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SENATE BILL 11-094

BY SENATOR(S) Boyd, Aguilar, Carroll, Foster, Newell, White, Bacon, Giron, Guzman, Heath, Hodge, Kopp, Morse, Steadman, Tochtrop, Williams S., Nicholson;
also REPRESENTATIVE(S) Summers, Fields, Fischer, Hamner, Hullinghorst, Jones, Kefalas, Kerr J., Labuda, Lee, Liston, Nikkel, Priola, Ryden, Schafer S., Todd, Vigil.

CONCERNING THE CONTINUATION OF THE STATE BOARD OF OPTOMETRIC EXAMINERS, AND, IN CONNECTION THEREWITH, CHANGING THE NAME OF THE BOARD, IMPLEMENTING THE SUNSET REVIEW RECOMMENDATIONS OF THE DEPARTMENT OF REGULATORY AGENCIES, AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-40-128 (1), Colorado Revised Statutes, is amended to read:

12-40-128. Repeal of article - subject to sunset law. (1) This article is repealed, effective ~~July 1, 2011~~ SEPTEMBER 1, 2022.

SECTION 2. Repeal. 24-34-104 (42) (f), Colorado Revised Statutes, is repealed as follows:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(f) ~~The state board of optometric examiners, created by article 40 of title 12, C.R.S.;~~

SECTION 3. 24-34-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (53.5) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON SEPTEMBER 1, 2022:

(a) THE STATE BOARD OF OPTOMETRY, CREATED BY ARTICLE 40 OF TITLE 12, C.R.S.

SECTION 4. Article 40 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-40-107.2. Volunteer optometrist license. (1) A PERSON LICENSED TO PRACTICE OPTOMETRY PURSUANT TO THIS ARTICLE MAY APPLY TO THE BOARD FOR VOLUNTEER LICENSURE STATUS. THE BOARD SHALL DESIGNATE THE FORM AND MANNER OF THE APPLICATION. THE BOARD MAY:

(a) GRANT THE APPLICATION BY ISSUING A VOLUNTEER LICENSE; OR

(b) DENY THE APPLICATION IF THE LICENSEE HAS BEEN DISCIPLINED FOR ANY OF THE CAUSES SET FORTH IN SECTION 12-40-118.

(2) A PERSON APPLYING FOR A LICENSE UNDER THIS SECTION:

(a) MUST EITHER:

(I) HOLD AN ACTIVE AND UNRESTRICTED LICENSE TO PRACTICE OPTOMETRY IN COLORADO AND BE IN ACTIVE PRACTICE IN THIS STATE; OR

(II) HAVE BEEN ON INACTIVE STATUS PURSUANT TO ARTICLE 70 OF

THIS TITLE FOR NOT MORE THAN TWO YEARS; AND

(b) SHALL:

(I) PAY A REDUCED LICENSE FEE IN LIEU OF THE FEE AUTHORIZED BY SECTION 24-34-105, C.R.S. THE DIRECTOR SHALL REDUCE THE VOLUNTEER OPTOMETRIST LICENSE FEE FROM THE LICENSE FEE CHARGED PURSUANT TO SECTION 12-40-113 (1) (a).

(II) ATTEST THAT, AFTER A DATE CERTAIN, THE APPLICANT WILL NO LONGER EARN INCOME AS AN OPTOMETRIST;

(III) MAINTAIN LIABILITY INSURANCE AS PROVIDED IN SECTION 12-40-126; AND

(IV) COMPLY WITH THE CONTINUING EDUCATION REQUIREMENTS ESTABLISHED IN SECTION 12-40-113 (1) (f); EXCEPT THAT THE BOARD MAY ESTABLISH LESSER CONTINUING EDUCATION REQUIREMENTS FOR VOLUNTEER LICENSEES.

(3) THE FACE OF EACH VOLUNTEER LICENSE ISSUED PURSUANT TO THIS SECTION SHALL PLAINLY INDICATE THE VOLUNTEER STATUS OF THE LICENSEE.

(4) THE BOARD MAY CONDUCT DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION 12-40-119 AGAINST ANY PERSON LICENSED UNDER THIS SECTION FOR AN ACT COMMITTED WHILE THE PERSON WAS LICENSED PURSUANT TO THIS SECTION.

(5) A PERSON LICENSED UNDER THIS SECTION MAY APPLY TO THE BOARD FOR A RETURN TO ACTIVE LICENSURE STATUS BY FILING AN APPLICATION IN THE FORM AND MANNER DESIGNATED BY THE BOARD. THE BOARD MAY APPROVE SUCH APPLICATION AND ISSUE A LICENSE TO PRACTICE OPTOMETRY OR MAY DENY THE APPLICATION IF THE LICENSEE HAS BEEN DISCIPLINED FOR OR ENGAGED IN ANY OF THE ACTIVITIES SET FORTH IN SECTION 12-40-118.

(6) AN OPTOMETRIST WITH A VOLUNTEER LICENSE SHALL PROVIDE OPTOMETRY SERVICES ONLY IF THE SERVICES ARE PERFORMED ON A LIMITED BASIS FOR NO FEE OR OTHER COMPENSATION.

SECTION 5. 12-40-118 (1) (a), (1) (b), (1) (c), (1) (e), (1) (k), (1) (m), and (1) (dd), Colorado Revised Statutes, are amended, and the said 12-40-118 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-40-118. Unprofessional conduct defined. (1) The term "unprofessional conduct", as used in this article, means:

(a) ~~Willfully~~ Deceiving or attempting to deceive the board or its agents with reference to any proper matter under investigation by the board;

(b) Publishing or circulating, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to ~~optometric~~ OPTOMETRY services or ophthalmic materials or devices;

(c) Employing or offering compensation or merchandise of value to any salesman, runner, patient, or other person as an inducement to secure his OR HER services or assistance in the solicitation of patronage for the performing, rendering, supplying, or selling of ~~optometric~~ OPTOMETRY services or ophthalmic materials or devices;

(e) ~~Addiction to, dependence on, or~~ The habitual or excessive use or abuse of ~~intoxicating liquors~~ ALCOHOL, a habit-forming drug, or any controlled substance as defined in section 12-22-303 (7);

(k) An act or omission constituting grossly negligent ~~optometric~~ OPTOMETRY practice or two or more acts or omissions ~~which~~ THAT fail to meet generally accepted standards of ~~optometric~~ OPTOMETRY practice;

(m) ~~Practicing while having~~ FAILING TO:

(I) NOTIFY THE BOARD, IN A MANNER AND WITHIN A PERIOD DETERMINED BY THE BOARD, OF a physical or mental ~~disability which~~ ILLNESS OR CONDITION THAT renders an optometrist unable to treat with reasonable skill and safety or ~~which~~ THAT may endanger the health and safety of persons under the care of ~~any~~ AN optometrist;

(II) ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS AN OPTOMETRIST UNABLE TO TREAT WITH REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE

HEALTH AND SAFETY OF PERSONS UNDER THE CARE OF AN OPTOMETRIST; OR

(III) PRACTICE WITHIN THE LIMITATIONS CREATED BY THE PHYSICAL OR MENTAL ILLNESS OR CONDITION AS SPECIFIED IN A CONFIDENTIAL AGREEMENT BETWEEN THE OPTOMETRIST AND THE BOARD ENTERED INTO PURSUANT TO SECTION 12-40-118.5 (5).

(dd) Engaging in any of the following activities and practices:

(I) ~~Willful and repeated~~ REPEATEDLY ordering or ~~performance,~~ ~~without clinical justification,~~ of PERFORMING demonstrably unnecessary laboratory tests or studies THAT LACK CLINICAL JUSTIFICATION;

(II) ~~The administration, without clinical justification, of~~ ADMINISTERING treatment ~~which~~ THAT is demonstrably unnecessary AND LACKS CLINICAL JUSTIFICATION; or

(III) Ordering or performing ~~without clinical justification,~~ any service, X ray, or treatment ~~which~~ THAT is contrary to recognized standards of the practice of optometry, as interpreted by the board, AND LACKS CLINICAL JUSTIFICATION;

(mm) FAILING TO RESPOND IN AN HONEST, MATERIALLY RESPONSIVE, AND TIMELY MANNER TO A COMPLAINT PURSUANT TO SECTION 12-40-119 (1) (b).

SECTION 6. 12-40-118.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-40-118.5. Mental and physical examination of licensees.

(5) (a) THE BOARD MAY ENTER INTO AN AGREEMENT WITH AN OPTOMETRIST WHOSE PRACTICE IS OR MAY BE AFFECTED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE OPTOMETRIST UNABLE TO TREAT WITH REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH AND SAFETY OF PERSONS UNDER THE CARE OF ANY OPTOMETRIST IF:

(I) THE BOARD BELIEVES THAT ONE OR MORE LIMITATIONS OF THE OPTOMETRIST'S PRACTICE WOULD BOTH ENABLE THE OPTOMETRIST TO TREAT WITH REASONABLE SKILL AND SAFETY AND WOULD PROTECT THE HEALTH AND SAFETY OF PERSONS UNDER THE CARE OF THE OPTOMETRIST; AND

(II) THE OPTOMETRIST ENTERS INTO AN ENFORCEABLE AGREEMENT WITH THE BOARD TO SO LIMIT THE OPTOMETRIST'S PRACTICE.

(b) AN AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION (5):

(I) IS CONFIDENTIAL AND NOT SUBJECT TO DISCLOSURE PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.; AND

(II) MAY INCLUDE PROVISIONS FOR MONITORING AND REEVALUATION OF THE OPTOMETRIST. THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS NECESSARY BASED ON THE RESULTS OF THE MONITORING OR REEVALUATION.

(c) THE BOARD MAY REQUIRE THE LICENSEE TO SUBMIT TO AN EXAMINATION PURSUANT TO THIS SECTION TO EVALUATE THE EXTENT OF THE ILLNESS OR CONDITION AND ITS IMPACT ON THE LICENSEE'S ABILITY TO PRACTICE WITH REASONABLE SKILL AND WITH SAFETY TO PATIENTS.

(d) BY ENTERING INTO AN AGREEMENT WITH THE BOARD PURSUANT TO THIS SECTION TO LIMIT HIS OR HER PRACTICE, THE LICENSEE IS NOT ENGAGING IN UNPROFESSIONAL CONDUCT. THE AGREEMENT IS AN ADMINISTRATIVE ACTION AND DOES NOT CONSTITUTE A RESTRICTION OR DISCIPLINE BY THE BOARD. HOWEVER, IF THE LICENSEE FAILS TO COMPLY WITH AN AGREEMENT ENTERED INTO PURSUANT TO THIS SECTION, THE FAILURE CONSTITUTES UNPROFESSIONAL CONDUCT PURSUANT TO SECTION 12-40-118 AND THE LICENSEE BECOMES SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-40-119.

(e) FOR PURPOSES OF THIS SUBSECTION (5), "PHYSICAL OR MENTAL ILLNESS OR CONDITION" DOES NOT INCLUDE THE HABITUAL OR EXCESSIVE USE OR ABUSE OF ALCOHOL, A HABIT-FORMING DRUG, OR ANY CONTROLLED SUBSTANCE AS DEFINED IN SECTION 12-22-303 (7).

SECTION 7. 12-40-119 (1) (a), (1) (b), (1) (d), (2) (e), (2.1), (2.3), (4) (a), (7) (a), (8) (a), (8) (c) (III), and (9), Colorado Revised Statutes, are amended to read:

12-40-119. Revocation, suspension, supervision, probation

procedure - professional review - reconsideration and review of action by board - rules. (1) (a) With respect to licenses ~~or certificates~~ issued pursuant to this article, the board may:

(I) Impose probation, with or without supervision, on a licensee, issue a letter of admonition to a licensee, OR suspend, revoke, or refuse to renew any license ~~or certificate~~ provided for by this article for any reason stated in section 12-40-118 or for violating any term of probation of the board;

(II) SUMMARILY SUSPEND A LICENSE UPON THE FAILURE OF THE LICENSEE TO COMPLY WITH ANY CONDITION OF A STIPULATION OR ORDER IMPOSED BY THE BOARD UNTIL THE LICENSEE COMPLIES WITH THE CONDITION, UNLESS COMPLIANCE IS BEYOND THE CONTROL OF THE LICENSEE; AND

(III) IMPOSE A FINE NOT TO EXCEED FIVE THOUSAND DOLLARS ON A LICENSEE FOR A VIOLATION OF THIS ARTICLE OR A RULE PROMULGATED PURSUANT TO THIS ARTICLE OTHER THAN A VIOLATION RELATED TO A STANDARD OF PRACTICE. THE BOARD SHALL, BY RULE, PROMULGATE A FINING SCHEDULE WITH LESSER AMOUNTS FOR FIRST VIOLATIONS AND INCREASING AMOUNTS FOR SUBSEQUENT VIOLATIONS OF THIS SUBPARAGRAPH (III).

(b) Upon its own motion or upon a signed complaint, an investigation may be made if there is reasonable cause to believe that an optometrist licensed ~~or certified, or both~~ by the board has committed an act of unprofessional conduct pursuant to section 12-40-118 or, while under probation, has violated the terms of ~~said~~ THE probation.

(d) The board may revoke, suspend, deny, issue, reissue, or reinstate licenses ~~and certificates~~ granted pursuant to this article or under the previous laws of this state, and the board may take such other intermediate action as may be deemed necessary under the circumstances of each case pursuant to this section.

(2) (e) The action of the board in refusing to grant or renew, revoking, or suspending a license, ~~or certificate~~, issuing a letter of admonition, or placing a licensee on probation or under supervision pursuant to subsection (1) of this section may be reviewed by the court of

appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(2.1) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee ~~or certificate holder~~ that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee. ~~or certificate holder.~~

(2.3) No person whose license ~~or certification, or both,~~ is revoked by the board may reapply for a new license under the provisions of this article for at least two years after any such revocation.

(4) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license, ~~or certificate,~~ the imposition of any discipline, or the ordering of probation, as provided in this section, may reconsider its prior action and grant, reinstate, or restore such license, ~~or certificate~~ or terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, ~~shall rest~~ RESTS in the sole discretion of the board.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee ~~or certificate holder~~ is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, ~~or certificate,~~ the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed ~~or uncertified~~ practices immediately cease.

(8) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed ~~or uncertified~~ practice.

(c) (III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license ~~or certificate~~, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed ~~or uncertified~~ practices.

(9) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed ~~or uncertified~~ act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

SECTION 8. 12-40-126 (1) (a) and (2), Colorado Revised Statutes, are amended to read:

12-40-126. Financial responsibility - rules. (1) Every optometrist who provides health care services within the state of Colorado shall establish financial responsibility as follows:

(a) By maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of ~~five hundred thousand~~ ONE MILLION dollars per incident and ~~one~~ THREE million ~~five hundred thousand~~ dollars annual aggregate per year; or

(2) (a) The board may, by rule, establish lesser financial responsibility standards than those required in subsection (1) of this section for classes of license holders who HAVE AN INACTIVE LICENSE OR WHO render limited or occasional optometric services because of administrative or other nonclinical duties, ~~or~~ partial or complete retirement, or for other reasons that render the limits provided in paragraph (a) of subsection (1) of this section unreasonable or unattainable.

(b) ~~However~~, Nothing in this section ~~shall preclude~~ PRECLUDES or otherwise ~~prohibit~~ PROHIBITS a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for such care so warrant.

SECTION 9. 12-40-106 (1) and (2), Colorado Revised Statutes, are amended to read:

12-40-106. State board of optometry - subject to termination.

(1) (a) The state board of ~~optometric examiners~~ OPTOMETRY, referred to in this article as the "board", ~~shall be~~ IS under the supervision and control of the division of registrations as provided by section 24-34-102, C.R.S. The board ~~shall consist~~ CONSISTS of five optometrists and two members-at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. ~~Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S.~~ Each member of the board, except for the members-at-large, ~~shall~~ MUST have been actually engaged and licensed in the practice of optometry ~~as defined in section 12-40-102~~ in Colorado for the five years ~~next~~ preceding the member's appointment. At least one of the two members-at-large ~~shall~~ MUST not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services.

(b) Any four members of ~~said~~ THE board ~~shall~~ constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board.

(c) THE GOVERNOR SHALL FILL a vacancy in the membership of ~~said~~ THE board ~~shall be filled by the governor~~ for the remainder of the unexpired term. ~~Any~~ THE GOVERNOR MAY REMOVE A member of the board ~~may be removed by the governor~~ for misconduct, incompetency, or neglect of duty.

(d) ~~Any~~ A board member having a personal or private interest in any matter before the board shall disclose such fact to the board and shall not participate in RELATED discussions ~~related thereto~~ or ~~vote thereon~~ VOTES.

(2) The board shall organize annually by electing one of its members as president AND one as vice-president. ~~and one as secretary.~~

SECTION 10. 12-40-102 (1), (2), (3), (4), (5), and (6), Colorado Revised Statutes, are amended to read:

12-40-102. Practice of optometry defined. (1) (a) The "practice of the profession of optometry" is: ~~The employment of any means other~~

~~than medicine, surgery, invasive laser surgery, postoperative care management following surgery without referral from an ophthalmologist, unless ninety days have expired from and after the surgery or the physician justifies medically indicated reasons for extending the postoperative period or the patient has been released by the physician, X ray, or drugs, except as provided in subsections (4) and (5) of this section, to diagnose and treat the presence of abnormal conditions of the human eye or its appendages and the accommodative and refractive conditions of the human eye or the scope of its functions in general; except for treatment of posterior uveitis; and the measurement of the powers or range of human vision and the adaptation of lenses and frames to improve the powers or range of human vision~~ MEANS THE EVALUATION, DIAGNOSIS, PREVENTION, OR TREATMENT OF DISEASES, DISORDERS, OR CONDITIONS OF THE VISION SYSTEM, EYES, AND ADJACENT AND ASSOCIATED STRUCTURES, INCLUDING THE USE OR PRESCRIPTION OF LENSES, PRISMS, VISION THERAPY, VISION REHABILITATION, AND PRESCRIPTION OR NONPRESCRIPTION DRUGS INCLUDING SCHEDULE III, IV, AND V CONTROLLED NARCOTIC SUBSTANCES FOR OCULAR DISEASE, SO LONG AS AN OPTOMETRIST IS PRACTICING WITHIN THE SCOPE OF HIS OR HER EDUCATION AS IS COMMONLY TAUGHT IN ACCREDITED SCHOOLS AND COLLEGES OF OPTOMETRY AND IS PRACTICING IN ACCORDANCE WITH APPLICABLE FEDERAL AND COLORADO LAW AND BOARD RULES.

(b) THE FOLLOWING ARE PART OF THE PRACTICE OF OPTOMETRY:

(I) THE REMOVAL OF SUPERFICIAL FOREIGN BODIES FROM THE HUMAN EYE OR ITS APPENDAGES;

(II) POSTOPERATIVE CARE IN THE FOLLOWING SITUATIONS:

(A) WITH REFERRAL FROM A PHYSICIAN;

(B) IF NINETY DAYS HAVE EXPIRED AFTER THE SURGERY UNLESS THE PHYSICIAN JUSTIFIES MEDICALLY INDICATED REASONS FOR EXTENDING THE POSTOPERATIVE PERIOD; AND

(C) IF THE PATIENT HAS BEEN RELEASED BY THE PHYSICIAN;

(III) THE TREATMENT OF ANTERIOR UVEITIS;

(IV) THE TREATMENT OF GLAUCOMA WITH ALL TOPICAL AND ORAL

ANTIGLAUCOMA DRUGS;

(V) EPILATION;

(VI) DILATION AND IRRIGATION OF THE LACRIMAL SYSTEM;

(VII) PUNCTAL PLUG INSERTION AND REMOVAL;

(VIII) ANTERIOR CORNEAL PUNCTURE;

(IX) CORNEAL SCRAPING FOR CULTURES;

(X) DEBRIDEMENT OF CORNEAL EPITHELIUM; AND

(XI) REMOVAL OF CORNEAL EPITHELIUM.

(c) Any person who is engaged in the prescribing OR PERFORMING WITHOUT REFERRAL of visual training or orthoptics, ~~or~~ the prescribing of any contact lenses, INCLUDING PLANO OR COSMETIC CONTACT LENSES, ~~or~~ the fitting or adaptation of such contact lenses to the human eye, ~~or~~ the use of scientific instruments to train the visual system or any abnormal condition of the eyes for the correction or improvement of, or the relief to, the visual function, or who holds oneself out as being able to do so, is engaged in the practice of optometry.

(d) THE "PRACTICE OF OPTOMETRY" DOES NOT INCLUDE:

(I) SURGERY OF OR INJECTIONS INTO THE GLOBE, ORBIT, EYELIDS, OR OCULAR ADNEXA. "SURGERY" MEANS ANY PROCEDURE IN WHICH HUMAN TISSUE IS CUT, ALTERED, OR OTHERWISE INFILTRATED BY MECHANICAL OR LASER MEANS.

(II) THE USE OF SCHEDULE I OR II NARCOTICS;

(III) TREATMENT OF POSTERIOR UVEITIS; OR

(IV) THE USE OF INJECTABLE DRUGS, EXCEPT FOR THE USE OF AN EPINEPHRINE AUTO-INJECTOR TO COUNTERACT ANAPHYLACTIC REACTION.

(2) A licensed optometrist who ~~utilizes, including prescribing, those~~

~~classes of pharmaceutical agents described in this section~~ USES OR PRESCRIBES PRESCRIPTION OR NONPRESCRIPTION DRUGS shall be required to provide the same level and standard of care to his OR HER patients as the standard of care provided by an ophthalmologist ~~utilizing~~ USING OR PRESCRIBING the same ~~class of pharmaceutical agents~~ DRUGS.

(3) A THERAPEUTIC OPTOMETRIST IS AN OPTOMETRIST LICENSED PURSUANT TO THIS ARTICLE WHO MEETS THE REQUIREMENTS OF SECTION 12-40-109.5 (1.5) AND (3). A licensed optometrist shall not use ~~pharmaceutical agents~~ PRESCRIPTION OR NONPRESCRIPTION DRUGS for treatment of eye disease or disorder or for any therapeutic purpose unless certified as a therapeutic optometrist pursuant to section 12-40-109.5 (1.5) and (3) HE OR SHE IS A THERAPEUTIC OPTOMETRIST.

(4) ~~The classes of pharmaceutical agents approved for optometric use for examination purposes under this section are topically applied mydriatics, miotics, cycloplegics, and anesthetics.~~

(5) (a) ~~The classes of pharmaceutical agents and the procedures approved for optometric use for treatment of the anterior segment of the eye or its appendages, including prescription, by certified therapeutic optometrists for treatment purposes under this section are as follows: Topical and oral antimicrobials (except oral antifungal agents), topical and oral antihistamines, topical antiinflammatory agents, topical and oral nonscheduled analgesics, and any controlled substance for ocular pain and inflammation except those specified in schedules I and II as provided in part 2 of article 18 of title 18, C.R.S., and the removal of superficial foreign bodies from the human eye or its appendages.~~

(b) Nothing in this section shall prohibit PROHIBITS an optometrist from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug, as long as the drug delivered by the ophthalmic device is ~~one of the pharmaceutical agents identified in subsection (4) or (6) of this section or this subsection (5) or the drug is not a prescription drug~~ NOT A SCHEDULE I OR II CONTROLLED SUBSTANCE.

(6) ~~The classes of pharmaceutical agents approved for optometric use by certified therapeutic optometrists for treatment of glaucoma include~~

~~topical and oral antiglaucoma agents.~~

SECTION 11. 12-40-103 (1) (a) and (1) (b), Colorado Revised Statutes, are amended to read:

12-40-103. Proprietor defined. (1) The term "proprietor", as used in this article, includes any person, group, association, or corporation not licensed under this article who:

(a) For financial gain employs optometrists in the operation of an ~~optometric~~ OPTOMETRY office;

(b) Places, directly or indirectly, in possession of an optometrist such ~~optometric~~ materials or equipment as may be necessary for the operation of an ~~optometric~~ OPTOMETRIST'S office on the basis of any fee splitting, income division, profit sharing, or similar agreement or on any basis ~~which~~ THAT has the effect of any such agreement, but the term "proprietor" does not include the bona fide seller of ~~optometric~~ OPTOMETRY equipment or material secured by chattel mortgage, conditional sales contract, or other title retention agreements or the bona fide leasing of such equipment by the manufacturer or by his OR HER franchised dealer; or

SECTION 12. The introductory portion to 12-40-105 (1) and 12-40-105 (1) (d), Colorado Revised Statutes, are amended to read:

12-40-105. Persons excluded from operation of this article.

(1) This article ~~shall~~ DOES not apply to:

(d) Persons serving a post-doctorate residency or ~~optometric~~ AN OPTOMETRY student internship under the supervision of an optometrist licensed in Colorado as part of a curriculum from an accredited college of optometry.

SECTION 13. 12-40-107 (1) (a), (1) (b), (1) (k), and (1) (l), Colorado Revised Statutes, are amended to read:

12-40-107. Powers and duties of the board - rules. (1) In addition to all other powers and duties conferred upon the board by this article, the board has the following powers and duties:

(a) ~~To provide for examinations at least once each year to ascertain the qualifications and fitness of applicants for licenses to practice optometry. The board may accept~~ DETERMINE ACCEPTABILITY OF scores from tests administered by any approved or accredited national testing organization.

(b) To prescribe rules ~~and regulations for conducting and administering examinations of applicants for licensing as optometrists and~~ to carry out effectively the provisions of this article. ~~In prescribing such rules and regulations~~ The board shall set the passing score of any ~~such~~ examination at a minimum acceptable level of competence for the practice of optometry.

(k) To establish programs of education ~~and certification~~ for optometrists wishing to enter new, proven, and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(l) To prepare and distribute to consumers as is reasonably necessary written communication providing information concerning the board and ~~optometric~~ THE regulation OF OPTOMETRY in Colorado;

SECTION 14. The introductory portion to 12-40-108 (1) and 12-40-108 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

12-40-108. Application for license - licensure by endorsement.

(1) ~~Every~~ A person ~~who does not currently hold a license to practice optometry in this state and who desires to practice optometry within~~ IN the state ~~shall~~ MAY file with the board an application for a license, giving the information required ~~on~~ IN a form ~~to be provided~~ AND MANNER APPROVED by the board. ~~wherein it shall appear that~~ The applicant SHALL DEMONSTRATE THAT HE OR SHE possesses the following qualifications:

(b) The applicant has graduated with the degree of doctor of optometry from a school or college of optometry accredited by a regional or professional accreditation organization ~~which~~ THAT is recognized or approved by the council on postsecondary accreditation or the United States commissioner of education. The board ~~shall have~~ HAS the authority, upon its investigation and approval of the standards thereof, to approve any other ~~optometric~~ college OF OPTOMETRY.

~~(2) For the purpose of paragraphs (c) and (d) of subsection (1) of this section, it shall be sufficient if a statement pertaining to the qualifications appears on the application.~~

SECTION 15. 12-40-108.5, Colorado Revised Statutes, is amended to read:

12-40-108.5. Current licensees - treatment and therapeutic practice. On and after July 1, 1988, a person who is licensed under this article as an optometrist on June 30, 1988, and who is otherwise qualified under ~~the provisions of this article~~ may use ~~the classes of pharmaceutical agents~~ PRESCRIPTION OR NONPRESCRIPTION DRUGS for examination purposes. ~~described in section 12-40-102 (4).~~ However, such optometrist may ~~utilize the classes of pharmaceutical agents~~ USE PRESCRIPTION OR NONPRESCRIPTION DRUGS for treatment of eye disease or disorder or for any therapeutic purpose ~~described in section 12-40-102 (5) and (6)~~ only if he or she becomes certified as a therapeutic optometrist pursuant to MEETS THE REQUIREMENTS OF section 12-40-109.5 (1.5) and (3) on or after July 1, 1988.

SECTION 16. 12-40-109 (1) and (2), Colorado Revised Statutes, are amended to read:

12-40-109. Examination - licenses. (1) ~~Each application shall be verified under oath by the applicant, and a material false statement thereon shall constitute grounds for the withholding or revocation of a license. The applicant shall take and submit test scores from the board-approved exam. The examination shall be of such a character as to test the qualifications of the applicant to practice optometry.~~

(2) Each person who makes a passing grade on the practical and clinical examination ~~of the board~~ and who is otherwise qualified shall be granted a license ~~evidenced by a certificate signed by the board. No license shall be granted by less than a majority vote of the board.~~ The license ~~certificate~~ provided for in this section shall be in such form and wording as may be adopted by the board. ~~except that the board shall provide an optometrist who is certified as a therapeutic optometrist pursuant to section 12-40-109.5 (1.5) with a distinctive certificate indicating such certification. Such certificate shall be displayed by~~ The optometrist SHALL DISPLAY HIS OR HER LICENSE for viewing by his OR HER patients, as provided in section

12-40-115. An application for initial licensure as a ~~certified therapeutic~~ AN optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to ~~the provisions of~~ section 24-34-105, C.R.S. Such fee shall not be required for any renewal certificate obtained pursuant to ~~the provisions of~~ section 12-40-113.

SECTION 17. 12-40-109.5, Colorado Revised Statutes, is amended to read:

12-40-109.5. Use of prescription and nonprescription drugs.

(1) Notwithstanding ~~the provisions of~~ section 12-22-121, a licensed optometrist may purchase, possess, and administer ~~the classes of pharmaceutical agents~~ PRESCRIPTION OR NONPRESCRIPTION DRUGS for examination purposes referred to in section 12-40-102 (4) only if, after July 1, 1983, the optometrist has ~~obtained a certificate from the board certifying that the optometrist has~~ complied with the following minimum requirements: Successful completion, by attendance and examination, of at least fifty-five classroom hours of study in general, ocular, and clinical pharmacology which must have been completed within twenty-four months preceding the application for certification; except that, in the event that such classroom hours have been completed since 1976, only six of such classroom hours must have been completed within twenty-four months preceding the application for certification. The courses shall be offered by an institution ~~which~~ THAT is accredited by a regional or professional accreditation organization recognized or approved by the council on postsecondary education or the United States department of education or their successors.

(1.5) Notwithstanding ~~the provisions of~~ section 12-22-121, a licensed optometrist may purchase, possess, administer, and prescribe ~~the classes of pharmaceutical agents~~ PRESCRIPTION OR NONPRESCRIPTION DRUGS for treatment referred to in section 12-40-102 (5) on and after July 1, 1988, only if the optometrist has ~~obtained a certificate from the board certifying that the optometrist has~~ complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and

treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution ~~which~~ THAT is accredited by a regional or professional accreditation organization recognized or approved by the council of postsecondary education or the United States department of education or their successors.

(2) ~~Prior to such certification,~~ The optometrist shall successfully complete a course in cardiopulmonary resuscitation within twenty-four months ~~preceding the application for certification~~ BEFORE USING PRESCRIPTION OR NONPRESCRIPTION DRUGS and shall pass a written and clinical examination approved by the board.

(3) In addition to the requirements of section 12-40-108.5, ~~any optometrist who holds a EACH therapeutic optometrist certificate on or before July 1, 1996, and any new applicant for a license shall meet all requirements prescribed by the board before commencing treatment of glaucoma or anterior uveitis. The board shall suspend, as provided in section 12-40-119, the therapeutic optometrist certificate of any optometrist who fails to meet the requirements of this section on or before March 31, 1999. Such suspension shall be terminated when the optometrist has fulfilled the requirements of this section.~~

SECTION 18. 12-40-111 (1), Colorado Revised Statutes, is amended to read:

12-40-111. Disposition of fees - reports - publications. (1) All ~~examination and other~~ fees prescribed in this article shall be determined and collected pursuant to section 24-34-105, C.R.S.

SECTION 19. Repeal. 12-40-113 (1) (c), Colorado Revised Statutes, is repealed as follows:

12-40-113. License renewal - requirements - fee - failure to pay. (1) (c) ~~Failure to so remit shall cause a denial of the application for renewal.~~

SECTION 20. Repeal. 12-40-114 (1) and (2), Colorado Revised Statutes, are repealed as follows:

12-40-114. Change of address. (1) ~~Every person licensed under~~

~~this article shall furnish to the board, in writing, prior to commencing practice in this state the address of each location at which he practices and shall notify the board of the discontinuance of such practice at a given location within ten days after such discontinuance.~~

~~(2) Any licensee may maintain offices which he periodically visits, other than that in which he maintains and carries on his principal practice. A licensee who maintains offices which he visits periodically shall notify the board in writing of the address of each of said offices.~~

SECTION 21. 12-40-115, Colorado Revised Statutes, is amended to read:

12-40-115. Licenses to be displayed. Every practitioner of optometry ~~within the meaning of this article~~ shall post and keep conspicuously displayed his OR HER license ~~certificate~~ in the office wherein he OR SHE practices. If an optometrist practices at several locations in the state, ~~he~~ THE OPTOMETRIST shall display his OR HER license number and name in a manner that can be easily recognized by his OR HER patients. ~~Any~~ EACH association of persons who engage in the practice of optometry under the name of a partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the entrance of its place of business the name of each person engaged or employed in said partnership or association in the practice of optometry.

SECTION 22. 12-40-118.5 (1), Colorado Revised Statutes, is amended to read:

12-40-118.5. Mental and physical examination of licensees.

(1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require ~~such person~~ THE LICENSEE to ~~take~~ SUBMIT TO a mental or physical examination by a physician OR QUALIFIED HEALTHCARE PROVIDER designated by ~~said~~ THE board. If ~~such~~ THE licensee refuses to undergo ~~such~~ a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend ~~such~~ THE licensee's license until AN EXAMINATION HAS OCCURRED, the results of ~~any such~~ THE examination are known, and the board has made a determination of the licensee's fitness to practice. The board shall proceed with ~~any such~~ THE order for examination and ~~such~~ THE determination in a timely manner.

SECTION 23. 12-40-120, Colorado Revised Statutes, is amended to read:

12-40-120. Use of forged or invalid certificate. It is unlawful for any person to use or attempt to use as his OR HER own a diploma of an ~~optometric~~ OPTOMETRY school or college, or a license of another person, or a forged diploma or license, or any forged or false identification.

SECTION 24. 12-40-121, Colorado Revised Statutes, is amended to read:

12-40-121. Sale or forgery of degree or license. (1) It is unlawful:

(a) To sell or offer to sell a diploma conferring an ~~optometric~~ OPTOMETRY degree or a license granted pursuant to this article or prior ~~optometric~~ OPTOMETRY practice laws; ~~or~~

(b) To procure ~~such~~ A diploma or license with intent that it ~~shall~~ be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom such license was granted; ~~or~~

(c) With fraudulent intent to alter such diploma or license or to use or attempt to use it when it is so altered.

SECTION 25. 12-40-122, Colorado Revised Statutes, is amended to read:

12-40-122. Corporate practice prohibited - exceptions. The practice of optometry in a corporate capacity is prohibited, but this prohibition ~~shall~~ DOES not apply to a professional corporation formed pursuant to this article or to ~~optometric~~ AN OPTOMETRY practice carried on by a nonprofit organization operating to assist indigent persons.

SECTION 26. 12-40-126 (2) and (3), Colorado Revised Statutes, are amended to read:

12-40-126. Financial responsibility. (2) The board may, by rule, establish lesser financial responsibility standards than those required in

subsection (1) of this section for classes of license holders who render limited or occasional ~~optometric~~ OPTOMETRY services because of administrative or other nonclinical duties or partial or complete retirement or for other reasons that render the limits provided in paragraph (a) of subsection (1) of this section unreasonable or unattainable. However, nothing in this section ~~shall preclude~~ PRECLUDES or otherwise ~~prohibit~~ PROHIBITS a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for such care so warrant.

(3) Each optometrist, as a condition of receiving and maintaining an active license to provide ~~optometric~~ OPTOMETRY services in this state, shall furnish the board evidence of compliance with subsection (1) of this section. No license shall be issued or renewed unless such evidence of compliance has been furnished.

SECTION 27. Repeal. 12-40-126 (5), Colorado Revised Statutes, is repealed as follows:

12-40-126. Financial responsibility. (5) ~~Each optometrist subject to the provisions of this section shall pay, in addition to any license fee, an additional fee in an amount to be determined by the board pursuant to the provisions of section 24-34-105, C.R.S., not to exceed fifteen dollars. Such fee shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, which moneys shall be used exclusively for the purposes as annually appropriated by the general assembly.~~

SECTION 28. 10-1-125, Colorado Revised Statutes, is amended to read:

10-1-125. Reporting of malpractice claims against optometrists.

(1) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for optometrists shall send to the ~~Colorado~~ state board of ~~optometric examiners~~ OPTOMETRY, in the form prescribed by the commissioner, information relating to each malpractice claim against a licensed optometrist that is settled or in which judgment is rendered against the insured.

(2) Such information shall include any information deemed

necessary by the Colorado state board of ~~optometric examiners~~ OPTOMETRY to conduct a further investigation and hearing.

SECTION 29. The introductory portion to 13-4-102 (2) and 13-4-102 (2) (i), Colorado Revised Statutes, is amended to read:

13-4-102. Jurisdiction. (2) The court of appeals ~~shall have~~ HAS initial jurisdiction to:

(i) Review actions of the state board of ~~optometric examiners~~ OPTOMETRY in refusing to grant or renew, revoking, or suspending a license, issuing a letter of admonition, or placing a licensee on probation or under supervision, as provided by section 12-40-119 (2) (e), C.R.S.;

SECTION 30. 18-18-103, Colorado Revised Statutes, is amended to read:

18-18-103. Special definition - board. As used in parts 1 and 2 of this article, "board" means the state board of pharmacy. As used in parts 3, 4, 5, and 6 of this article, "board" means the respective licensing board responsible for licensing and registering practitioners or other persons who are subject to registration pursuant to part 3 of this article. For physicians the respective board is the Colorado medical board, for podiatrists the respective board is the Colorado podiatry board, for dentists the respective board is the state board of dental examiners, for optometrists the respective board is the state board of ~~optometric examiners~~ OPTOMETRY, for pharmacists and pharmacies the respective board is the state board of pharmacy, for veterinarians the respective board is the state board of veterinary medicine, and for manufacturers, distributors, and humane societies the respective board is the state board of pharmacy.

SECTION 31. 18-18-302 (1), Colorado Revised Statutes, is amended to read:

18-18-302. Registration requirements. (1) Every person who manufactures, distributes, or dispenses any controlled substance within this state, or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually or biannually, if applicable, a registration, issued by the respective licensing board or the department in accordance with rules adopted by such

board or by the department. For purposes of this section and this article, "registration" or "registered" means the licensing of manufacturers, pharmacists, pharmacies, and humane societies located in this state, and distributors located in or doing business in this state, by the state board of pharmacy as set forth in parts 1 and 3 of article 22 of title 12, C.R.S., the licensing of physicians by the Colorado medical board, as set forth in article 36 of title 12, C.R.S., the licensing of podiatrists by the Colorado podiatry board, as set forth in article 32 of title 12, C.R.S., the licensing of dentists by the state board of dental examiners, as set forth in article 35 of title 12, C.R.S., the licensing of optometrists by the state board of ~~optometric examiners~~ OPTOMETRY, as set forth in article 40 of title 12, C.R.S., the licensing of veterinarians by the state board of veterinary medicine, as set forth in article 64 of title 12, C.R.S., and the licensing of researchers and addiction programs by the department of human services, as set forth in part 3 of article 22 of title 12, C.R.S.

SECTION 32. 24-1-122 (3) (p), Colorado Revised Statutes, is amended to read:

24-1-122. Department of regulatory agencies - creation. (3) The following boards and agencies are transferred by a **type 1** transfer to the department of regulatory agencies and allocated to the division of registrations:

(p) State board of ~~optometric examiners~~ OPTOMETRY, created by article 40 of title 12, C.R.S.;

SECTION 33. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for operating expenses, for the fiscal year beginning July 1, 2011, the sum of one thousand fifty dollars (\$1,050) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for

allocation to the executive director's office and administrative services, for legal services, for the fiscal year beginning July 1, 2011, the sum of four thousand four hundred two dollars (\$4,402) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2011, the sum of four thousand four hundred two dollars (\$4,402), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (2) of this section.

SECTION 34. Applicability. This act shall apply to conduct occurring on or after the effective date of this act.

SECTION 35. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO