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HOUSE BILL NO. 1330

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 54.1-3205, 54.1-3205.1, and 54.1-3215 of the Code of Virginia, relating to the practice of optometry.

Patrons—O'Bannon, Moran, Nutter and Sickles

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3205, 54.1-3205.1, 54.1-3215 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-3205. Practicing in a commercial or mercantile establishment.

A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a commercial or mercantile establishment, ~~or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as a lessee of or in the commercial or mercantile establishment unless~~ (i) the optometric practice is solely owned and controlled by the licensed optometrist, (ii) the prescription files and business records of the optometric practice are the sole property of the licensed optometrist, (iii) the leased space of the optometric practice is definite and distinct from the space used by other occupants of the premises, (iv) any shared doorway has a door that may be locked by the licensed optometrist to secure the portion of the premises used for the optometric practice, and (v) the optometrist has after-hours access to the leased space when the licensed optometrist needs such access to provide emergency care to a patient.

B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.

C. For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities.

D. For the purposes of this section, an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices, whether directly or indirectly, as an officer, employee, lessee or agent of any person or entity in any location that provides direct access to or from a commercial or mercantile establishment. Direct access includes any entrance or exit, except an entrance or exit closed to the public and used solely for emergency egress pursuant to applicable state and local building and fire safety codes, that prohibits a person from exiting the building or structure occupied by such practice or establishment (i) onto an exterior sidewalk or public way or (ii) into a common area that is not under the control of either the optometry practice or the commercial or mercantile establishment, such as into the common areas of an enclosed shopping mall. For the purposes of this section, neither an optometric practice nor an ophthalmologic practice which sells eyeglasses or contact lenses ancillary to its practice shall be deemed a commercial or mercantile establishment. Further, any entity that is engaged in the sale of eyeglasses or contact lenses, the majority of the beneficial ownership of which is owned by an ophthalmologic practice and/or one or more ophthalmologists, shall not be deemed a commercial or mercantile establishment.

E. This section shall not be construed to prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.

§ 54.1-3205.1. Supervision by unlicensed persons prohibited.

No optometrist shall be directly or indirectly supervised within the scope of the practice of optometry by any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not a Virginia-licensed optometrist or physician. No officer, employee, or agent of a commercial or mercantile establishment, who is not a Virginia-licensed optometrist or physician, shall (i) directly or indirectly control, dictate, or influence the professional judgment, including but not limited to the level or type of care or services rendered, of the practice of optometry by a licensed optometrist in the practice of optometry or (ii) terminate or threaten to terminate a lease agreement with a licensed optometrist as a means of controlling or attempting to control the professional judgment of the licensed optometrist.

§ 54.1-3215. Reprimand, revocation and suspension.

The Board may revoke or suspend a license or reprimand the licensee for any of the following

59 causes:

- 60 1. Fraud or deceit in his practice;
- 61 2. Conviction of any felony under the laws of the Commonwealth, another state, the District of
62 Columbia or any United States possession or territory or of any misdemeanor under such laws involving
63 moral turpitude;
- 64 3. Conducting his practice in such a manner as to endanger the health and welfare of his patients or
65 the public;
- 66 4. Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental
67 or physical illness rendering him unsafe to practice optometry;
- 68 5. Knowingly and willfully employing an unlicensed person to do anything for which a license to
69 practice optometry is required;
- 70 6. Practicing optometry while suffering from any infectious or contagious disease;
- 71 7. Neglecting or refusing to display his license and the renewal receipt for the current year;
- 72 8. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any
73 patient;
- 74 9. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims
75 professional superiority, or offers free ~~optometrical~~ *optometric* services or examinations;
- 76 10. Employing, procuring, or inducing a person not licensed to practice optometry to so practice;
- 77 11. Aiding or abetting in the practice of optometry any person not duly licensed to practice in this
78 Commonwealth;
- 79 12. Advertising, practicing or attempting to practice optometry under a name other than one's own
80 name as set forth on the license;
- 81 13. Lending, leasing, renting or in any other manner placing his license at the disposal or in the
82 service of any person not licensed to practice optometry in this Commonwealth;
- 83 14. Splitting or dividing a fee with any person or persons other than with a licensed optometrist who
84 is a legal partner or comember of a professional limited liability company formed to engage in the
85 practice of optometry;
- 86 15. Practicing optometry where any officer, employee, or agent of a commercial or mercantile
87 establishment, as defined in subsection C of § 54.1-3205, who is not licensed in Virginia to practice
88 optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment,
89 including but not limited to the level or type of care or services rendered, of the licensed optometrist;
- 90 16. *Failing to report to the Board any suspected violation of § 54.1-3205.1;*
- 91 ~~16~~17. Violating other standards of conduct as adopted by the Board;
- 92 ~~17~~18. Violating, assisting, inducing or cooperating with others in violating any provisions of law
93 relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the
94 Board.