

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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SENATE BILL 659

Short Title: Optometry Practice Mods. (Public)

Sponsors: Senators Burgin, Krawiec, and Corbin (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 10, 2023

1 A BILL TO BE ENTITLED
2 AN ACT MAKING VARIOUS MODIFICATIONS TO THE LAWS OF OPTOMETRY.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 90-118.10 reads as rewritten:

5 "**§ 90-118.10. Annual renewal of licenses.**

6 Since the laws of North Carolina now in force provided for the annual renewal of any license
7 issued by the North Carolina State Board of Examiners in Optometry, it is hereby declared to be
8 the policy of this State that all ~~licenses~~ licenses, primary and branch, heretofore issued by the
9 North Carolina State Board of Examiners in Optometry, or hereafter issued by said Board are
10 subject to annual renewal and the exercise of any privilege granted by any license heretofore
11 issued or hereafter issued by the North Carolina State Board of Examiners in Optometry is subject
12 to the issuance on or before ~~the first day of January~~ December 31 of each year of a certificate of
13 renewal of license.

14 On or before ~~the first day of January~~ December 31 of each year, each optometrist engaged in
15 the practice of optometry in North Carolina shall make application to the North Carolina State
16 Board of Examiners in Optometry and receive from said Board, subject to the further provisions
17 of this section and of this Article, a certificate of renewal of said license.

18 The application shall show the serial number of the applicant's license, his or her full name,
19 ~~address~~ the address, including the street and the county county, in which he or she has practiced
20 during the preceding year, the date of the original issuance of license to said applicant and such
21 other information as the said Board from time to time may prescribe by regulation.

22 If the application for such renewal certificate, accompanied by the fee required by this Article,
23 is not received by the Board before ~~January 31~~ January 1 of each year, an additional fee of fifty
24 dollars (\$50.00) shall be charged for renewal certificate. If such application accompanied by the
25 renewal fee is not received by the Board before ~~March 31~~ January 31 of each year, every person
26 thereafter continuing to practice optometry without having applied for a certificate of renewal
27 shall be guilty of the unauthorized practice of optometry and shall be subject to the penalties
28 prescribed by G.S. 90-118.11. If the inactive license is not appropriately renewed by December
29 31 of that year, that license will expire and not be eligible for renewal.

30 In issuing a certificate of renewal, the Board shall expressly state whether such person,
31 otherwise licensed in the practice of optometry, has been certified to prescribe and use
32 pharmaceutical agents."

33 **SECTION 2.** G.S. 90-123 reads as rewritten:

34 "**§ 90-123. Fees.**



In order to provide the means of carrying out and enforcing the provisions of this Article and the duties of devolving upon the North Carolina State Board of Examiners in Optometry, the Board is authorized to charge and collect the following fees:

- (1) Each application for general optometry ~~examination~~ license ~~\$800.00~~ \$1,000
- (2) Each general optometry license renewal, which fee shall be annually fixed by the Board, and not later than December 15 of each year written notice of the amount of the renewal fee shall be given to each optometrist licensed to practice in this State by mailing the notice to the last address of record with the Board of each such optometrist..... ~~300.00~~ 500.00
- (2a) Each provisional license..... 300.00
- (2b) Each renewal of a provisional license 100.00
- (3) ~~Each certificate of license to a resident optometrist desiring to change to another state or territory.....~~ 300.00
- (4) ~~Each license issued to a practitioner of another state or territory to practice in this State.....~~ 350.00
- (5) ~~Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has removed from and returned to this State.....~~ 350.00
- (6) Each application for registration as an optometric assistant or renewal thereof 100.00
- (7) Each application for registration as an optometric technician or renewal thereof 100.00
- (8) ~~Each duplicate license or application for a branch office license or renewal thereof for each branch office.....~~ 100.00; 200.00."

SECTION 3. G.S. 90-121.2 reads as rewritten:

"§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of certificate.

(a) The Board shall have the power to make, adopt, and promulgate such rules and regulations, including rules of ethics, as may be necessary and proper for the regulation of the practice of the profession of optometry and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules and regulations, including rules of ethics, made against any optometrist licensed to practice in North Carolina. The Board shall also have the power and authority to: (i) refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal of a license to practice optometry; (iii) revoke or suspend a license to practice optometry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that such applicant or ~~licensee~~ licensee meets any of the following criteria:

- ...
- (7) ~~Is mentally, emotionally, or physically unfit to practice optometry or is afflicted with such a physical or mental disability as to be deemed dangerous to the health and welfare of his patients. An adjudication of mental incompetency in a court of competent jurisdiction or a determination thereof by other lawful means shall be conclusive proof of unfitness to practice optometry unless or until such person shall have been subsequently lawfully declared to be mentally competent;~~
- (7a) Is unable to practice optometry with reasonable skill and safety by reason of abuse of alcohol, drugs, chemicals, or any other type of substance, or by

1 reason of any physical or mental illness, abnormality, or other limiting
 2 condition;

3 ...

4 (a1) The Board may, in its discretion, order an applicant or licensee to submit to a mental
 5 or physical examination by physicians or physician assistants, or other appropriate licensed
 6 health care providers, designated by the Board during the pendency of the licensing application,
 7 or before or after charges may be presented against the applicant or licensee. The results of the
 8 examination shall be admissible in evidence in a hearing before the Board in accordance with the
 9 provisions of this Article. An adjudication of mental incompetency in any court of competent
 10 jurisdiction or a determination of mental incompetency by other lawful means shall be conclusive
 11 proof of unfitness to practice optometry, unless or until that applicant or licensee is subsequently
 12 lawfully declared mentally competent. An adjudication or determination of mental incompetency
 13 shall constitute good cause for the issuance of an order by the Board that the licensee immediately
 14 cease practice and surrender their license to the Board. Failure to comply with an order under
 15 this subsection may be considered unprofessional conduct.

16 (a2) In addition to and in conjunction with the actions described above, in subsections (a)
 17 and (a1) of this section, the Board may make a finding adverse to a licensee or applicant but
 18 withhold imposition of judgment and penalty or it may impose judgment and penalty but suspend
 19 enforcement thereof and place the licensee on probation, which probation may be vacated upon
 20 noncompliance with such reasonable terms as the Board may impose. The Board may administer
 21 a public or private reprimand or a private letter of concern, and the private reprimand and private
 22 letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and shall not be
 23 disclosed to any person except the licensee. The Board may require a licensee to: (i) make
 24 specific redress or monetary redress; (ii) provide free public or charity service; (iii) complete
 25 educational, remedial training, or treatment programs; (iv) pay a fine; and (v) reimburse the
 26 Board for disciplinary costs.

27"

28 **SECTION 4.** G.S. 90-121.6 reads as rewritten:

29 "**§ 90-121.6. ~~Reporting and publication of~~ Duty to report judgments, awards, payments,**
 30 **and settlements.**

31 (a) All optometrists licensed or applying for licensure by the Board shall report to the
 32 ~~Board:~~Board within 30 days of the occurrence of any of the following:

- 33 (1) All medical malpractice judgments or awards affecting or involving the
 34 optometrist.
 35 (2) All settlements in the amount of seventy-five thousand dollars (\$75,000) or
 36 more related to an incident of alleged medical malpractice affecting or
 37 involving the optometrist where the settlement occurred on or after May 1,
 38 2008.
 39 (3) All settlements in the aggregate amount of seventy-five thousand dollars
 40 (\$75,000) or more related to any one incident of alleged medical malpractice
 41 affecting or involving the optometrist not already reported pursuant to
 42 subdivision (2) of this subsection where, instead of a single payment of
 43 seventy-five thousand dollars (\$75,000) or more occurring on or after May 1,
 44 2008, there is a series of payments made to the same claimant which, in the
 45 aggregate, equal or exceed seventy-five thousand dollars (\$75,000).

46 ...

47 (d1) Reports under this section shall be made to the Board by one of the following
 48 methods:

- 49 (1) Certified mail and obtaining a delivery receipt.
 50 (2) A designated delivery service authorized by G.S. 1A-1, Rule 4(j) and
 51 obtaining a delivery receipt.

1 (3) Emailing the Board at their public email address found on the Board's website
2 and confirming receipt by the Board via return email.
3 (d2) Failure to report under this section shall constitute unprofessional conduct and shall
4 be grounds for discipline under G.S. 90-121.2.

5 (e) Nothing in this section shall limit the Board from collecting information needed to
6 administer this Article."

7 **SECTION 5.** Article 6 of Chapter 90 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 90-121.7. Duty to report certain other acts or events.**

10 (a) Every licensee has a duty to report to the Board any incidents that the licensee
11 reasonably believes to have occurred involving any of the following, within 30 days of learning
12 about the incident:

13 (1) Sexual misconduct of any person licensed by the Board under this Article with
14 a patient. Patient consent or initiation of acts or contact by a patient shall not
15 constitute affirmative defenses to sexual misconduct. For purposes of this
16 subdivision, the term "sexual misconduct" means vaginal intercourse or any
17 sexual act or sexual contact or touching as described in G.S. 14-17.20. Sexual
18 misconduct shall not include any act or contact that is for an accepted medical
19 purpose.

20 (2) Fraudulent prescribing, drug diversion, or theft of any controlled substances
21 by another person licensed by the Board under this Article. For purposes of
22 this subdivision, the term "drug diversion" means transferring controlled
23 substances or prescriptions for controlled substances to any of the following:

24 a. The licensee for personal use.

25 b. The licensee's immediate family member, including a spouse, parent,
26 child, sibling, and any stepfamily member or in-law coextensive with
27 the preceding identified relatives.

28 c. Any other person living in the same residence as the licensee.

29 d. Any person with whom the licensee is having a sexual relationship.

30 e. Any individual unless for a legitimate medical purpose by an
31 individual practitioner acting in the usual course of his professional
32 practice.

33 (b) For persons issued a license to practice by the Board under this Article, failure to
34 report under this section shall constitute unprofessional conduct and shall be grounds for
35 discipline under G.S. 90-121.2.

36 (c) Any person who reports under this section in good faith and without fraud or malice
37 shall be immune from civil liability. Reports made in bad faith, fraudulently, or maliciously shall
38 constitute unprofessional conduct and shall be grounds for discipline under G.S. 90-121.2.

39 (d) Reports under this section shall be made to the Board by one of the following
40 methods:

41 (1) Certified mail and obtaining a delivery receipt.

42 (2) A designated delivery service authorized by G.S. 1A-1, Rule 4(j) and
43 obtaining a delivery receipt.

44 (3) Emailing the Board at their public email address found on the Board's website
45 and confirming receipt by the Board via return email."

46 **SECTION 6.** G.S. 90-127.3 reads as rewritten:

47 **"§ 90-127.3. Copy of prescription furnished on request.**

48 All persons licensed or registered under this Chapter shall upon request give each patient
49 having received an eye examination a copy of his spectacle ~~prescription.~~ prescription, consistent
50 with Federal Trade Commission rules and guidelines. No person, firm or corporation licensed or
51 registered under Article 17 of this Chapter shall fill a prescription or dispense lenses, other than

1 spectacle lenses, unless the prescription specifically states on its face that the prescriber intends
2 it to be for contact lenses and includes the type and specifications of the contact lenses being
3 prescribed. The prescriber shall state the expiration date on the face of every prescription, and
4 the expiration date shall be no earlier than 365 days after the examination date.

5 Any person, firm or corporation that dispenses contact lenses on the prescription of a
6 practitioner licensed under Articles 1 or 6 of this Chapter shall, at the time of delivery of the
7 lenses, inform the recipient both orally and in writing that he return to the prescriber for insertion
8 of the lens, instruction on lens insertion and care, and to ascertain the accuracy and suitability of
9 the prescribed lens. The statement shall also state that if the recipient does not return to the
10 prescriber after delivery of the lens for the purposes stated above, the prescriber shall not be
11 responsible for any damages or injury resulting from the prescribed lens, except that this sentence
12 does not apply if the dispenser and the prescriber are the same person.

13 Prescriptions filled pursuant to this section shall be kept on file by the prescriber and the
14 person filling the prescription for at least 24 months after the prescription is filled."

15 **SECTION 7.** Article 6 of Chapter 90 of the General Statutes is amended by adding
16 a new section to read:

17 **"§ 90-127.4. Dispensing optometrists.**

18 (a) An optometrist may register under this section and with the North Carolina Board of
19 Pharmacy to dispense certain drugs. A registered dispensing optometrist shall not compound
20 medications or dispense controlled substances. A registered dispensing optometrist shall only
21 dispense legend or prescription drugs to their own patients.

22 (b) In order to dispense certain drugs consistent with this section, the dispensing
23 optometrist shall pay the dispensing fee to the North Carolina Board of Pharmacy as set forth in
24 G.S. 90-85.24 and comply with the dispensing registration process as set forth in G.S. 90-85.26B.
25 The optometrist shall register with both the North Carolina Board of Pharmacy and the Board
26 and comply with all rules governing dispensing of drugs in accordance with this section.

27 (c) Drugs dispensed under this section shall only be for the diagnosis and treatment of
28 abnormal conditions of the eye and its adnexa."

29 **SECTION 8.(a)** Article 4A of Chapter 90 of the General Statutes is amended by
30 adding a new section to read:

31 **"§ 90-85.26B. Registration of dispensing optometrists.**

32 Each dispensing optometrist who dispenses prescription drugs, for a fee or other charge, shall
33 annually register with the Board on the form provided by the Board and with the licensing board
34 having jurisdiction over the dispensing optometrist. Such dispensing shall comply in all respects
35 with the relevant laws and regulations that apply to pharmacists governing the distribution of
36 drugs, including packaging, labeling, and record keeping. Authority and responsibility for
37 disciplining dispensing optometrists who fail to comply with the provisions of this section are
38 vested in the licensing board having jurisdiction over the dispensing optometrist."

39 **SECTION 8.(b)** G.S. 90-85.24 reads as rewritten:

40 **"§ 90-85.24. Fees collectible by Board.**

41 (a) The Board of Pharmacy shall be entitled to charge and collect not more than the
42 following fees:

43 ...

44 (9) For annual registration as a dispensing physician under G.S. 90-85.21(b),
45 seventy-five dollars (\$75.00);

46 (10) For reinstatement of registration as a dispensing physician, seventy-five
47 dollars (\$75.00);

48 ...

49 (19) For reinstatement of a registration to dispense devices, deliver medical
50 equipment, or both, two hundred dollars ~~(\$200.00)~~ (\$200.00);

- 1 (20) For annual registration as a dispensing optometrist under G.S. 90-127.4,
- 2 seventy-five dollars (\$75.00);
- 3 (21) For reinstatement of registration as a dispensing optometrist under
- 4 G.S. 90-127.4, seventy-five dollars (\$75.00)."

5 "

6 **SECTION 9.** The North Carolina State Board of Examiners in Optometry may adopt
7 temporary rules to implement the provisions of this act. The North Carolina Board of Pharmacy
8 may adopt temporary rules to implement Section 8 of this act.

9 **SECTION 10.** This act becomes effective October 1, 2023.