in any way advertises himself to be an optician is deemed to be practicing opticianry within the meaning of this chapter.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑50.** Administration of Board by Department of Labor, Licensing and Regulation.

 The board must be administered by the Department of Labor, Licensing and Regulation in accordance with Article 1, Chapter 1, Title 40.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑60.** Adoption of bylaws to govern board proceedings.

 The board may adopt bylaws governing its own proceedings and promulgate regulations for the practice of opticianry and examination of applicants for the practice of opticianry.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑70.** Board responsibilities regarding examinations, investigations, and prosecutions.

 The board shall examine or provide for the examination of applicants for licenses in opticianry, investigate complaints, and investigate and prosecute violations of this chapter.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑80.** Collection of evidence for investigations and other board proceedings.

 For the purpose of conducting an investigation or proceeding under this chapter, the board or a person designated by the board may subpoena witnesses, take evidence, and require the production of documents or records which the board considers relevant to the inquiry.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑90.** Participation in hearing by board member filing complaint or conducting investigation.

 If a board member files a complaint or conducts the initial investigation of a complaint, the board member must not participate in the capacity as board member at the hearing of that complaint.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑100.** Injunctive actions allowed by board.

 The board may seek to enjoin violations of this chapter as provided for in Section 40‑1‑100.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑110.** Grounds for license revocation, suspension, or limitations, or for disciplinary action against licensee.

 (A) In addition to the grounds for disciplinary action provided in Section 40‑1‑110, the board may revoke, suspend, or otherwise restrict or limit the license of an optician or reprimand or otherwise discipline a licensee when it is established upon a satisfactory showing to the board that the licensee:

 (1) has been convicted of a felony or crime involving moral turpitude. Forfeiture of a bond or a plea of nolo contendere is considered a conviction;

 (2) has knowingly performed an act which in any way assists a person to practice opticianry illegally;

 (3) has caused to be published or circulated directly or indirectly fraudulent, false, or misleading statements as to the skill or methods of practice of an optician;

 (4) has failed to provide and maintain reasonable sanitary facilities;

 (5) is guilty of obtaining fees or assisting in obtaining fees under deceptive, false, or fraudulent circumstances;

 (6) has violated a provision of this chapter or a regulation promulgated under this chapter; or

 (7) has been guilty of using third‑party solicitation which is untruthful, deceptive, and coercive to obtain patronage.

 (B) In addition to all other remedies and actions provided for in this chapter, the license of an optician adjudged mentally incompetent by a court of proper jurisdiction automatically must be suspended by the board until the optician is adjudged by a court of competent jurisdiction or in any other manner provided by law as being restored to mental competency.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑115.** Jurisdiction of board.

 The board has jurisdiction over the action of licensees and former licensees as provided for in Section 40‑1‑115.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑120.** Disciplinary actions permitted by board; procedures.

 In addition to the sanctions the board may take against a person pursuant to Section 40‑38‑110, the board may take disciplinary action against a person as provided for in Section 40‑1‑120.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑130.** Denial of license on same grounds as for disciplinary actions.

 As provided for in Section 40‑1‑130, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑140.** Denial of license based on prior criminal record.

 A license for opticianry may be denied based on a person's prior criminal record as provided for in Section 40‑1‑140.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑150.** Voluntary surrender of license by licensee under investigation.

 A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40‑1‑150.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑160.** Right of aggrieved person to seek review of board decision.

 A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑170.** Payment of investigation and prosecution costs by violator.

 A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑180.** Collection of costs and fines.

 All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑190.** Confidentiality of proceedings under provisions of this chapter.

 All investigations and proceedings undertaken under the provisions of this chapter are confidential and all communications are privileged as provided for in Section 40‑1‑190.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑200.** Violations; penalty.

 A person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than fifty thousand dollars or imprisoned not more than one year. Each violation constitutes a separate offense. Penalties provided for in this chapter or in Article 1, Chapter 1, Title 40 may be imposed against a corporation, association, or person aiding and abetting in a violation.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑210.** Additional civil penalties and injunctive relief.

 In addition to initiating a criminal proceeding for a violation of this chapter, the board also may seek civil penalties and injunctive relief in accordance with Section 40‑1‑210.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑230.** Examinations; applications; fees; competency examinations; contact lens examinations.

 (A) A person desiring to be examined by the board must submit an application furnished by the board sixty days before the examination. The application must be accompanied by a fee established by the board in regulation and in accordance with Section 40‑1‑50(D).

 (B) An applicant for examination shall pass the opticianry competency examination prepared by the American Board of Opticianry, or if that examination is not available, an opticianry competency examination prepared by the board. Examinations in dispensing and other practical areas of opticianry may be conducted by the board. The board may not require an examination that is substantially duplicative of the national examination if the national examination is available.

 (C) An optician or applicant for licensure as a contact lens optician successfully shall complete a written qualifying contact lens examination prepared by the National Committee of Contact Lens Examination, or if that examination is not available, an equivalent examination prepared by the board.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑240.** Qualifications for licensure as optician or contact lens optician.

 (A) A person is qualified to receive a certificate of licensure as an optician if the person has:

 (1) graduated from an accredited public or private high school or secondary school of equal grade approved by the board or has completed an equivalent course of study approved by the board.

 (2)(a) received a certificate from a two‑year school of opticianry approved by the board;

 (b) a currently valid optician's license in another state;

 (c) been engaged in opticianry for not less than two years in a state that does not license opticians; or

 (d) had two years' apprenticeship under a South Carolina licensed optician, optometrist, or ophthalmologist. The board must approve in writing an apprenticeship before the apprenticeship commences, and the regulations of the board apply to the apprentice.

 (3) satisfactorily passed an examination conducted or recognized by the board and shows proficiency in processing a lens, frame, or any other optical device or appurtenance in accordance with an optometrist's or physician's prescription. Processing does not mean those tasks and functions in surface grinding performed by persons who work in a wholesale laboratory.

 Having met the requirements of this subsection and upon payment of a licensure fee established by the board in regulation, the board shall issue a certificate of licensure and shall enter the person in the board register as licensed to work as an optician.

 (B) A person is qualified to receive a certificate of licensure as a contact lens optician who has:

 (1) met all the requirements of subsection (A); and

 (2) satisfactorily passed a written qualifying contact lens examination conducted or recognized by the board.

 Having met the requirement of this subsection and upon payment of a licensure fee established by the board in regulation, the board shall issue a certificate of licensure and shall enter the person in the board register as licensed to work as a contact lens dispensing optician.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑250.** Apprentices and apprenticeships; promulgation of regulations.

 The board shall promulgate regulations for apprentice registration requirements and fees and for the regulation of apprentices and apprenticeships.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑260.** Annual renewal of licenses and registrations; fees; revocation for default; reinstatement; continuing education requirements.

 (A) A licensed optician or registered apprentice who desires to continue to be licensed or registered in this State annually, on or before the first day of October, shall pay a renewal fee, to be established by the board in regulation and in accordance with Section 40‑1‑50(D). In case of default in payment of the fee, the person's license or registration is automatically revoked if the board gives the licensee thirty days' notice in writing before the effective date of revocation. Deposit of the notice in the United States Postal Service addressed to the person at the person's last place of residence or business, registered with the board, with postage prepaid, constitutes legal service of the notice. No license or registration may be revoked for nonpayment of the renewal fee if within the thirty‑day notice period the person pays a renewal fee and a penalty established by the board in regulation. A person whose license or registration has been revoked for failure to pay the renewal fee may apply to have it reinstated upon payment of all renewal fees and a penalty as established by the board in regulation. If the license or registration has been lapsed for more than two years, the person shall appear before the board, which shall determine if the license or registration should be reinstated and the terms under which the reinstatement is to be made. A person holding a license or registration in South Carolina not practicing in this State who wishes to keep the license or registration current, annually may pay an inactive license or registration fee established by the board in regulation. If the person decides to resume practice in this State, the person shall pay the fee being charged active practitioners in South Carolina at that time.

 (B) An optician or apprentice annually shall attend a minimum of four hours of continuing education courses or meetings, one hour of which may be in office management or administration. The instruction must be on subjects relative to opticianry at board‑approved and recognized educational seminars and courses or accredited institutions of learning. An optician holding a contact lens license must obtain one additional hour of continuing education courses or meetings, which must be in contact lens education at board‑approved and recognized educational seminars and courses or accredited institutions of learning. Satisfactory proof of compliance with this subsection is a prerequisite for annual renewal.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑270.** Fitting of contact lenses and professional determinations by opticians prohibited; exception.

 Notwithstanding any other provision of law, with respect to contact lenses, an optician shall act upon receipt of and based on a prescription for the lenses by an ophthalmologist or optometrist. Nothing in this chapter may be construed to allow an optician to fit contact lenses or to make professional determinations as lenses to the specifications of these lenses unless under the supervision of an ophthalmologist or optometrist. If supervision is not direct and if the optician dispenses the contact lenses outside of the presence of the ophthalmologist or optometrist, the optician shall instruct the patient to return to the prescribing ophthalmologist or optometrist for verification of the fitting as soon as an appointment may be obtained.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑280.** Ophthalmic dispensing of services and appliances; prescription required; exceptions.

 The services and appliances related to ophthalmic dispensing must be dispensed, furnished, or supplied to the intended wearer or user only upon prescription issued by a physician or an optometrist; however, duplications, replacements, reproductions, or repetitions may be provided without prescription and are deemed to be ophthalmic dispensing, as if performed on the basis of a written prescription. Oral prescriptions are permitted if the optician maintains a written record. Contact lenses may be dispensed only in accordance with Section 40‑38‑270.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑290.** Dispensing of spectacles to public from manufacturing or warehouse locations prohibited.

 It is unlawful for an ophthalmic manufacturer, wholesale supply house, or any of their employees, whether licensed as an optician or unlicensed, to dispense spectacles to the public from its manufacturing or wholesale locations.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑300.** Use of optician's license by unlicensed persons unlawful; assistants under supervision of opticians; delegation of tasks.

 (A) It is unlawful for an optician to permit his license to be used by an unlicensed person, and it is unlawful for an unlicensed person to practice or attempt to practice or conduct optician business under the rights and privileges conferred upon another person who is a licensed optician.

 (B) Notwithstanding any other provision of law, an optician may delegate tasks to assistants working under his direct supervision. However, under no circumstances may an assistant be allowed to perform a contact lens fitting. Nothing in this section precludes an optician who is supervising an assistant from being absent from the practice for reasonable periods during the working day including, but not limited to, lunch or other customary, practice‑related absences; however, no contact lenses may be dispensed during the optician's absence.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑310.** Unlawful advertising, sales, and pricing acts regarding ophthalmic goods and services; required disclosures.

 (A) It is unlawful for a person to disseminate, directly or indirectly, or cause to be disseminated any untruthful, deceptive advertisement, or representation concerning eye examinations, ophthalmic goods, ophthalmic services, or the practice of opticianry. It is unlawful for a person, partnership, or corporation to disseminate, directly or indirectly, or cause to be disseminated any untruthful, impossible, improbable, misleading, or deceptive advertisement or representation concerning the terms, guarantee, or warranty which relates to the procurement of ophthalmic goods or services.

 (B) It is unlawful for a person to offer or give eye examinations, eyeglasses, spectacles, lenses, or any part used in connection with them as a premium or bonus with merchandise or in any other manner to induce trade. This section does not prohibit giving ophthalmic products incidental to the use of the product being offered or the offering of a reduced price, sale, or discount on purchases.

 These disclosures must be made with any offer:

 (1) if the offered price is represented as being a reduced price, sale price, or discounted price, the offer shall disclose the reduced price, sale price, or discounted price is from the offeror's regular selling price or shall disclose any other price and its source which serves as the standard from which the offeror represents the offered price as being a reduced price, sale price, or discounted price;

 (2) the date the offer terminates.

 (C) It is unlawful for a person to disseminate price information concerning ophthalmic goods and services without including an advertised price for:

 (1) eyeglasses includes single vision or multi‑focal lenses;

 (2) contact lenses refers to hard or soft contact lenses;

 (3) ophthalmic materials includes all dispensing fees;

 (4) ophthalmic materials includes an eye examination; and

 (5) eyeglasses includes both frame and lenses.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑320.** Use of third‑party solicitations; restrictions.

 Nothing in this chapter prevents opticians from using third‑party solicitation which does not involve uninvited, in‑person solicitation of persons who, because of their particular circumstances, may be vulnerable to undue influences.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑330.** Regulations by board concerning employment, location and number of stores, advertising, and display of products prohibited.

 The board has no authority to promulgate regulations governing the employment of opticians, the location of optical stores, the number of optical stores operated, the advertising of optical products or services, or the manner in which these products can be displayed.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑340.** Advertising by dispensing optician under corporate name, trade name, or as successor to another optician.

 Dispensing opticians may hold themselves out as doing business and may advertise under their corporate name, trade name, or as successor to another optician in the State, and the board may not promulgate regulations restricting these rights.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑350.** Display of certificate of licensure; effect of failure to display certificate.

 (A) A person to whom a certificate of licensure is granted under this chapter shall display it in a conspicuous place in the person's principal office or place of business or employment. A separate certificate of licensure as a contact lens optician granted by the board also must be displayed by an optician eligible to dispense contact lenses.

 (B) A person who fails, neglects, or refuses to display the certificate of licensure is deemed to have forfeited the certificate, and it may not be restored except upon the payment of a reinstatement fee of twenty‑five dollars.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑360.** Service of required notices; prima facie evidence.

 Notices required by this chapter may be sent by registered mail, return receipt requested, to the person's last mailing address furnished to the board. The post office registration receipt signed by the recipient, his agent, or a responsible member of his household or office staff or, if not accepted by the person to whom addressed, the postal authority stamp showing the notice refused is prima facie evidence of service of the notice.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑370.** Persons excepted from application of chapter.

 This chapter does not apply to:

 (1) physicians licensed in this State for the practice of medicine or osteopathy;

 (2) optometrists licensed under the laws of this State to practice optometry; or

 (3) persons who sell as merchandise from an established place of business ready‑made eyeglasses or spectacles if the person does not aid the purchaser in the fitting of the eye glasses or spectacles.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑380.** Immunity.

 No member of the board, its committees, special examiners, agents, and employees may be held liable for acts performed in the course of official duties except where actual malice is shown.

HISTORY: 1998 Act No. 426, Section 1.

**SECTION 40‑38‑390.** Severability.

 If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 1998 Act No. 426, Section 1.