

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 317

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO OPTOMETRISTS; REPEALING CHAPTER 15, TITLE 54, IDAHO CODE, RELAT-
2 ING TO OPTOMETRISTS; AND AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION
3 OF A NEW CHAPTER 15, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT TITLE,
4 TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR A SCOPE
5 OF PRACTICE, TO REQUIRE LICENSURE, TO PROVIDE FOR INACTIVE LICENSES,
6 TO PROVIDE EXEMPTIONS FROM LICENSURE, TO ESTABLISH THE STATE BOARD OF
7 OPTOMETRY, TO PROVIDE FOR POWERS OF THE STATE BOARD OF OPTOMETRY, TO
8 PROVIDE QUALIFICATIONS FOR LICENSURE, TO PROVIDE FOR QUALIFICATIONS
9 FOR AUTHORIZATION TO USE THERAPEUTIC LASERS, TO PROVIDE FOR LICENSURE
10 BY ENDORSEMENT, TO PROVIDE FOR THE RENEWAL AND REINSTATEMENT OF A LI-
11 CENSE, TO PROVIDE FOR CERTAIN FEES, TO PROVIDE FOR DISCIPLINE BY THE
12 STATE BOARD OF OPTOMETRY, TO SPECIFY CERTAIN PROHIBITED ACTS, AND TO
13 PROVIDE SEVERABILITY.
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Chapter 15, Title 54, Idaho Code, be, and the same is
17 hereby repealed.

18 SECTION 2. That Title 54, Idaho Code, be, and the same is hereby amended
19 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
20 ter 15, Title 54, Idaho Code, and to read as follows:

21 CHAPTER 15
22 OPTOMETRISTS

23 54-1501. SHORT TITLE. This chapter shall be known and may be cited as
24 the "Optometric Physician Licensing Act."

25 54-1502. LEGISLATIVE INTENT. The practice of optometry in the state
26 of Idaho is hereby declared to affect public health, safety, and welfare.
27 Such practice is subject to regulation and control in the public interest to
28 protect the public from the improper, unauthorized, and unqualified prac-
29 tice of optometry and from unprofessional conduct by persons licensed to
30 practice optometry. This chapter shall be liberally construed to carry out
31 these objectives and purposes.

32 54-1503. DEFINITIONS. As used in this chapter:

33 (1) "Accredited institution" means a school or college of optometry
34 that is accredited by the accreditation council on optometric education.

35 (2) "Board" means the state board of optometry.

36 (3) "Bureau" means the bureau of occupational licenses.

37 (4) "Ophthalmologist" means an individual who is licensed pursuant to
38 chapter 18, title 54, Idaho Code.

1 (5) "Optician" means a person engaging in the practice of manufactur-
 2 ing, duplicating, ordering, or supplying any ophthalmic lens, including
 3 spectacle lenses and contact lenses, ordered through prescription by the
 4 instruction of an optometrist or ophthalmologist to improve vision. An
 5 optician does not have prescriptive authority or the authority to modify a
 6 prescription.

7 54-1504. SCOPE OF PRACTICE. The practice of optometry means to ex-
 8 amine, evaluate, diagnose, rehabilitate, or treat any condition, anomaly,
 9 disease, or abnormality affecting the visual system or systems relating to
 10 the eyes and ocular adnexa, except that the practice of optometry does not
 11 include the following ophthalmic surgery procedures:

- 12 (1) Laser-assisted in-situ keratomileusis (LASIK), photorefractive
- 13 keratectomy (PRK), or phototherapeutic keratectomy (PTK);
- 14 (2) Small incision lenticule extraction (SMILE);
- 15 (3) Yttrium-aluminum-garnet (YAG) vitreolysis;
- 16 (4) Retrobulbar blocks;
- 17 (5) Conjunctival biopsy without graft;
- 18 (6) Ectropion or entropion repair by the lateral tarsal strip;
- 19 (7) Ectropion or entropion repair by using sutures;
- 20 (8) Punctal cautery;
- 21 (9) Punctal snip;
- 22 (10) Lacrimal stenting;
- 23 (11) Retina laser procedures;
- 24 (12) Penetrating keratoplasty or corneal transplant;
- 25 (13) The administration of general anesthesia;
- 26 (14) Surgery done with general anesthesia;
- 27 (15) Laser or non-laser procedure into the vitreous chamber of the eye
- 28 to treat any retinal or macular disease;
- 29 (16) Surgery related to removal of the eye from a living human being;
- 30 (17) Surgery requiring full thickness incision or excision of the
- 31 cornea or sclera other than paracentesis in an emergency situation requiring
- 32 immediate reduction of the pressure inside the eye;
- 33 (18) Anterior chamber paracentesis other than in an emergency situa-
- 34 tion;
- 35 (19) Surgery requiring incision of the iris and ciliary body, including
- 36 diathermy or cryotherapy;
- 37 (20) Surgery requiring incision of the vitreous;
- 38 (21) Surgery requiring incision of the retina;
- 39 (22) Surgical extraction of the crystalline lens;
- 40 (23) Surgical intraocular implants;
- 41 (24) Incisional or excisional surgery of the extraocular muscles;
- 42 (25) Surgery of the eyelid for suspect malignancies or for incisional
- 43 cosmetic or mechanical repair of blepharochalasis, ptosis, and tarsorrh-
- 44 phy;
- 45 (26) Surgery of the bony orbit, including orbital implants;
- 46 (27) Incisional or excisional surgery of the lacrimal system other than
- 47 probing or related procedures;
- 48 (28) Surgery requiring full thickness conjunctivoplasty with graft or
- 49 flap;

- 1 (29) Pterygium surgery;
- 2 (30) Brow ptosis surgical repair;
- 3 (31) Tarsal plate laceration repair; or
- 4 (32) Surgery using therapeutic lasers unless authorized by the board
- 5 pursuant to this chapter.

6 54-1505. LICENSE REQUIRED. (1) A license is required to engage in the
7 practice of optometry. No person shall hold himself out as an optometrist
8 unless licensed in accordance with the provisions of this chapter. No person
9 who is not so licensed may use in connection with his name or place of busi-
10 ness the title of optometrist, optometric physician, doctor of optometry,
11 optical doctor, doctor of optical science, or any words, letters, abbrevia-
12 tions, or insignia indicating or implying that a person holds an optometrist
13 license unless such person holds that license.

14 (2) It shall be unlawful for any person other than a licensed op-
15 tometrist or ophthalmologist to duplicate any ophthalmic lens for cor-
16 rective purposes or for assisting vision, except that a manufacturing,
17 dispensing, or surfacing optician may grind or supply, dispense, replace,
18 or duplicate any such lens in conformity with an unexpired prescription by
19 instruction of an optometrist or ophthalmologist.

20 54-1506. INACTIVE LICENSES. The board may issue an inactive license to
21 an optometrist pursuant to rules adopted by the board that may specify the
22 terms, procedures, and fees necessary to maintain an inactive license. The
23 holder of an inactive license shall not engage in any practice requiring a
24 license under this chapter. An optometrist wishing to convert an inactive
25 license to an active license must account to the board for that period of
26 time in which the license was inactive and must fulfill requirements that
27 demonstrate competency to resume practice. Those requirements may include
28 but are not limited to education, supervised practice, and examination. The
29 board may consider practice in another jurisdiction in determining compe-
30 tency.

31 54-1507. EXEMPTIONS FROM LICENSURE. Nothing in this chapter shall be
32 held or construed to have any application to, or to prevent or affect, the
33 following:

- 34 (1) Any person who holds a license to practice medicine.
- 35 (2) The selling of ready-to-wear glasses equipped with convex spher-
36 ical lenses, or sunglasses equipped with plano lenses, industrial glasses
37 with plano lenses, or goggles with plano lenses.
- 38 (3) The ascertaining of the probable need of visual services, provided
39 such person does not attempt to diagnose, prescribe, or recommend any par-
40 ticular practitioner or system of practice.
- 41 (4) An optician as defined in this chapter.
- 42 (5) Any person in the course of employment by the federal government if
43 such person provides optometric services solely under the direction and con-
44 trol of the organization by which he is employed.
- 45 (6) The practice of optometry by a person licensed, registered, or cer-
46 tified in another state, a territory, the District of Columbia, or a foreign
47 country when incidentally called in this state to teach a course related to

1 optometry or to consult with a person licensed under this chapter, provided
2 that such person does not directly practice on the public.

3 (7) The practice of optometry by a person licensed, registered, or cer-
4 tified in good standing as an optometrist in another state or the District of
5 Columbia who is in this state to teach or supervise therapeutic laser proce-
6 dures pursuant to section 54-1512, Idaho Code.

7 54-1508. BOARD -- ORGANIZATION AND MEETINGS. (1) There is hereby es-
8 tablished in the department of self-governing agencies a state board of op-
9 tometry.

10 (2) The board shall consist of five (5) members who shall be appointed
11 by the governor, four (4) of whom shall be licensed pursuant to this chapter
12 and one (1) of whom shall be a member of the public with an interest in the
13 rights of consumers of optometric services.

14 (3) Board members shall be appointed by the governor for a term of five
15 (5) years and serve at the pleasure of the governor. The governor may con-
16 sider recommendations for members of the board from any statewide optometric
17 association or from any individual residing in this state.

18 (4) In the event of the death, resignation, loss of qualifications, or
19 removal of any board member, or when a position becomes vacant for any other
20 reason before the expiration of the term to which the member is appointed,
21 the vacancy shall be filled for the unexpired portion of the term in the same
22 manner as the original appointment.

23 (5) The board shall hold a meeting at least annually and elect a chair-
24 man. The board may hold additional meetings on the call of the chairman or
25 at the written request of any two (2) members of the board. The board may ap-
26 point such committees as it considers necessary to carry out its duties. A
27 majority of the members of the board shall constitute a quorum.

28 (6) Members of the board shall be reimbursed for expenses and receive an
29 honorarium as provided by section 59-509 (p), Idaho Code.

30 54-1509. BOARD POWERS. The board shall have the following powers:

31 (1) To authorize, by written agreement, the bureau of occupational li-
32 censes to act as its agent and, in its discretion, to contract with the bureau
33 of occupational licenses for those services deemed necessary for the proper
34 administration of this chapter;

35 (2) To establish, by rule, and collect fees as prescribed by this chap-
36 ter;

37 (3) To maintain records necessary to carry out its duties under this
38 chapter;

39 (4) To pass upon the qualifications and fitness of applicants for li-
40 censes, authorizations, and designations and to adopt rules requiring con-
41 tinuing education as a condition for the renewal of licenses issued under
42 this chapter;

43 (5) To establish, pursuant to Idaho's administrative procedure act,
44 such rules as are necessary for the administration of this chapter, includ-
45 ing a code of ethics, standards of professional conduct, and standards of
46 practice;

47 (6) To adopt rules for the approval, prescribing, administration, and
48 dispensing of therapeutic pharmaceutical agents;

1 (7) To examine for, deny, approve, issue, revoke, suspend, restrict, or
2 otherwise discipline licenses pursuant to this chapter and to conduct inves-
3 tigations and hearings in connection with such actions, in accordance with
4 the provisions of chapter 52, title 67, Idaho Code;

5 (8) To provide a procedure for an applicant to request a review for a
6 felony or lesser crime conviction. The applicant shall bear the burden of
7 providing all evidence, documentation, and proof of suitability for licen-
8 sure required by the board for review;

9 (9) In any proceeding before the board authorized by this chapter, the
10 board or its designee may administer oaths or affirmations to witnesses ap-
11 pearing before it, may subpoena witnesses and compel their attendance, and
12 also may require the production of books, papers, documents, electronically
13 stored information, and other items at such proceedings. If any person shall
14 refuse to obey any subpoena so issued or shall refuse to testify or comply
15 with a request for production, the board may present its petition to a dis-
16 trict judge to cause an order to be issued requiring such witness to appear
17 before the board to testify and to produce such books, papers, and other doc-
18 uments and items as directed in the subpoena. Any person failing or refusing
19 to obey such order shall be punished for contempt of court. The licensed per-
20 son who is the subject of the proceeding shall have the same right of subpoena
21 upon making application to the board as set out in this chapter; and

22 (10) To take such action as may be necessary to enforce the provisions of
23 this chapter and to regulate the practice of optometry.

24 54-1510. QUALIFICATIONS FOR LICENSURE. Upon application to the board
25 and the payment of the required fees set by rule, an applicant may be licensed
26 as an optometrist if the applicant meets all the requirements of this chapter
27 and provides documentation acceptable to the board that he:

28 (1) Holds a degree from an accredited institution of optometry;

29 (2) Has successfully passed an examination approved by the board; and

30 (3) Is certified to use diagnostic and therapeutic pharmaceutical
31 agents as provided in this chapter and pursuant to the rules of the board.

32 54-1511. QUALIFICATIONS FOR AUTHORIZATION TO USE THERAPEUTIC
33 LASERS. (1) Upon application to the board and payment of the required fees
34 set by rule, an applicant may be provisionally authorized to use therapeutic
35 lasers in the practice of optometry if the applicant holds an active license
36 in good standing and provides documentation acceptable to the board that the
37 licensee:

38 (a) Is certified to use therapeutic pharmaceutical agents as provided
39 in this chapter and pursuant to the rules of the board;

40 (b) Has successfully passed the laser and surgical procedures examina-
41 tion as administered by the national board of examiners in optometry or
42 a substantially equivalent examination as may be approved by the board;
43 and

44 (c) Has identified one (1) or more supervisors who meet the qualifica-
45 tions of subsection (2) of this section and the rules of the board.

46 (2) The board may authorize a licensee to use therapeutic lasers for the
47 treatment of conditions of the eye, ocular adnexa, or both, if the applicant
48 has met the requirements for provisional authorization and has successfully

1 performed at least five (5) supervised laser procedures on patients. Di-
2 rect supervision must be provided by an ophthalmologist who holds a license
3 in good standing or an optometrist who holds a license in good standing and
4 is authorized to use therapeutic lasers in the practice of optometry in this
5 state or another state and meets any other requirements as may be established
6 by the rules of the board.

7 54-1512. ENDORSEMENT FOR LICENSURE. (1) An applicant who proves to the
8 satisfaction of the board that the applicant is licensed, certified, or reg-
9 istered in good standing under the laws of another state, territory, or ju-
10 risdiction of the United States, or a foreign country that in the opinion of
11 the board has substantially equivalent licensing, certification, or regis-
12 tration requirements as provided in this chapter, and who meets other re-
13 quirements as established in the rules of the board, may, upon the payment of
14 the required fee and the approval of the application, be licensed by endorse-
15 ment pursuant to this chapter.

16 (2) An applicant who proves to the satisfaction of the board that
17 the applicant is authorized to perform therapeutic laser procedures in
18 the practice of optometry under the laws of another state, territory, or
19 jurisdiction of the United States that, in the opinion of the board, are
20 substantially similar to or exceed the requirements to perform such proce-
21 dures in this state may, upon the payment of the required fee and the approval
22 of the application, be licensed to perform therapeutic laser procedures by
23 endorsement pursuant to this chapter.

24 54-1513. LICENSE -- RENEWAL AND REINSTATEMENT. (1) All licenses is-
25 sued under this chapter shall be for a term of one (1) year and expire on the
26 birthday of the licensee unless renewed in the manner prescribed by rule.
27 Except as set forth in this chapter, rules governing procedures and condi-
28 tions for license renewal and reinstatement shall be in accordance with sec-
29 tion 67-2614, Idaho Code.

30 (2) Effective January 1, 2021, every holder of a license to practice op-
31 tometry must be certified to use diagnostic and therapeutic pharmaceutical
32 agents as provided in this chapter and pursuant to the rules of the board.
33 Authorization for an optometrist to prescribe, administer, and dispense
34 therapeutic pharmaceutical agents for the treatment of conditions of the
35 eye, ocular adnexa, or both, as approved by the board of optometry and as
36 identified in rules adopted by the board of optometry, shall be granted only
37 to an optometrist who:

38 (a) Has successfully passed the treatment and management of ocular dis-
39 ease section of the optometrist examination approved by the association
40 of regulatory boards of optometry or an equivalent examination as may be
41 approved by the board;

42 (b) Has been approved by the board to use diagnostic pharmaceutical
43 agents; and

44 (c) Has completed such appropriate additional educational and clinical
45 experience requirements as shall be established by the board.

46 (3) Any license issued under this chapter to a licensee who has not met
47 the qualifications and been certified to use therapeutic pharmaceutical
48 agents shall expire on December 31, 2020, and shall not be subject to renewal

1 or reinstatement. Licensees who received their license prior to 1990 shall
2 be excused from the provisions of this subsection, and their licenses shall
3 be accorded grandfather rights.

4 54-1514. FEES. (1) The board shall establish by rule fees for applica-
5 tions, active and inactive licensure, authorizations and designations, en-
6 dorsement, renewal, and reinstatement.

7 (2) All fees received under the provisions of this chapter shall be de-
8 posited in the state treasury to the credit of the occupational licenses ac-
9 count in the dedicated fund, and all costs and expenses incurred by the board
10 under the provisions of this chapter shall be a charge against and paid from
11 the account for such purposes, and the funds collected pursuant to this sec-
12 tion shall be immediately available for the administration of this chapter,
13 the provisions of any other law notwithstanding. All fees received under the
14 provisions of this chapter shall be nonrefundable; however, if a license fee
15 is tendered but the board does not issue a license, the license fee may be re-
16 turned.

17 54-1515. DISCIPLINE BY THE BOARD -- GROUNDS. (1) The board may refuse
18 to issue, refuse to renew, revoke, suspend, restrict, reprimand or censure,
19 or otherwise discipline a licensee, including the imposition of a fine not to
20 exceed two thousand dollars (\$2,000), upon the following grounds:

- 21 (a) Fraud or deception in procuring a license;
- 22 (b) Having been found guilty, convicted, entered into a guilty plea
23 that is accepted by the court, or having received a withheld judgment
24 or suspended sentence in this or any other state of a felony or other
25 crime that reflects on the qualifications, functions, or duties of an
26 optometrist;
- 27 (c) Failure to meet the community standard of care as provided by other
28 qualified optometrists in the same or similar communities, taking into
29 account his training, experience, and the degree of expertise to which
30 the licensee holds himself out to the public;
- 31 (d) Gross negligence or recklessness in the practice of optometry;
- 32 (e) Inability to practice optometry with reasonable skill and safety by
33 reason of:
- 34 (i) Mental illness;
- 35 (ii) Physical illness, including but not limited to physical de-
36 terioration that adversely affects cognitive, motor, or percep-
37 tive skills;
- 38 (iii) Habitual or excessive use or abuse of drugs defined in law as
39 controlled substances, alcohol, or any other substances that im-
40 pair ability; or
- 41 (iv) Having a communicable, contagious, or infectious disease
42 that endangers the health of patients.
- 43 (f) Engaging in any practice or behavior of a character likely to de-
44 ceive or defraud the public;
- 45 (g) Obtaining any fee or compensation by fraud, deceit, or misrepresen-
46 tation;
- 47 (h) Advertising the practice of optometry in a false, misleading, or
48 deceptive manner;

1 (i) Violation of the code of ethics or standards of professional con-
2 duct adopted in the rules of the board;

3 (j) Violation of any of the provisions of this chapter or the rules of
4 the board;

5 (k) Willfully attempting to violate, directly or indirectly, conspir-
6 ing to violate, or assisting or participating in or abetting the viola-
7 tion of any of the provisions of this chapter or any of the rules estab-
8 lished by the board pursuant to the authority granted in this chapter;

9 (l) Having engaged in any conduct that constitutes an abuse or ex-
10 ploitation of a patient arising out of the trust and confidence placed
11 in the licensee by the patient;

12 (m) Having had any professional license, registration, or certifica-
13 tion revoked, suspended, or otherwise disciplined in Idaho or any other
14 state, territory, country, or jurisdiction;

15 (n) Interfering with a board investigation or disciplinary proceeding
16 by willful misrepresentation of facts, materially refusing to furnish
17 the board with information or records required or requested pursuant
18 to this chapter, or by use of threats, harassment, or undue influence
19 against any client or witness to prevent such person from providing
20 evidence in a disciplinary proceeding, investigation, or other legal
21 action;

22 (o) Failure to comply with a board order; or

23 (p) Using therapeutic pharmaceutical agents or performing laser pro-
24 cedures without authorization of the board under the provisions of this
25 chapter.

26 (2) The board may reinstate any revoked or suspended license upon such
27 terms as it may determine.

28 54-1516. CERTAIN ACTS PROHIBITED. (1) The following acts shall be un-
29 lawful and punishable as a misdemeanor:

30 (a) Practicing, offering, or attempting to offer to practice optometry
31 as defined in this chapter, unless licensed or otherwise exempt as pro-
32 vided in this chapter;

33 (b) Knowingly aiding or abetting any person or entity to practice op-
34 tometry when such person or entity is not authorized to practice optome-
35 try in Idaho as provided in this chapter; and

36 (c) Duplicating any ophthalmic lens for corrective purposes or for as-
37 sisting vision, unless licensed as an optometrist or an ophthalmolo-
38 gist, or practicing as an optician, as defined in this chapter.

39 (2) Each violation of the provisions of this section shall, upon con-
40 viction, result in a fine in an amount not to exceed one thousand dollars
41 (\$1,000), or imprisonment in the county jail for no less than thirty (30)
42 days but no more than ninety (90) days, or by both such fine and imprisonment.

43 54-1517. SEVERABILITY. The provisions of this chapter are hereby de-
44 clared to be severable and if any provision of this chapter or the applica-
45 tion of such provision to any person or circumstance is declared invalid for
46 any reason, such declaration shall not affect the validity of the remaining
47 portions of this chapter.