

# ARKANSAS OPTOMETRY LAW

## SUBCHAPTER 1

### 17-90-101. Definition - Applicability.

(a) The "practice of optometry" means the examination, diagnosis, treatment, and management of conditions of the human eye, lid, adnexa, and visual system, including the removal of foreign bodies from the cornea, conjunctiva, lid, or adnexa, but shall exclude other surgery of the lid, adnexa, or visual system which requires anything other than a topical anesthetic. Optometry shall include utilizing any method or means which the licensed optometrist is educationally qualified to provide, as established and determined by the Arkansas State Board of Optometry. In administering this subchapter, the Arkansas State Board of Optometry shall by rule or regulation prescribe those acts, services, procedures, and practices which constitute both primary optometric eye care and the practice of optometry. The practice of optometry shall include but not be limited to: the prescribing and sale of eyeglasses and contact lenses; the prescribing and administering of all oral and topical drugs for the diagnosis or treatment only of conditions of the eye, lids, and adnexa, except those listed in Schedules I and II of the Uniform controlled Substances Act; and the prescribing and administering of epinephrine, benadryl, or other comparable medication for the emergency treatment of anaphylaxis or anaphylactic reactions. All licensed optometrists are prohibited from using ophthalmic lasers for surgical procedures, from performing cataract surgery, from performing radial keratotomy surgery, and from selling prescription drugs.

(b) Any person who utilizes any objective or subjective method, including, but not limited to, self testing devices and computerized or automated refracting devices for the purpose of preparing an optical prescription, to analyze or determine any optical defect, deficiency, or deformity, or visual or muscular anomaly of the visual system, or who measures the curvature of the human cornea, or who prescribes, tints, coats, dispenses, adapts, or duplicates lenses, prisms, ocular exercises, visual therapy, or orthoptics for the correction, relief, or aid of the visual functions, or who prescribes, adapts, fits, duplicates, dispenses, modifies, sells, or supplies contact lenses, or holds himself out as being able to do so, shall be deemed to be engaged in the practice of optometry. **All licensed optometrists are prohibited from using ophthalmic lasers for surgical procedure except as permitted in subdivision (a) (3) (D) of this section, performing cataract surgery, performing radial keratotomy surgery, and selling prescription drugs.**

(c) Those licensed optometrists who meet the qualifications and standards established by the Arkansas State Board of Optometry shall be designated optometric physicians.

(d) Nothing in this chapter shall apply to physicians and surgeons as defined in the Medical Practice Act, A.C.A. §§ 17-80-101, et seq. **The "practice of optometry" includes the following procedures: (i) Injections, excluding intravenous or intraocular injections: (ii) Incision and**

**curettage of a chalazion: (iii) Removal and biopsy of skin lesions with low risk of malignancy, excluding lesion involving the lid margin or nasal to the puncta: (iv) Laser capsulotomy: (v) Laser trabeculoplasty.**

(e) Nothing in this chapter shall prevent the performance of those acts, practices and procedures, including the ordering, application and sale of tints or coats for spectacle lenses, by legally qualified persons who are specifically authorized and approved by the Arkansas Ophthalmic Dispensers Act, A.C.A. § 17-89-101, et seq.

(f) Every licensed optometrist shall, within ten (10) days of receipt of written notification of the filing of a claim or lawsuit alleging malpractice against him or her, notify the Arkansas State Board of Optometry by registered letter of the lawsuit and provide information or reports as required by the board. All such information and reports shall be exempt from the Freedom of Information Act, §§ 25-19-101, et seq., and shall be released only upon the order of a court of competent jurisdiction.

#### **17-90-102. Exemptions.**

Nothing in this chapter, except as expressly provided otherwise, shall apply to physicians and surgeons, nor to persons who sell eyeglasses, spectacles, lenses, contact lenses, frames, mountings, or prisms at wholesale on individual prescriptions to optometrists, physicians, and surgeons, 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.

#### **17-90-103. Status of profession.**

The practice of optometry is declared to be a learned profession, and the same rights, powers, and duties are declared to attach thereto as attach to other learned professions.

#### **17-90-104. Unlawful practice.**

The following acts are declared to be unlawful:

- (1) The violation of any of the provisions of this chapter;
- (2) For any optometrist, physician, or surgeon to advertise in any manner, either directly or indirectly, any fraudulent, false, or misleading statement as to the skill or method of practicing of himself or of any other optometrist, physician, or surgeon, to advertise in any manner that will tend to deceive, mislead, or defraud the public, or to advertise in any other manner;
- (3) For any person, firm, partnership, or corporation or any optometrist, physician, or surgeon to advertise, either directly or indirectly, free optometric service or examination or to advertise directly or indirectly by any means whatsoever any definite or indefinite amount or terms as a fee for the professional services or materials rendered or furnished by an optometrist, physician, or surgeon;

- (4) For any person, firm, corporation, or partnership not having a license, to engage in the practice of optometry;
- (5) For any person, firm, partnership, or corporation to employ any optometrist, physician, or surgeon to assist it in the unlawful practice of optometry. However, a licensed optometrist or partnership composed of licensed optometrists may employ other licensed optometrist in practicing optometry;
- (6) For an optometrist, physician, or surgeon to accept employment from any unlicensed person, firm, partnership, or corporation, or in any other manner to assist it or them, in the unlawful practice of optometry;
- (7) For any person, firm partnership, or corporation to give or offer to give eyeglasses, spectacles, lenses, or frames to any person as a premium or inducement for the purchase of any goods, wares, or merchandise;
- (8) For any person to impersonate a registered optometrist or a registered physician or surgeon or to buy, sell, or fraudulently obtain a certificate or registration;
- (9) For any unlicensed person, partnership, firm, or corporation to publicly represent that he or it by himself or itself, or through agents or employees, is engaging in the practice of optometry or is qualified to do so; and
- (10) For any optometrist, physician, surgeon, individual, firm, partnership, corporation, wholesaler, jobber, or retailer to solicit the sale of spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or any other optical appliances or devices, eye examinations, or visual services, including vision training or orthoptics, by radio, window display, television, telephone directory display advertisement, newspaper advertisement, handbills, circulars, prospectuses, posters, motion pictures, stereopticon slides, or any other printed publication or medium or by other means of advertisement; or
- (11) For any optometrist, physician, surgeon, individual, firm, partnership, corporation, wholesaler, jobber, or retailer to use any method or means of baiting, persuading, or enticing the public into buying spectacles, eyeglasses, lenses, contact lenses, frames, mountings, prisms, or other optical appliances or devices for visual correction or relief of the visual system or to train the visual system.

**(Consent Decree entered in Arkansas Community Organizations For Reform Now v. Arkansas State Board of Optometry, U.S. District Court, E.D. Ark., No. LR-76-C-73, August 18, 1977: The Consent Decree declares unconstitutional and void so much of the Arkansas code of the Board of Optometry rules and regulations as prohibits, burdens or interferes with the dissemination of information as to the price, quality or availability of eye care goods and services. The Decree enjoins the defendants from enforcing said laws, and enjoins the Board from adopting or enforcing rules which deny plaintiffs any First Amendment rights.)**

**17-90-105. Penalty - Injunction**

(a)(1) Any optometrist, physician, or surgeon or individual, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(2) Each any every day the violation continues shall constitute a separate offense and be punishable as such.

(b)(1) The violation of any provision of this chapter may be enjoined by the state board in the chancery courts of this state, even though the violation may be punishable by fine, the intention of this chapter being to provide a speedy means of protecting the public which has not heretofore existed.

(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 to injunction, either temporary or permanent, in any court of this state.

### **17-90-106. Service of process on nonresident practitioner.**

(a)(1) The performance by a nonresident person, firm, or corporation within this state of any act prohibited or authorized by the terms of this chapter which constitutes the practice of optometry as defined by this chapter, except when done by persons, firms, or corporations having a designated agent for service of process within this state, shall be deemed equivalent to the appointment by the nonresident of the Secretary of State or his successor in office to be the true and lawful attorney and agent of the nonresident.

(2) All lawful process in any action or proceedings against him or against any person, firm, or corporation growing out of any action done within this state which may be authorized or prohibited under this chapter may be served upon him.

(3) The performance of the act shall be an agreement by the person, firm, or corporation that any such process against the person, firm, or corporation which is so served shall be of the same legal force and validity as if served on the person, firm, or corporation personally.

(b)(1) Service of process shall be made by serving a copy of the process on the Secretary of State, and the service shall be sufficiently served upon the nonresident.

(2) Notice of the service and a copy of the process must be forthwith sent by registered mail by the plaintiff or his attorney to the defendant at his last known address.

(3) The defendant's return receipt or the affidavit of the plaintiff or his attorney of compliance therewith must be appended to the writ of process and entered and filed in the office of the circuit court wherein the cause is brought.

(c) The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action.

(d) Service of summons, when obtained upon a nonresident person, firm, or corporation as above provided, shall be deemed sufficient service of summons and process to give to any of the courts of this state jurisdiction over the cause of action and over the nonresident defendant and shall warrant and authorize personal judgment against the nonresident person, firm, or corporation in the event that the plaintiff prevails in the action.

#### **17-90-107. Subpoenas.**

A subpoena is to be directed to the sheriff of any county where a witness resides or is found. It shall be served and returned in the same manner as subpoenas in civil actions in the circuit courts are served and returned.

#### **17-90-108. Requirement to provide eyeglass prescription.**

(a)(1) At the completion of an ophthalmic examination by any licensed optometrist or by any physician who practices as an ophthalmologist in this state if, as a result of the examination, the practitioner recommends that the patient needs eyeglasses of common availability within the state, then the optometrist or physician practicing as an ophthalmologist shall, upon request of the patient, provide to the patient a complete and accurate written prescription at no additional charge.

(2)(A) Contact lens prescriptions, written and signed, shall be released without additional charge upon request of the patient after the completion of the fitting and upon payment being made for the examination and fitting.

(B) Contact lens prescriptions *released and filled shall* be dispensed, sold, and *supplied after positive verification only* in accordance with the laws of the State of Arkansas and the rules and regulations promulgated and administered by the State Board of Optometry.

(3) A written contact lens prescription shall expire one (1) year after the date of the completion of the contact lens fitting, unless there is a medical reason that warrants a prescription for less than one (1) year.

(b) The respective licensing boards of optometry and physicians who practice as ophthalmologists and oculists shall provide for the revocation, suspension, or refusal to renew the license of an optometrist, or of a physician who practices as an ophthalmologist or oculist, licensed by them, who repeatedly or flagrantly violates the provisions of this section.

(c) The provisions of this section shall be supplemental to the laws of this state pertaining to the licensing of optometrist and the practice of optometry and the laws pertaining to physicians and surgeons who practice as ophthalmologist and oculists.

17-90-109. (a) No person, firm, corporation, or other legal entity located outside the State of Arkansas shall fill, ship, mail, or deliver through electronic mail, the Internet, alternative channels or other means, contact lenses or prescriptions for contact lenses to a resident of Arkansas without first having:

(1) Registered and paid all applicable fees required by the State Board of Optometry;

(2) Possession of a *positively verified* written, signed, and unexpired contact lens prescription issued, dispensed, sold, or supplied by a licensed optometrist or ophthalmologist in compliance with the laws of the State of Arkansas and all rules and regulations promulgated by the State Board of Optometry; and

(3) Registered to do business with the Secretary of State and designated a registered agent for service of process.

(b) If a nonresident person, firm, corporation, or legal entity fails to comply with the requirements of § 17-90-109(a), service of process may be perfected in accordance with the provisions of § 17-90-106; or alternatively, the optometrist or ophthalmologist dispensing, selling, or supplying the contact *lenses* shall be deemed a valid agent for service of process for the nonresident person, firm, corporation, or legal entity.

17-90-110. Any optometrist or ophthalmologist who releases a contact lens prescription in accordance with § 17-90-108(a)(2) shall not be liable for any damages for injury resulting from the purchasing, manufacturing, or dispensing of the contact lenses unless the contact lens seller and the contact lens prescriber are the same person.

#### **17-90-201. Appointment of members.**

The State Board of Optometry shall consist of seven (7) members appointed by the Governor for terms of five (5) years.

(1) Five (5) members shall be licensed optometrists who have been engaged in the regular practice of optometry in this state for a period of three (3) years. Any vacancy shall be filled by a successor appointed from a list of three (3) members submitted by the Arkansas Optometric Association.

(2) Two (2) members shall not be actively engaged in or retired from the profession of optometry. One (1) shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large, subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations. All vacancies shall be filled in a like manner.

#### **17-90-202. Compensation of members and secretary.**

(a) Each member of the board shall receive twenty-five dollars (\$25.00) per day or a reasonable sum to be fixed from time to time by the board for each day of actual service on the board. The board members are authorized to receive mileage reimbursement for travel expense incurred

while performing official duties of the board in an amount not to exceed that which is authorized by law as the maximum allowable mileage reimbursement for state employees.

(b) Mileage and per diem shall be paid from the fees collected by the board.

(c) The secretary of the board shall receive such additional salary as may be fixed by the board.

#### **17-90-203. Meetings - Officers - Records.**

(a) The board shall meet at least twice each year. At the first regular meeting, the board members shall elect a president, a vice-president, and a secretary-treasurer.

(b) A record of its proceedings shall be kept which shall be open for public inspection at reasonable times.

(c) The board shall make a report annually to the Governor showing all receipts and disbursements of moneys and a summary of all business transacted during the year.

#### **17-90-204. Powers and duties.**

The board shall have the following powers in addition to those conferred elsewhere within this chapter:

(1) To make rules and regulations for the administration and enforcement of this chapter:

(2) To revoke, suspend, or refuse to renew any certificate of license in the manner and for the causes set forth in this chapter;

(3) To determine what acts on the part of any person licensed under this chapter shall constitute unprofessional conduct;

(4) To employ or retain the services of attorneys and other necessary assistants in carrying out the provisions of this chapter;

(5) To bring suit in its proper name to enforce or restrain the violation of any provision of this chapter;

(6) To administer oaths, to have an official seal, or to 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.

(7) To levy civil penalties, after providing notice and a hearing, in an amount not to exceed one thousand dollars (\$1,000) for each violation against those individuals, firms or corporations found to be in violation of this chapter or rules and regulations promulgated there under:

(a) These penalties shall be used for the purpose of defraying the expenses of the board and as required for carrying out the provisions of this chapter;

(b) These penalties shall be in addition to other penalties which may be imposed by this board pursuant to this chapter;

(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 a judgment for the amount of penalty not paid.

**(9) To establish credentialing requirements for a licensee to administer or perform procedures as listed in § 17-90-101 (a) (3) (D).**

#### **17-90-205. Disposition of funds - Secretary-treasurer's bond.**

(a) All renewal fees and all examination and application fees shall be used by the board to pay its expenses in administering this chapter.

(b)(1) All moneys received by the board shall be disbursed by the secretary-treasurer who shall furnish surety bond.

(2) The secretary-treasurer shall keep a true and faithful account of all moneys received and all moneys expended and shall file annually with the Governor a report of all financial transactions duly audited by an independent accountant.

(c) All moneys not expended or used by the board to pay expenses in administering this chapter shall be retained by the board from year to year to be expended for the purposes and intentions expressed in this chapter.

(d) The secretary-treasurer of the board shall execute a bond for the state in a sum to be fixed by the board conditioned for the faithful performance of the duties of his office.

#### **17-90-206 Reporting requirements**

**(a) The State Board of Optometry shall require every optometrist who meets the requirements for certification to perform authorized laser procedures to report to the board regarding the outcome of the procedures performed in a format as required or directed by the Board.**

**(b) Reports under subsection (a) of this section shall be sent to the Department of Health.**

#### **17-90-301. Examinations - Fees**

(a) No person, except those already licensed by the board, shall practice optometry until he or she shall have:



(1) Successfully passed all examinations as the Board may require in the rules and regulations of the Board to include but not be limited to clinical examination if required; and

(2) Been registered and received a certificate of registration which shall have conspicuously printed on its face the definition of optometry set forth in § 17-90-101.

(b) Every applicant for examination shall present satisfactory evidence that he is:

(1) Over the age of twenty-one (21) years;

(2) A successful candidate having passed all parts of the National Board of Optometry examination since January 1, 1987;

(3) Of good moral character; and

(4) A graduate of a college of Optometry which has been accredited by the Council on Education of the American Optometric Association.

(c) All persons making application for examination and for registration shall be required to pay to the treasurer of the board a fee in a reasonable amount to be fixed by the board.

(d) (1) Beginning July 1, 2003, the Arkansas State Board of Optometry will issue licenses only for optometric physicians to persons who meet:

(A) The requirements of these sections:

(B) The requirements of § 17-90-401; and

(C) The requirements of rules of the Arkansas State Board of Optometry.

(2) A person who was licensed as an optometrist prior to July 1, 2003, and who does not meet the standard for licensure as an optometric physician may continue to renew the license as an optometrist, but may only practice in the manner prescribed by the rules of the board.

#### 17-90-302. **Reciprocity**

(a) Any person from another state desiring to engage in the practice of optometry in this state may be issued a certificate at the sole discretion of the board without a written examination upon satisfactory proof that he:

(1) Is qualified under this chapter;

(2) Has been issued a certificate or license to practice optometry by a state having licensure requirements at least equal in scope and standards to Arkansas with whom the board has an agreement of reciprocity; and

(3) Has engaged in the practice of optometry for a period of three (3) years in the other state and has complied with all the requirements of the Arkansas licensure law at the time of application.

*(4) Has passed within the past three (3) years the Continued Professional Development in Optometry (CPDO) exam administered by the NBEO.*

(b) He shall be required to pay a fee to the treasurer of the board for registration in a reasonable amount to be fixed by the board.

### **Licensure by Endorsement**

**Section 1. Arkansas Code § 17-90-302 is amended to read as follows:**

- (a) **Any person from another state desiring to engage in the practice of optometry in this state may be issued licensure by endorsement as the sole discretion of the State Board of Optometry upon satisfactory proof that he or she:**
- (1) Is qualified under this chapter;**
  - (2) Has been issued a certificate or license to practice optometry by a state, territory, the District of Columbia, or Canada having standards of proficiency at least equal to the standards of Arkansas;**
  - (3) Has engaged in the lawful practice of optometry for a period of three (3) years of the past four (4) years in the other state, territory, the District of Columbia, or Canada and has complied with all the requirements of the Arkansas licensure law at the time of application; and**
  - (4) Has passed an Arkansas jurisprudence examination as approved by the Board.**
- (b) **The applicant shall pay a fee to the Secretary-Treasurer of the State Board of Optometry for registration in a reasonable amount equal to the fee of a new applicant to cover the administrative costs of the application process as determined by the board.**
- (c) **An application for licensure by endorsement shall be accompanied by:**
- (1) The fee described in subsection (b) of this section;**
  - (2) Certification from all other states or territories in which the applicant has practiced;**
  - (3) A certificate of good standing from each authority which issued the license, setting forth the applicant's moral reputation and character, history with the authority, professional ability, continuing education compliance, and other information or data as the State Board of Optometry may deem necessary or expedient;**
  - (4) A copy of the therapeutic license held by the applicant;**
  - (5) A copy of the cardiopulmonary resuscitation certification held by the applicant and a current photo.**
  - (6) Transcripts from all colleges or universities attended by the applicant and an accredited school or college of optometry**
  - (7) Proof of completion of all parts of the National Board of Examiners in Optometry examination required at the time of graduation for initial licensure sent directly to the State Board of Optometry;**

- (8) Information on past medical malpractice claims and any disciplinary actions; and**
- (9) Application to the identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.**
- (10) Appear in person before State Board for an interview.**

**d. Upon furnishing satisfactory proof of fitness as contemplated in this section, the State Board of Optometry in its discretion may issue a license to practice optometry to the applicant without further cost except as otherwise provided in this chapter for the renewal of licenses.**

**17-90-303. License - Registration and display - Statement of services.**

(a) Any optometrist practicing in any county in this state shall display his license in a conspicuous place in his office.

(b) Any optometrist practicing away from his office shall deliver to each person obtaining services from him, a statement dated and signed by him setting forth the amount charged, his address, and the number of his certificate.

**17-90-304. Renewal - Failure to renew.**

(a) All registered optometrist shall annually pay a reasonable sum, to be fixed by the board, to the treasurer of the board as a license renewal fee on or before February 1 each year.

(b) The failure to pay the license renewal fee by any licensee may cause his license to be revoked or suspended, or other such penalties as provided in Arkansas Code 17-90-305, after thirty (30) days' notice.

**17-90-305. Revocation, suspension, or refusal to renew - Grounds.**

(a) The Board shall have the power to revoke, suspend, place a license on probation for such time as the board shall order and under such conditions as the board may impose, to insure the health and safety of the citizens of Arkansas, impose a fine of up to one thousand dollars (\$1000) per violation, refuse to renew a license, and/or reprimand the licensee or any combination thereof, for any of the following offenses if the board finds that the individual has committed the same:

- (1) Perpetrating a fraud on the public;

- (2) Presenting false information or documentation to the board in an attempt to obtain or to retain a license;
- (3) Conviction of a felony or the conviction of a misdemeanor, if said misdemeanor conduct would denote an impairment in the ability to practice optometry;
- (4) Habitual drunkenness;
- (5) Habitual or excessive use of schedule medication or other habit forming or mind altering drugs such as would impair the ability to practice optometry;
- (6) Violation of the laws of the United States or the State of Arkansas regulating the possession, distribution and prescribing of schedule medication;
- (7) Flagrant overcharging or billing;
- (8) False representation of materials;
- (9) False or misleading advertising;
- (10) Gross incompetency in the treatment of patients;
- (11) Unprofessional conduct;
- (12) Suffering from mental disease or defect rendering the licensee incompetent to practice optometry as a result of proof given by a licensed medical psychiatrist in the State of Arkansas and in combination with testimony of a licensed optometrist.
- (13) Violation of any provision of the laws of Arkansas regulating the practice of optometry;
- (14) Violation of any rule or regulation of the Board of Optometry;
- (15) Violation of any term of probation or order rendered by the Board.

(b) In addition to those acts which may be prescribed by the board as unprofessional conduct, the following shall be deemed by the board to be unprofessional:

- (1) The violation of any provision of this chapter;
- (2) The acceptance of employment either directly or indirectly by a licensed optometrist from an optometrist not licensed in Arkansas, or an unlicensed person, firm, or corporation engaged in any business or profession to assist it, him, or them in practicing optometry in this state.

**17-90-306. Revocation, suspension, or refusal to renew - Procedures.**

- (a) No certificate of license shall be rejected for renewal, suspended, or revoked for any cause, unless the person accused has been given at least thirty (30) days notice in writing setting forth the nature of the charges against him.
- (b) The accused person must also be afforded a public hearing at which time the person accused shall have the right to appear with or without counsel, to confront witness who appear against him, and to adduce testimony in his own behalf.
- (c) A record of the charges filed and the action taken thereon shall be prepared.
- (d) All hearings of the board and appeals from decisions or orders of the board will be subject to the provisions of the Administrative Procedure Act of the State of Arkansas as codified in Arkansas Code 25-15-101 et seq.

**17-90-401. Arkansas State Board of Optometry - Powers and duties.**

The Arkansas State Board of Optometry shall have the following rights and responsibilities:

- (1) To enforce, amend, or repeal the rules and regulations promulgated by the Board;
- (2) (A) To approve those optometrists who shall be authorized to possess, administer, and prescribe those drugs approved by this subchapter.
  - (B) No optometrist shall be so approved until he or she has:
    - (a) Exhibited his or her qualifications by passing an examination prepared or approved by the board; and
    - (b) Served an internship program established by the board, supervised and certified by a board-certified ophthalmologist, which internship includes at least one hundred (100) hours of supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa.
      - (i) The examination shall include, but not be limited to, written questions designed to test knowledge of the proper use and characteristics of the drugs approved by the board.
      - (ii) The examination shall be offered not less often than annually;
- (3) To promulgate educational standards, which shall be used as prerequisites to authorization to use those drugs approved in this subchapter. Educational standards shall cover only the area of the proper use and characteristics of the drugs approved by the board and emergency first aid techniques;

(4) To approve, consistent with the rules and regulations promulgated by the Board, those acts, services, procedures, and practices which may be performed by a licensed optometrist and, prior to authorization, by appropriate examination, establish the competence of every optometrist to perform the approved acts, services, procedures, and practices;

(5) (A) To prohibit any optometrist who is a graduate of a school or college of optometry as of July 20, 1987, who has not already successfully completed a postgraduate course of study of transcript quality in ocular therapy and pharmacology from an accredited school or college of optometry, which complies with all the prerequisites and requirements of the board and this subchapter, from being approved to perform any of the additional acts, services, procedures, and practices which are specifically authorized in §17-90-101 and §17-90-403 until he or she has successfully complied with all the prerequisites and requirements of the board and this subchapter.

(B) The express purpose of this subdivision is to prohibit the "grandfathering" of currently licensed optometrists unless and until they have completed the prerequisites and requirements of the board and this subchapter established by this subdivision. Nothing in this subdivision shall be construed to prohibit any optometrist currently licensed from continuing to practice optometry and be relicensed, but until he has met the requirements of this subchapter and the rules and regulations of the board, he shall not be allowed to utilize the additional treatments provided for in this subchapter;

(6) To promulgate rules and regulations governing the prescribing, and administering, and use of all drugs authorized in this chapter by all licensed and board-certified primary care optometrists, in the diagnosis, treatment, or management only of conditions of the human eye, lid, adnexa, or visual system.

(7) To promulgate rules and regulations which authorize board-certified primary care optometrists to order any procedure or laboratory test necessary in the examination, diagnosis, treatment, or management of diseases or conditions of the human eye, lid, adnexa, or visual system.

#### **17-90-402. Standards - Noncompliance**

(a) Reasonable standards applicable only to those optometrists who are authorized to use drugs for referral of eye patients with eye pathology discoverable by the use of drugs shall be promulgated only if the board finds that the standards are required to protect the health of the citizens of the state.

(b) The standards shall not require referral in cases where an optometrist is aware that a condition has been previously diagnosed by a physician.

(c) If these standards are promulgated, they shall be enforced by the Arkansas State Board of Optometry.

(d) Any violation of these standards shall be deemed unprofessional conduct under §17-90-101 et seq.

(e) If the board finds that an optometrist has habitually violated the standards of referral, then the board shall withdraw the authority to use drugs from that optometrist.

**17-90-403 Authority to possess, administer, and prescribe.**

One who is engaged in the practice of optometry as a profession, as defined in §17-90-101, and who has the education and professional competence, as determined by the Arkansas State Board of Optometry, and who has satisfied the educational requirements established by the Arkansas State Board of Optometry from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Post-Secondary Accreditation, the United States Department of Education, or the Arkansas board of Higher Education, and has met the requirements of §17-90-401, is authorized to possess, administer, and prescribe pharmaceutical agents for the diagnosis or treatment only of conditions of the eye, lids, or adnexa, except those listed in Schedules I and II of the Uniform Controlled Substances Act.

**17-90-501. Title. Impaired Optometrist Treatment Program**

This subchapter shall be known as the Impaired Optometrist Treatment Program.

**17-90-502. Purpose.**

The purpose of this subchapter is to provide for the identification and treatment of optometrists licensed under the Arkansas Optometry Law, who suffer from impairment, in order to promote the public health and safety and to ensure the continued availability of the skills of highly trained optometric professionals for the benefit of the public.

**17-90-503. Definitions. For purposes of this subchapter:**

- (1) Board shall mean the Arkansas State Board of Optometry with reference to optometrists;
- (2) Impaired or impairment shall mean the presence of the diseases of alcoholism, drug abuse, or mental illness;
- (3) Impaired Optometrist Treatment Program shall mean the Arkansas State Board of Optometry approved or sponsored program for the detection, intervention, and monitoring of impaired providers;
- (4)(A) Professional incompetence shall mean the inability or failure of an optometrist to practice his or her profession with reasonable skill and safety;
- (B) Impairment in and of itself shall not give rise to a presumption of professional incompetence; and

(5) Treatment program shall mean a plan of care and rehabilitation services provided by those organizations and persons authorized to provide such services for impaired providers taking part in the programs provided under this subchapter.

**17-90-504. Authority.**

The Arkansas State Board of Optometry may undertake the functions and responsibilities to carry out the purposes of this subchapter, which may include any of the following:

- (1) Contracting with providers of treatment programs;
- (2) Receiving and evaluating reports of suspected impairment from any source;
- (3) Intervening in cases of verified impairment;
- (4) Referring impaired optometrists to treatment programs;
- (5) Monitoring the treatment and rehabilitation of impaired optometrists;
- (6) Providing post-treatment monitoring and support of rehabilitated impaired optometrists;
- (7) Suspending, limiting, or restricting the optometrists license for the duration of the impairment; and
- (8) Performing such other activities as the Board deems necessary to accomplish the purposes of this subchapter.

**17-90-505. Procedures.**

The State Board shall develop procedures for:

- (1) Informing each participant in the Impaired Optometric Treatment Program of the program procedures, responsibilities of program participants, and the possible consequences of noncompliance with the program.
- (2) Voluntary self reporting and treatment program participation by an optometrist.

**17-90-506. Evaluation.**

- (a) If the Board has reason to believe that an optometrist is impaired, the Board may cause an evaluation of such optometrist to be conducted for the purpose of determining if there is an impairment.
- (b) If the Board finds, after examination and hearing, that a licensee is impaired, it may take one or more of the actions specified in this subchapter.



**17-90-507. Request for restricted license.**

(a) An impaired optometrist may request in writing to the Board for a restriction of his license to practice.

(b) The Board may grant such request for restriction and shall have the authority to attach conditions to the licensure of the optometrist to practice optometry within specified limitations.

**17-90-508. Confidentiality of records.**

(a)(1) Notwithstanding any provision of state law, records of the Board pertaining to an impaired optometrist shall be exempt from the Freedom of Information Act, §§ 25-19-101, et seq., shall be kept confidential, and shall not be subject to discovery or subpoena.

(2) No person in attendance at any meeting of the Board meeting concerning an impaired optometrist shall be required to testify as to any discussions or proceedings.

(b) However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such action merely because they were presented during the proceedings of the Board meeting on an optometrist, nor shall any person who testifies before the Board meeting on an optometrist, or who is a member of the Board, be prevented from testifying as to matters within his knowledge, but the witness shall not be asked about his testimony before the Board or about opinions formed by him as a result of the Board hearings.

**17-90-509. Participation in treatment program.**

An impaired optometrist who is participating in or has successfully completed a treatment program pursuant to this subchapter shall not be limited or restricted in his or her professional practice or excluded from any hospital staff solely because of such participation.

**17-90-510. Limitation on liability.**

(a) Notwithstanding any other provisions of law, the Arkansas State Board of Optometry, Committees and members thereof, shall not be held liable in damages to any person within the scope of their responsibilities pursuant to this subchapter.

(b) No person who in good faith and without malice makes a report pursuant to this subchapter to the Arkansas State Board of Optometry shall be liable for damages to any person.