

A Bill for an Act Relating to Optometry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§459- List of specific topical ocular pharmaceutical agents. The following pharmaceutical agents may be used for examination purposes only:

- (1) Proparacaine HCL 0.5%;
- (2) Benoxinate HCL 0.4%;
- (3) Tropicamide 0.5% and 1.0%;
- (4) Cyclopentolate 0.5% and 1.0%;
- (5) Phenylephrine HCL 2.5%; and
- (6) Hydroxyamphetamine Hydrobromide 1%.”

SECTION 2. Section 459-1, Hawaii Revised Statutes, is amended to read as follows:

“§459-1 Optometry; practice of, defined. The practice of optometry, for the purpose of this chapter, is defined to be the recognition and analysis of visual dysfunction of the human eye; the employment of trial frame [and] or trial lenses, and any objective or subjective means or methods, other than the use of [drugs,] medicine[,] or surgery, but including the use of topically applied pharmaceutical agents known as topical anesthetics, cycloplegics, and mydriatics, for non-therapeutic purposes only, for the purpose of determining the refractive powers, visual, [and] muscular, or other anomalies of human eyes; [and] or the prescribing [or employment], fitting or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular [insufficiencies] anomalies of human eyes. Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or [holds himself out as being] claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked [certificate of registration] and unsuspended license as provided in this chapter; provided[,] that an orthoptist may give visual training, including exercises, under the supervision of [an oculist] a physician or optometrist. The use of topically applied pharmaceutical agents shall be granted to an optometrist licensed under this chapter who has met the requirements under section 459-7.

If while examining a patient a licensed optometrist finds, by history or examination, any ocular abnormality or any evidence of systemic disease requiring further diagnosis and possible treatment by a licensed physician, the optometrist shall refer that patient to an appropriate licensed physician.”

SECTION 3. Section 459-7, Hawaii Revised Statutes, is amended to read as follows:

“§459-7 Examination[; certificate of registration]. (a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the

practice of optometry before beginning or continuing practice, upon presentation of satisfactory evidence, verified by oath, that the applicant is at least eighteen years of age, is a graduate of a high school, is a graduate of an American optometric college, school, or university recognized and approved by the board of examiners in optometry and [the American optometric association,] accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States Office of Education, shall take an examination before the board upon complying with the following requirements:

- (1) Applications for examination shall be made out and filed in writing with the secretary of the board; and
- (2) Each application shall be accompanied by an application fee, which shall be retained by the board, and an examination fee.

(b) Each applicant shall file, in writing, with the secretary at least thirty days prior to the date selected by the board for examination, the following credentials:

- (1) A diploma or certificate of graduation from an American optometric college or school recognized and approved by the board;
- (2) A certificate that the applicant is of good moral character. Certificates of good moral character for applicants who are licensed in some other state of the United States shall bear the signatures and seals of the secretary of the board of optometric examiners, and the secretary of the state optometric association of that state; and
- (3) An unretouched unmounted recent photograph of the applicant.

(c) The applicants shall be given due notice of the date and place of examination. No applicant who fails to obtain an average of seventy per cent in every subject upon which the applicant is examined shall be passed by the board. If an applicant, because of the applicant's failure to pass an examination is refused a license, the applicant, within one year, shall be permitted to take a second examination without additional fee. If an applicant fails the second time, the applicant shall be required to file a new application and to pay a reexamination fee. If an applicant fails the third time or any subsequent time, the applicant shall be required to file a new application and to pay the application and examination fees and to take a complete examination.

An appeal to the circuit court, of the circuit within which the applicant resides, may be taken from any decision of the board by any applicant who is refused or denied a certificate.

Every candidate who passes an examination shall be registered as possessing the qualifications required by this chapter, and shall receive from the board a proper certificate of registration upon payment of a registration fee. Before any certificate is issued it shall be numbered and recorded on a book kept by the secretary of the board of examiners in optometry.

(d) Each registered optometrist shall pay a biennial license fee between December 1, and December 31 of each odd-numbered year, to the board for a renewal of the optometrist's registration certificate for the biennium. The failure of any regular licensed optometrist to pay the biennial license fee in advance on or before December 31 of each odd-numbered year, during the time the optometrist's license remains in force, shall ipso facto, work a revocation and forfeiture of the license. Any person whose license is so revoked and forfeited shall pay a penalty fee for the restoration of the license, and, in addition, all delinquent biennial license fees. When an application for restoration of a license is made and all delinquent license fees and penalties are paid within three years after the forfeiture no examination shall be required. If this is not done within

three years, the license shall not be restored unless the regular examination for applicants is passed.

(e) Each registered optometrist shall submit proof to the board of examiners that the optometrist did, on or before December 31 of each even-numbered year, during the time the license remains in force, meet the requirement of continuing education in programs as set and approved by the board. The board shall adopt rules for the certification of the administration of the continuing education program.

(f) Certificates of registration shall be endorsed authorizing licensed optometrists to use pharmaceutical agents for examination purposes. A certificate shall certify that an optometrist has complied with the following requirements:

- (1) Successful completion of instruction in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on ocular pharmacology. The systemic effects and reactions to topical pharmaceutical agents used for examinations shall be studied, as well as the emergency management and referral of any adverse reactions that may occur. Instruction shall also include review of systemic and ocular diseases and clinical techniques and instruments used with these pharmaceutical agents for examination purposes. The course of study shall be approved by the board, and shall be offered by an institution which is accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States Office of Education; and
- (2) Successful completion of an examination approved by the board which tests for those subjects outlined in the course of instruction in (1) above."

SECTION 4. Section 459-9, Hawaii Revised Statutes, is amended to read as follows:

"§459-9 Refusal to permit examination or issue certificate; grounds for. The board of examiners in optometry may refuse to admit persons to its examinations or to issue the certificates for any of the following causes:

- (1) Presentation to the board of any certificate or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing an examination;
- (2) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or habits of intemperance, or drug addiction calculated to destroy the accuracy of the work of an optometrist;
- (3) Advertising in the following manner:
 - (A) By any means whatsoever, directly or indirectly, to offer lens, lenses, glasses, or frames or fittings thereof at a discount or as a premium for the purchase of any article of merchandise;
 - (B) By means of false and deceptive statements or by statements which tend to deceive or defraud; or to claim superiority over fellow optometrists; or to publish reports of cases or certificates of same in any public advertising media;
 - (C) In conjunction with any nonlicensed person or groups of individuals by permitting the use of [his] the person's name, professional title, or profession;

- (4) Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist or from any company or corporation;
- (5) Making of a house-to-house canvass either in person or through solicitors or associates for the purpose of selling, advertising, or soliciting the sale of eyeglasses, spectacles, lenses, frames, mountings, eye examinations, or optometric services; peddling of eyeglasses, spectacles, or lenses from house-to-house or on the streets or highways notwithstanding any law for the licensing of peddlers;
- (6) Renting space, subleasing departments, or otherwise occupying space to practice optometry on the premises of a commercial (mercantile) concern. Optometric practices must be under the registered optometrist's ownership and under [his] the optometrist's exclusive control. It must not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files must be the sole property of the optometrist. The office must be definite and apart from the space occupied by any commercial (mercantile) concern so that all signs are separate and distinct from the commercial (mercantile) concern and all entrances to the premises must be separate and definite in character such that there could be no misleading interpretation that [his] the optometrist's practice is in any way associated with a commercial (mercantile) concern;
- (7) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other such allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any such intended or prospective wearer or user;
- (8) Using any name in connection with [his] the optometrist's practice other than the name under which [he] the optometrist is licensed to practice, or failing to comply with the following provisions, to wit: all signs, cards, stationery, or other advertising must clearly identify the individual optometrist using or presenting the same and must be free from any ambiguity or possibility of misinterpretation as to such identity;
- (9) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performances of the services[.];
- (10) Utilizing pharmaceutical agents without first being certified as provided in section 459-7 or utilizing pharmaceutical agents for purposes other than those specified in section 459-1; or
- (11) Failure to refer a patient to an appropriate licensed physician upon discovery, by history or examination, that the patient evidences an ocular abnormality or symptoms of systemic disease requiring further diagnosis and possible treatment by a licensed physician."

SECTION 5. Section 461-15, Hawaii Revised Statutes, is amended to read as follows:

"§461-15 Miscellaneous permits. It shall be unlawful:

- (1) For any person to sell or offer for sale at public auction, or to sell or offer for sale at private sale in a place where public auctions are conducted, any drugs without first having obtained a permit from the board of pharmacy [so to do;] to do so;
- (2) For any person to in any manner distribute or dispense samples of any drugs or medical supplies without first having obtained a permit from the board [so to do;] to do so; provided[,] that nothing in this paragraph shall interfere with the furnishing of samples or drugs directly to physicians, druggists, dentists, [and] veterinarians, and optometrists for use in their professional practice;
- (3) For wholesalers to sell, distribute, or dispense any drug, except to a pharmacist, physician, dentist, [or] veterinarian, or optometrist who is allowed to use pharmaceutical agents under chapter 459 or to a generally recognized industrial, agricultural, manufacturing, or scientific user of drugs for professional or business purposes; provided that it shall be unlawful for wholesalers to sell, distribute, or dispense any pharmaceutical agent which is not listed under section 459- to any optometrist; and
- (4) For any person, as principal or agent, to conduct or engage in the business of preparing, manufacturing, compounding, packing, or repacking any drug without first having obtained a permit from the board [so to do.] to do so."

SECTION 6. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§459- Adverse effects, temporary reporting requirements. The Board of Examiners in Optometry shall promulgate rules and regulations as will require a licensed optometrist to report findings of adverse effects experienced by any of the optometrist's patients from his use of pharmaceutical agents during an examination. This requirement shall expire on June 30, 1988."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.