

# Chapter 89. Ophthalmic Dispensers.

## Subchapter 1. General Provisions

### 17-89-101. Short title.

This chapter shall be known and cited as the "Ophthalmic Dispensing Act".

History. Acts 1981, No. 589, § 1. A.S.A. 1947, § 72-2101.

### 17-89-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Apprentice dispensing optician" means an individual registered with the Arkansas Board of Dispensing Opticians to work under the supervision of a licensed or registered dispensing optician, a physician skilled in disease of the eye, or an optometrist licensed by this state;

(2) "Board" means the Arkansas Board of Dispensing Opticians;

(3) "Licensed dispensing optician" means any person licensed by the Arkansas Board of Dispensing Opticians to engage in ophthalmic dispensing;

(4)(A) "Ophthalmic dispensing" means the preparation of laboratory work orders, verification, and dispensing of spectacle lenses, spectacles, eyeglasses, or parts thereof to the intended wearer on a written prescription from a licensed physician skilled in disease of the eye or from a licensed optometrist.

(B) "Ophthalmic dispensing" shall include:

(i) The measuring, fitting, adapting, and adjusting of spectacle lenses, spectacles, eyeglasses, or parts thereof to the human face;

(ii) The preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabrication of eyewear;

(iii) The verification of the quality of finished spectacle lenses, spectacles, or eyeglasses;  
and

(iv) The adjustment or repair of spectacle frames to the human face.

(C) The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically excluded;

(5) "Person" shall include individuals, partnerships, firms, corporations, professional corporations, unincorporated associations, or any of the foregoing;

(6) "Registered dispensing optician" means any person registered by the Arkansas Board of Dispensing Opticians to engage in ophthalmic dispensing; and

(7) "Supervision" means the direct personal physical provision of direction and control through personal inspection.

History. Acts 1981, No. 589, § 2. A.S.A. 1947, § 72-2102.

### **17-89-103. Exceptions.**

(a) Except as expressly provided otherwise in this chapter, nothing in this chapter shall apply to persons who sell glasses, spectacles, lenses, frames, mountings, or prisms at wholesale on individual prescriptions to licensed optometrists, physicians, or dispensing opticians, nor shall it prohibit the sale of ready-made eyeglasses and spectacles when sold as merchandise at any established place of business where no attempt is made to practice optometry or opticianry.

(b) Nothing in this chapter shall prohibit an employee of an Arkansas-licensed optometrist or an Arkansas-licensed physician skilled in disease of the eye from performing any of the acts described in § 17-89-102(4) when the acts are performed in the office of an Arkansas-licensed optometrist or an Arkansas-licensed physician skilled in disease of the eye. The employees are not required to be registered or licensed under the provisions of this chapter.

(c) The provisions of this chapter shall not apply to licensed optometrists or physicians skilled in disease of the eye, except as stated in this chapter. It is the specific intent of the General Assembly that this subsection supplement, not repeal, existing acts of Arkansas.

History. Acts 1981, No. 589, §§ 17, 21, 23. A.S.A. 1947, §§ 72-2117, 72-2121, 72-2123.

### **17-89-104. Practice of optometry or medicine prohibited.**

(a) With the exception of those acts listed in § 17-89-102(4), it shall be unlawful for any person except a licensed optometrist or licensed physician skilled in disease of the eye to engage in the practice of optometry or to do any act or part thereof defined in this or any other state law as the practice of optometry.

(b) It is likewise unlawful for any person except a licensed physician to engage in the practice of medicine or to do any act or part thereof defined in this or any other state law as the practice of medicine.

(c) Nothing in this chapter shall be construed to authorize or permit any licensed or registered dispensing optician or any other person except a licensed optometrist or licensed physician skilled in disease of the eye to undertake or hold himself or herself out as being able:

(1) To examine eyes by any objective or subjective method or exercise eyes;

(2) To undertake by any method or means the measurement of the cornea of the human eye;  
or

(3) To examine, prescribe, diagnose, treat, or correct for visual deficiency.

(d) The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically prohibited except when done by a licensed optometrist or licensed physician skilled in disease of the eye.

History. Acts 1981, No. 589, §§ 3, 12. A.S.A. 1947, §§ 72-2103, 72-2112.

**17-89-105. Penalties.** *\*\*Update Notice: This section has been amended by Act 1994 of 2005 (Part A)*

(a) Any person who violates any provision of this chapter or who, other than those persons specifically excluded from the provisions of this chapter, provides ophthalmic dispensing services to the public without a certificate of licensure or certificate of registration under this chapter or who engages in the business after his or her certificate of licensure or registration has been suspended or revoked shall be guilty of a ~~misdemeanor~~ violation\*\* and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(b) Each day of violation shall constitute a separate offense and be punishable as such.

History. Acts 1981, No. 589, § 20. A.S.A. 1947, § 72-2120.

**17-89-106. Injunctions.**

(a) The courts of record in this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful business of ophthalmic dispensing or any violation of the provisions of this chapter, with the action being brought in the county in which the alleged unlawful practice or violation occurred or in which the defendant resides, upon the complaint of any individual.

(b) The issuance of an injunction by a court shall not relieve a person from criminal prosecution for violation of this chapter, but the remedy of injunction shall be in addition to criminal prosecution.

History. Acts 1981, No. 589, § 19. A.S.A. 1947, § 72-2119.

## **Subchapter 2. Arkansas Board Of Dispensing Opticians**

**17-89-201. Creation - Members.**

(a) There is created the Arkansas Board of Dispensing Opticians which shall be responsible for administering the specific duties as set out in this chapter.

(b)(1) The board shall be composed of nine (9) members appointed by the Governor to three-year terms.

(2)(A) Three (3) members of the board shall be practicing licensed or registered dispensing opticians appointed by the Governor from a list of six (6) names submitted to him or her by the Arkansas Association of Dispensing Opticians.

(B) One (1) of the three (3) members shall be an employee of either an Arkansas-licensed ophthalmologist or optometrist.

(3) One (1) member of the board shall be a member of the State Board of Optometry.

(4) One (1) member of the board shall be a licensed optometrist appointed by the Governor from a list of three (3) names submitted by the Arkansas Optometric Association.

(5) Two (2) members of the board shall be licensed ophthalmologists appointed by the Governor from a list of six (6) names submitted by the Ophthalmology Section of the Arkansas Medical Society.

(6) One (1) member of the board shall be a consumer.

(7)(A) One (1) member of the board shall represent the elderly.

(B) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be actively engaged in or retired from the profession of ophthalmic dispensing;

(iii) Be appointed from the state at large, subject to confirmation by the Senate; and

(iv) Be a full voting member but shall not participate in grading examinations.

(c) The consumer board member position and the representative of the elderly position may not be filled by the same person.

(d) Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year when the term expires.

(e)(1) In the event of a vacancy during a board member's term, the Governor shall appoint a person to fill that vacancy.

(2) If the vacating member was an optician, the Governor shall make his or her selection from a list of three (3) names submitted by the opticians association.

(3) If the vacating member was an optometrist, the Governor shall make his or her selection from a list of three (3) names submitted by the President of the State Board of Optometry.

(4) If the vacating member was an ophthalmologist, the Governor shall make his or her selection from a list of three (3) names submitted by the Ophthalmology Section of the Arkansas Medical Society.

(f) Board members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1981, No. 589, § 4; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; Acts 1993, No. 1087, § 1; 1997, No. 250, § 162; 1999, No. 524, §§ 1, 2; 2001, No. 1553, § 26. A.S.A. 1947, §§ 6-623 - 6-626, 72-2104.

### **17-89-202. Meetings - Officers.**

(a) The Arkansas Board of Dispensing Opticians shall meet at least twice each year, and at its first regular meeting each year shall elect a chair, vice chair, and secretary-treasurer.

(b) Each officer shall be elected for a term of one (1) year. If an officer is removed or resigns during his or her term of office, the board shall elect a successor for the balance of the unexpired term of office.

(c)(1) The secretary-treasurer shall perform those administrative duties assigned him or her by the board and shall execute a bond for the state in a sum to be fixed by the board conditioned on the faithful performance of the duties of his or her office.

(2) The board shall outline the duties of the secretary-treasurer and fix his or her compensation, per diem, mileage, and other expense moneys in accordance with applicable Arkansas laws and regulations.

History. Acts 1981, No. 589, §§ 4, 5. A.S.A. 1947, §§ 72-2104, 72-2105.

### **17-89-203. Powers and duties.**

(a) The Arkansas Board of Dispensing Opticians shall:

(1)(A) Administer, coordinate, and enforce the provisions of this chapter, evaluate qualifications and supervise the examination of applicants for licensure or registry under this chapter, and investigate complaints, allegations, and charges of practices violating the provisions of this chapter or rules adopted pursuant to this chapter.

(B) In evaluating qualifications and supervising the examination of applicants for licensure or registry under this chapter, verify an applicant's qualifications, establish the format and content of examination procedures, administer both the practical and written examinations at least once each year, and issue a certificate of licensure or certificate of registry to each applicant successfully meeting the qualifications and passing the examination;

(2) Establish annually a schedule of examination and license fees based on the Arkansas Board of Dispensing Opticians' financial requirements for the ensuing year;

(3) Compile and maintain a book of licensure and a book of registry of all dispensing opticians who are licensed or registered to engage in the business of ophthalmic dispensing in the State of Arkansas, which shall be updated annually. The Arkansas Board of Dispensing Opticians shall annually furnish a copy of the books to the State Board of Optometry and the Ophthalmology Section of the Arkansas Medical Society;

(4) Register on an annual basis apprentice dispensing opticians together with the licensed or registered dispensing optician by whom they are employed;

(5) Prepare and present an annual report of administration, licensure, registry, and investigation to the State Board of Optometry and to the Ophthalmology Section of the Arkansas Medical Society;

(6) Establish by rules those acts on the part of any person licensed or registered under this chapter which shall constitute improper conduct and grounds for revocation or suspension of a license or registry or refusal to renew the license or registry;

(7) Investigate reported violations of this chapter and rules adopted pursuant to this chapter and take such steps as may be necessary to enforce this chapter and the rules;

(8) Conduct hearings and keep such records and minutes as are necessary for the orderly dispatch of its functions. The Arkansas Board of Dispensing Opticians shall provide notice to appropriate persons in the manner it considers appropriate of the times and places of all hearings authorized under this chapter;

(9) Adopt rules and regulations commensurate with the policies of this chapter and for the purpose of carrying this chapter into effect, including, but not limited to, rules which establish ethical standards of ophthalmic dispensing practices, application procedures, and procedures for investigating complaints. Following their adoption, the rules shall govern and control the business conduct of every person licensed or registered under this chapter in this state engaged in ophthalmic dispensing; and

(10) Have the discretion to adopt an official seal.

(b) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all authority and procedures of the board.

History. Acts 1981, No. 589, § 6; Acts 1993, No. 1087, § 4; 1999, No. 524, § 3. A.S.A. 1947, § 72-2106.

#### **17-89-204. Financial reporting - Disposition of funds.**

(a) The Arkansas Board of Dispensing Opticians shall report quarterly to the Department of Finance and Administration the source of all revenue received by it pursuant to this chapter during the preceding quarter.

(b) All appropriate expenses incurred by the board in the administration of the provisions of this chapter shall be paid when vouchers relating to the expenses are exhibited as having been approved by the board.

(c) There is created the Board of Dispensing Opticians Fund on the books of the Treasurer of State. All moneys collected by the board shall be deposited as special revenues to the credit of that fund.

History. Acts 1981, No. 589, § 5. A.S.A. 1947, § 72-2105.

#### **17-89-205. Refund to expenditure.**

Fines collected by the Arkansas Board of Dispensing Opticians shall be deposited into the Board of Dispensing Opticians Fund in the State Treasury as a refund to expenditure for the year in which the deposit is made.

History. Acts 2003, No. 231, § 4.

## **Subchapter 3. Licensing And Registration**

### **17-89-301. License or registration required.**

Except as otherwise provided in this chapter, any person not licensed to practice medicine or optometry in Arkansas who shall perform or purport to perform any act described in § 17-89-102(4) must be licensed or registered by the Arkansas Board of Dispensing Opticians as provided in this chapter.

History. Acts 1981, No. 589, § 3. A.S.A. 1947, § 72-2103.

### **17-89-302. Qualifications - Licensed dispensing opticians.**

(a) Every applicant for examination as a licensed dispensing optician shall present satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she is over the age of twenty-one (21), of good moral character, a high school graduate or the equivalent thereof, and either:

(1) Is a graduate of a school of opticianry whose curriculum consists of at least eighteen (18) months of didactic and practical instruction which is accredited by a national accreditation organization and approved by the board; or

(2)(A) Has been engaged in the providing of ophthalmic dispensing services, as defined in this chapter, in the State of Arkansas for a period of not less than five (5) years immediately prior to application.

(B) No more than three (3) years may consist of:

(i) Working in a qualified service optical laboratory approved by the board; or

(ii) Providing ophthalmic dispensing services under the direct supervision of an Arkansas-licensed or registered dispensing optician, Arkansas-licensed optometrist, or Arkansas physician skilled in diseases of the eye.

(b) All persons making application for licensure as licensed dispensing opticians must successfully complete the written and practical examination prepared and conducted by the board.

History. Acts 1981, No. 589, § 7; Acts 1987, No. 966, § 1; 1993, No. 1219, § 17. A.S.A. 1947, § 72-2107.

### **17-89-303. Qualifications - Registered dispensing opticians.**

Every applicant for examination as a registered dispensing optician shall present satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she is over the age of twenty-one (21), of good moral character, a high school graduate or the equivalent thereof, and either:

(1) Has a minimum of three (3) years' dispensing experience in Arkansas under the direct supervision of an Arkansas-licensed optometrist or Arkansas-licensed physician skilled in disease of the eye;

(2) Has a minimum of three (3) years' experience under the direct supervision of a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas, one (1) year of which may be while working in a qualified full-service optical laboratory approved by the board; or

(3) Is a graduate of an approved school of opticianry which has been accredited by a national accreditation organization and is recognized by the board.

History. Acts 1981, No. 589, § 7; Acts 1993, No. 1219, § 18. A.S.A. 1947, § 72-2107.

### **17-89-304. Examinations.**

(a) No person other than a licensed optometrist or licensed physician skilled in diseases of the eye or a person licensed or registered by the Arkansas Board of Dispensing Opticians as approved in this chapter shall provide ophthalmic dispensing services to the public until after he or she has passed the written and practical examination conducted by the board and shown proficiency in those subjects and procedures designated by the board, including, but not limited to:

(1) Mechanical optics;

(2) Occupational vision requirements;

(3) Taking facial measurements for proper frame sizing;

(4) Ophthalmic lens types; and

(5) Fitting and adjusting glasses and frames to the face.

(b) A person eligible for licensure or registry under this chapter and desirous of licensure or registry shall make application for examination to the board at least sixty (60) days prior to the date of examination upon a form and in such a manner as the board shall prescribe. The application shall be accompanied by the fee prescribed in subsection (f) of this section.

(c) Each applicant for licensure or registry under this chapter shall be examined by the board by written and practical examination and shall be required to meet certain standards of performance established by rules adopted by the board.

(d)(1) Applicants for licensure or registry shall be examined at a time and place and under such supervision as the board may determine.

(2) Examinations shall be given at least once each year at such places within this state as the board may determine.

(3) The board shall give reasonable public notice of the examinations in accordance with its adopted rules at least ninety (90) days prior to the administration of the examination.



(4) The board shall notify by mail all individual examination applicants of the time and place of the examination.

(e) Every applicant successfully passing the examination of the board and satisfying the qualifications required by this chapter shall receive from the board a certificate of licensure or a certificate of registry to provide ophthalmic dispensing services to the public as a registered or licensed dispensing optician in this state.

(f) Any person making application for examination for licensure or registry as a dispensing optician shall be required to pay to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians a fee established by the board.

History. Acts 1981, No. 589, §§ 7, 8, 11; Acts 1987, No. 966, § 2; 1993, No. 1087, § 2. A.S.A. 1947, §§ 72-2107, 72-2108, 72-2111.

### **17-89-305. Reciprocity.**

(a) Any person who desires to provide ophthalmic dispensing services to the public as a licensed or registered dispensing optician in this state and who holds a current validated certificate of licensure or registry as a dispensing optician in a state whose requirements for licensure or registry are in the opinion of the Arkansas Board of Dispensing Opticians at least equivalent to those of this state may at the discretion of the board be issued a certificate of licensure or a certificate of registry.

(b) The certificate may be issued without a written or practical examination upon payment of the fee prescribed in § 17-89-304(f) to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians and upon satisfactory proof that the applicant:

(1) Is qualified under the provisions of this chapter;

(2) Is of good moral character;

(3) Has provided ophthalmic dispensing services to the public as a dispensing optician in the state of licensure or registration for a period of at least five (5) years for licensure or three (3) years for registration immediately prior to his or her application for reciprocity to this state; and

(4) Is licensed or registered in a state which grants like reciprocal privileges to opticians who hold certificates of licensure or registry issued by this state.

History. Acts 1981, No. 589, § 10; Acts 1993, No. 1219, § 19. A.S.A. 1947, § 72-2110.

### **17-89-306. Dispensers from nonlicensing states.**

(a) Any person from a nonlicensing state who desires to provide ophthalmic dispensing services to the public as a licensed or registered dispensing optician in this state, and who submits satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she meets the following requirements, shall be eligible for licensure or registry by the board.

(b) The applicant must:

- (1) Be qualified under the provisions of this chapter;
- (2) Be of good moral character;
- (3) Have been engaged in ophthalmic dispensing as described in § 17-89-102(4) for a period of:
  - (A) Five (5) years for applicants for licensure, of which no more than three (3) years may be while working in a qualified full-service optical laboratory approved by the board; or
  - (B) Three (3) years for applicants for registry, of which no more than one (1) year may be while working in a qualified full-service laboratory approved by the board immediately prior to the date of application;
- (4) Successfully complete the written and practical examination for licensure or registry prepared and conducted by the board; and
- (5) Have paid the fee prescribed in § 17-89-304(f) to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 10; Acts 1993, No. 1219, § 20. A.S.A. 1947, § 72-2110.

#### **17-89-307. Certificates - Renewal.**

- (a) All licensed and registered opticians shall pay by July 1 of each year a fee established by the Arkansas Board of Dispensing Opticians to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians as a renewal licensure or registry fee.
- (b)(1) Unless the fee is paid, certificates of licensure or registry issued under this chapter shall expire and become invalid at 12:00 midnight on July 1 of that year.
- (2) Upon the payment of the renewal fee and in the absence of a board finding against renewal under this chapter, the person shall have his or her certificate of licensure or registry renewed for an additional year commencing on July 1 of that year.
- (3) Any person licensed or registered under the provisions of this chapter who has not paid his or her renewal fee in full by July 1 of that year shall be required to pay a renewal penalty established by the board.

History. Acts 1981, No. 589, § 13; Acts 1987, No. 966, § 3; 1993, No. 1087, § 3. A.S.A. 1947, § 72-2113.

#### **17-89-308. Continuing education program.**

- (a) The Arkansas Board of Dispensing Opticians may institute a program for continuing education for its licensees.
- (b) The board may require proof of successful completion of its continuing education requirements as a condition for renewal of license, except that the board shall not require more than nine (9) clock hours of continuing education within any two-year period.

(c) Only courses approved by the board shall be acceptable for satisfying the continuing education requirements.

(d) The board shall promulgate regulations to implement this section.

History. Acts 1985, No. 962, § 1. A.S.A. 1947, § 72-2129.

### **17-89-309. Denial, suspension, or revocation - Grounds.**

(a) The Arkansas Board of Dispensing Opticians shall revoke or suspend or refuse to issue or renew a license or registration of any dispensing optician for any violation of any provision of this chapter or of any rules and regulations promulgated by the board, including, but not limited to, the following:

(1) The applicant, licensee, or registrant obtaining a license or registration by means of fraud, misrepresentation, or concealment of material facts;

(2) The applicant, licensee, or registrant engaging in conduct, including, but not limited to, engaging in the advertising practice commonly known as "bait and switch", or establishing an ophthalmic dispensing business immediately adjacent to the office of a licensed optometrist or physician skilled in diseases of the eye in what is commonly known as a "side-by-side" operation, or engaging in the referral procedure commonly known as "capping and steering";

(3) The applicant, licensee, or registrant being convicted of a felony in any state or federal court, and not pardoned, if the acts for which the person is convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of a dispensing optician;

(4) The applicant, licensee, or registrant violating any prohibitive provision under this chapter;

(5) The applicant, licensee, or registrant engaging in any fraudulent, misleading, or deceptive advertising;

(6) The applicant, licensee, or registrant failing to qualify for the license or registration;

(7) The applicant, licensee, or registrant violating any other rule or regulation promulgated by the board; or

(8) The applicant, licensee, or registrant using any narcotic drug or alcohol which impairs his or her ability to perform the work of an ophthalmic dispenser.

(b) If after due notice and hearing a person licensed or registered as an optician or apprentice under this chapter is found to have violated this chapter, the board may impose any one (1) or more of the following sanctions:

(1) Suspension, revocation, or denial of the license or registration or the renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

- (3) Place conditions or restrictions upon the person's license, registration, or practice; or
- (4) Such other requirements or penalties as may be appropriate to the circumstances or the case, and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(c) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Circuit Court of Pulaski County to obtain the judgment for the amount of the penalty not paid.

History. Acts 1981, No. 589, § 17; Acts 1999, No. 524, § 4. A.S.A. 1947, § 72-2117.

### **17-89-310. Complaints - Hearings.**

(a)(1) Any person may file a complaint with the Arkansas Board of Dispensing Opticians against any person providing ophthalmic dispensing services to the public or having a certificate of licensure or registry to practice ophthalmic dispensing in this state charging the person with having violated the provisions of this chapter.

(2) The complaint shall set forth specific charges in sufficient detail so as to disclose to the accused person fully and completely the alleged acts of misconduct for which he or she is charged.

(3) When the complaint is filed with the board, the Secretary-treasurer of the Arkansas Board of Dispensing Opticians shall mail a copy to the accused person by registered mail at his or her last address of record with a written notice of the time and place of hearing advising him or her that he or she may be present in person and with counsel, if he or she so desires, to offer evidence and be heard in his or her defense.

(b)(1) At the time and place fixed for hearing before the board, the board shall receive evidence upon the complaint under consideration and shall accord the person against whom charges have been made a full and fair opportunity to be heard in his or her defense.

(2) The board shall not be bound by strict or technical rules of evidence but shall consider all evidence fully and fairly, provided that all oral testimony by the board must be taken under oath.

(3) All hearings shall be conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) All evidence considered by the board shall be construed so as not to deprive any person of his or her rights without a full, fair, and impartial hearing.

(5) The board may administer oaths and issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, papers, or documents pertinent to any matters coming before the board.

History. Acts 1981, No. 589, § 18; Acts 1999, No. 524, § 5. A.S.A. 1947, § 72-2118.

## **Subchapter 4. Regulation Of Practice**

### **17-89-401. Employment of apprentice dispensing opticians.**

(a)(1) Licensed or registered opticians under this chapter may utilize apprentice dispensing opticians to engage in ophthalmic dispensing as defined in this chapter under their direct personal physical supervision and at the same location where the licensed or registered person dispenses.

(2) However, no licensed or registered dispensing optician shall supervise more than three  
(3) apprentices at a given time.

(b) Apprentices may be employed upon submission of an application for registration as an apprentice dispensing optician to the board and approval by the Arkansas Board of Dispensing Opticians and payment of a fee to the board in an amount to be determined by the board.

History. Acts 1981, No. 589, § 14; Acts 1995, No. 999, § 1. A.S.A. 1947, § 72-2114.

### **17-89-402. Written prescription required.**

(a) It shall be unlawful for any dispensing optician or person engaged in the business of manufacturing, selling, or dispensing regular or safety ophthalmic materials to fill or duplicate an ophthalmic prescription without having a written prescription signed by the licensed optometrist or licensed physician skilled in disease of the eye who conducted the examination from which the prescription was prepared.

(b) It shall also be unlawful for him or her to fail to comply with the written instructions when the instructions are included on a written prescription signed by a licensed optometrist or licensed physician skilled in disease of the eye.

(c) No change or alteration from the prescription of the prescribing optometrist or physician shall be made, except that changes may be made in tint or material of the lenses unless the changes are specifically prohibited on the written prescription.

(d) It is the specific intent of the General Assembly that this section supplement, not repeal, existing laws of Arkansas.

History. Acts 1981, No. 589, § 15. A.S.A. 1947, § 72-2115.

### **17-89-403. Standards for materials.**

All ophthalmic materials, including eyeglasses, spectacles, lenses, or other optical devices or materials or parts thereof, sold in the State of Arkansas must conform to standards of quality as promulgated by the American National Standards Institute, commonly known as Z-80.1 standards, or any standards later set forth in a regulation promulgated by the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 22. A.S.A. 1947, § 72-2122.

**17-89-404. Branch offices.**

(a) No licensed or registered dispensing optician or other person in this state shall establish more than two (2) ophthalmic dispensing branch offices in addition to his or her principal office unless he or she shall have first secured a branch office permit from the Arkansas Board of Dispensing Opticians.

(b)(1) With board approval, the board shall promulgate rules and regulations establishing the branch office permit and the procedures for issuing, suspending, or revoking the branch office permit.

(2) The rules and regulations shall comply with the pertinent provisions of all existing state law.

(c) All businesses providing retail ophthalmic dispensing services, as defined in § 17-89-102(4), to the public must have physically present a licensed or registered dispensing optician within the place of business at the time the services are provided.

(d) Each optical dispensary in the State of Arkansas whose title does not contain the proper name of an Arkansas optometrist or Arkansas physician skilled in diseases of the eye or a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas must file a certificate of ownership each year with the board between June 1 and June 30. Each certificate of ownership must give the name and address of the dispensary, the optometrist or physician skilled in diseases of the eye, or licensed or registered dispensing optician or person who owns or maintains legal responsibility of the dispensary.

History. Acts 1981, No. 589, § 16; Acts 1987, No. 966, § 4. A.S.A. 1947, § 72-2116.

**17-89-405. Fraudulent, misleading, or deceptive advertising prohibited.**

It shall be unlawful for any dispensing optician or any person engaged in ophthalmic dispensing in this state, or anyone on their behalf, to knowingly or willfully engage in any fraudulent, misleading, or deceptive advertising. Any of the following practices shall be deemed to be fraudulent, misleading, or deceptive advertising:

(1) The use in any advertisement, whether by newspaper, magazine, circular, sign, billboard, radio, television, or any other printed, oral, or visual form of advertising, of a picture, drawing, or other illustration or format which conveys the impression or belief that the ophthalmic dispenser or dispensing optician firm provides eye examinations or is qualified to give complete eye care service, which may include eye examinations and the issuance of prescriptions for spectacles;

(2)(A) The use of words or a format designed to convey or which result in conveying an impression that the ophthalmic dispensing firm or the dispensing optician is qualified to provide eye care service other than the services that are authorized by the laws of this state and regulations promulgated pursuant thereto for ophthalmic dispensing in this state.

(B) For the purposes of this subsection, the use of the words "eye care", "professional eye care", or the use of such words as "providing experienced professionals trained to meet your eye care needs" and similar words or expressions in the advertisement shall be interpreted as being fraudulent, misleading, and deceptive, since these terms are normally accepted and understood to represent services that can be performed only by a licensed optometrist or a licensed physician;

(3) Failure to include in the advertisement the disclaimer provision required in § 17-89-406(a); and

(4) The use of any other advertising method which conveys a misleading or deceptive interpretation of the services that may be provided by a dispensing optician or by an ophthalmic dispensing firm in this state, within the limitations provided by law.

History. Acts 1985, No. 418, § 2. A.S.A. 1947, § 72-2125.

### **17-89-406. Disclaimer in advertisements required.**

(a) Any advertisement made by, for, or in behalf of any ophthalmic dispensing firm or any dispensing optician in this state, by newspaper, magazine, handbill, circular, radio, television, billboard, sign, or other means or forms of advertisement, except goodwill advertising as determined by the State Board of Optometry, shall cause to have printed thereon, or stated in oral advertisements, the following disclaimer:

"This firm is not licensed to make eye examinations."

(b)(1) In any printed advertisement, the disclaimer shall be printed in the same style, arrangement, and overall appearance of other printed material appearing within the advertisement, giving similar prominence to the disclaimer in the same size of type, style, arrangement, and overall appearance used in a majority of the written material in the advertisement.

(2) In oral advertisements, the disclaimer shall be depicted in a vocal presentation of the same volume, quality, and style as other portions of the oral advertisement are presented.

History. Acts 1985, No. 418, § 3. A.S.A. 1947, § 72-2126.

### **17-89-407. Penalties - Enforcement.**

(a)(1) Any person violating the provisions of §§ 17-89-405 and 17-89-406 shall be guilty of a Class A misdemeanor and upon conviction shall be subject to the fines and penalties provided by law.

(2) Each advertisement in violation of §§ 17-89-405 and 17-89-406 shall be a separate offense, and each day on which an advertisement in violation of §§ 17-89-405 and 17-89-406 is made shall constitute a separate offense.

(b)(1) The State Board of Optometry shall have the power to institute suit in the circuit court of the county in which a violation of §§ 17-89-405 and 17-89-406 is alleged to have

occurred to require enforcement by injunctive procedures and to recover costs of court and reasonable attorney's fees.

(2) The board shall not be required to execute or give a bond for cost, indemnity, or stay as a condition to the issuance of a restraining order or injunction, either temporary or permanent, in any court of this state.

History. Acts 1985, No. 418, §§ 4, 5. A.S.A. 1947, §§ 72-2127, 72-2128.

### **17-89-408. Office permit.**

(a)(1) It shall be unlawful for any person or legal entity to conduct an office or place of business in this state where ophthalmic dispensing services are offered or performed unless that person or entity shall have first secured an office permit from the Arkansas Board of Dispensing Opticians pursuant to board regulation for each such office or place of business.

(2) However, persons or entities identified in § 17-89-103 are exempt from this section.

(3) The office permit shall be prominently displayed in each office or place of business in this state where ophthalmic dispensing services are offered or performed.

(b) The office permit shall be renewed on or before July 1 of each year at a cost and pursuant to procedures to be determined by board rule or regulation.

(c) The board shall suspend, revoke, or refuse to issue or renew an office permit for any violation of any provision of this chapter or of any rules and regulations promulgated by the board, including at least the following:

(1) The applicant, person, or legal entity obtains an office permit by means of fraud, misrepresentation, or concealment of material facts;

(2) The applicant, person, or legal entity violates any prohibitive provision under this chapter;

(3) The applicant, person, or legal entity engages in any fraudulent, misleading, or deceptive advertising;

(4) The applicant, person, or legal entity fails to qualify for the office permit; or

(5) The applicant, person, or legal entity violates any other rule or regulation promulgated by the board.

(d) After due notice and a hearing regarding a violation of this section, the board may impose any one of the following sanctions:

(1) Suspension, revocation, or denial of the office permit renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;



(3) Such other requirements or penalties as may be appropriate to the circumstance or the case and which would achieve the desired disciplinary purpose but which would not impair the public welfare and morals.

(e) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Circuit Court of Pulaski County to obtain the judgment for the amount of the penalty not paid.

History. Acts 1999, No. 524, § 6.