

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0252

HOUSE BILL NO. 1044

Introduced by: The Committee on Health and Human Services at the request of the State Board of Examiners in Optometry

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the practice of
2 optometry.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 36-7-15.2 be amended to read as follows:

5 36-7-15.2. Only those optometrists who have satisfactorily completed a curriculum in
6 general and ocular pharmacology at an institution accredited by a regional or professional
7 accreditation organization which is recognized or approved by the council on postsecondary
8 accreditation of the United States Office of Education within the Department of Health and
9 Human Services and approved by the State Board of Examiners in Optometry are eligible to
10 apply for the certificate issued pursuant to § 36-7-15.1. Those practitioners who have established
11 their eligibility pursuant to this section ~~must~~ shall also pass an examination approved by the
12 board before they may be certified to administer the topical pharmaceutical agents described by
13 § 36-7-1. ~~The State Board of Examiners in Optometry may promulgate rules pursuant to chapter~~
14 ~~1-26 to establish a fee, not to exceed one hundred dollars, for the examination, reexamination,~~
15 ~~and certification for the use of topical pharmaceutical agents as provided by this section.~~



1 Section 2. That § 36-7-15.3 be amended to read as follows:

2 36-7-15.3. The board, in certifying optometrists for the use of therapeutic drugs, shall
3 require that all applicants before certification either have taken and successfully passed the
4 treatment and management of ocular disease portion of the National Board of Examiners in
5 Optometry test or have taken and successfully passed an examination prepared or certified by
6 the board as covering all areas of pharmacological education provided to graduates of accredited
7 optometric colleges. The South Dakota State University School of Pharmacy may assist the
8 board in the formulation or administration of the examination of optometrists for competency
9 in therapeutic drugs. ~~The board shall provide at least annually to each licensed pharmacist in this~~
10 ~~state a list of the names, addresses, and certification numbers of all optometrists certified to~~
11 ~~prescribe therapeutic drugs. Each optometrist certified to prescribe therapeutic drugs shall~~
12 ~~communicate verbally and by a conspicuous sign adjacent to the office entrance the fact of~~
13 ~~certification to use topical eye medications. The certification notice shall also be included by~~
14 ~~the optometrist in the classified section of the telephone directory.~~

15 Section 3. That § 36-7-18 be amended to read as follows:

16 36-7-18. Every person practicing optometry shall:

- 17 (1) Display ~~his~~ the certificate of registration or exemption in a conspicuous place in the
18 principal office wherein he practices; and
- 19 (2) Exhibit the certificate to the State Board of Examiners or its authorized
20 representative upon request; ~~and~~
- 21 ~~(3) When practicing away from his office, deliver to each patient a receipt for service~~
22 ~~rendered which shall contain his signature, home post office address, and the number~~
23 ~~of his certificate of registration or exemption.~~

24 A violation of this section is a Class 2 misdemeanor.

1 Section 4. That § 36-7-24 be amended to read as follows:

2 36-7-24. The Board of Examiners, in compliance with chapter 1-26, may revoke the
3 certificate of any registrant for any one, or any combination, of the following causes:

- 4 (1) Conviction of a felony, as shown by a certified copy of the record of the court of
5 conviction;
- 6 (2) Obtaining, or attempting to obtain, a certificate of registration by fraudulent
7 misrepresentation;
- 8 (3) Malpractice;
- 9 (4) Continued practice by a person knowingly having an infectious or contagious disease;
- 10 (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other
11 habit-forming drugs;
- 12 (6) ~~Being guilty of unprofessional~~ Unprofessional conduct;
- 13 (7) Failure to submit to or cooperate with the criminal background investigation
14 requested by the board.

15 Section 5. That § 36-7-25 be amended to read as follows:

16 36-7-25. The term "unprofessional conduct," as used in this chapter, ~~is defined to mean~~
17 means:

- 18 (1) Any conduct of a character likely to deceive or defraud the public;
- 19 (2) The loaning of ~~his~~ a license or certificate by any licensed optometrist or any person
20 or corporation;
- 21 (3) The employment of "cappers" or "steerers" to obtain business;
- 22 (4) "Splitting" or dividing a fee or compensation with any person or corporation;
- 23 (5) The obtaining of any fee or compensation by fraud or misrepresentation;
- 24 (6) Employing either directly or indirectly any suspended or unlicensed optometrist to

1 perform any work covered by this chapter;

2 (7) The advertising by any means whatsoever of optometric practice or treatment or
3 advice in which untruthful, improbable, misleading, or impossible statements are
4 made;

5 (8) Advertising by printed matter, radio, display, or any other means, the quotation of
6 prices for a discount on or any specific amount of payment for eyeglasses, spectacles,
7 or accessories thereto, ophthalmic lenses, frames or mountings, or the phrases "free
8 examinations," "moderate prices," "low prices," "guaranteed glasses," "satisfaction
9 guaranteed," or any variations thereof, or words of similar import;

10 (9) Seeking patronage by means of handbills, posters, circulars, newspapers, radio or
11 periodicals, which means set forth more than the name, profession, title, location,
12 phone number and office hours of the optometrist;

13 (10) Advertising wherein the optometrist employs any form of newspaper, sign, literature
14 or directory professional card or window or public exhibition display of optical
15 materials, handbills, road signs, clock signs, novelties or favors contrary to or
16 violating the code of ethics or any of the other lawful rules and regulations properly
17 promulgated by the state board; ~~or~~

18 (11) The failure to refer a patient to a physician licensed pursuant to chapter 36-4 if
19 examination of the eye indicates a substantial likelihood of pathology which requires
20 the attention of a physician licensed pursuant to chapter 36-4;

21 (12) Any conviction of a felony or violation of a Board of Examiners in Optometry rule
22 as determined by the board after notice and hearing pursuant to chapter 1-26;

23 (13) Consistently misdiagnosing or consistently prescribing improper therapy; or

24 (14) Failing to hold in professional confidence all information concerning a patient.

1 Unprofessional conduct, as defined in this section, shall not be the basis for criminal
2 prosecution unless otherwise declared unlawful.

3 Section 6. That § 36-7-27 be amended to read as follows:

4 36-7-27. After one year and upon application and proof that the disqualification has ceased
5 ~~or that the applicant will probably not repeat the offense~~ the Board of Examiners may reinstate
6 a person whose certificate has been revoked, if no other basis for denial of the license exists.

7 Section 7. That § 47-11B-22 be amended to read as follows:

8 47-11B-22. A corporation formed pursuant to the provisions of this chapter, may adopt a
9 pension, profit sharing (whether cash or deferred), health and accident, insurance, or welfare
10 plan for all or part of its employees, including lay employees, providing that such plan does not
11 require or result in the sharing of specific or identifiable fees with any lay employees and any
12 payments made to lay employees or into any such plan in behalf of lay employees are based
13 upon their compensation or length of service, or both, rather than the amount of fees or income
14 received by the corporation or its shareholders.