

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 268

An Act to amend and reenact §§ 54.1-3202, 54.1-3211, 54.1-3213, 54.1-3215, 54.1-3219, 54.1-3221, 54.1-3222, and 54.1-3223 of the Code of Virginia and to repeal § 54.1-3220 of the Code of Virginia, relating to the practice of optometry; licensing; regulations.

[H 1737]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3202, 54.1-3211, 54.1-3213, 54.1-3215, 54.1-3219, 54.1-3221, 54.1-3222, and 54.1-3223 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-3202. Exemptions.

This chapter shall not apply to:

1. Physicians licensed to practice medicine by the Board of Medicine or to prohibit the sale of nonprescription eyeglasses and sunglasses; or

2. Any optometrist rendering free health care to an underserved population in ~~Virginia the Commonwealth~~ who (i) does not regularly practice optometry in ~~Virginia, the Commonwealth~~; (ii) holds a current valid license or certificate to practice optometry in another state, territory, district, or possession of the United States; (iii) volunteers to provide free health care in an underserved area of ~~this the Commonwealth~~ under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people; (iv) files a copy of his license or certification in such other jurisdiction with the Board; (v) notifies the Board at least five business days prior to the voluntary provision of services of the dates and location of such service; and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in ~~Virginia the Commonwealth~~ to any optometrist whose license or certificate has been previously suspended or revoked, who has been convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow an optometrist who meets the ~~above criteria of this subdivision~~ to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state; or

3. Any student, intern, or trainee in optometry who is performing optometric services under the direct supervision of a licensed optometrist or ophthalmologist as part of a course of study at an accredited institution of higher education.

§ 54.1-3211. Examination.

The Board shall set the necessary standards to be attained in the examinations to entitle the candidate to receive a license to practice optometry.

The examination shall be given at least semiannually if there are any candidates who have applied to the Board for examination at least 30 days before the date for the examination.

The examination shall include anatomy; physiology; pathology; general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents; and the use of the appropriate instruments.

The Board may determine a score that it considers satisfactory on any written examination of the National Board of Examiners in Optometry. ~~The Board may waive its examination for a person who achieves a satisfactory score on the examination of the National Board of Examiners in Optometry.~~

Those persons licensed on or before June 30, 1997, to practice optometry in ~~this state the Commonwealth~~ but not certified to administer diagnostic pharmaceutical agents may continue to practice optometry but may not administer diagnostic pharmaceutical agents without satisfying the requirements of this section. Those persons licensed after June 30, 1997, shall be considered as certified to administer diagnostic pharmaceutical agents. After June 30, 2004, every person who is initially licensed to practice optometry in ~~Virginia the Commonwealth~~ shall meet the qualifications for a TPA-certified optometrist.

§ 54.1-3213. License to practice optometry; requirements; renewal; fees.

A. Every candidate successfully passing the examination shall be licensed by the Board as ~~possessing~~ *if such candidate possesses* the qualifications required by law *and regulation* to practice optometry.

The fee for examination and licensure shall be prescribed by the Board and shall be paid to the executive director of the Board by the applicant upon filing his application.

B. *In order to be qualified for licensure as an optometrist, every applicant shall demonstrate competency for certification to prescribe for and treat diseases or abnormal conditions of the human eye*

and its adnexa with therapeutic pharmaceutical agents (TPAs). Requirements for TPA certification shall include:

1. Satisfactory completion of such didactic and clinical training programs for the treatment of diseases and abnormal conditions of the eye and its adnexa as are determined to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients; and

2. Passage of such examinations as are determined to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients.

C. Every license to practice optometry granted under the provisions of this chapter shall be renewed at such time, in such manner, and upon payment of such fees as the Board may prescribe.

§ 54.1-3215. Board actions; reprimand, suspension, revocation, etc.

The Board may ~~revoke or suspend a license or reprimand the licensee~~ refuse to admit an applicant to any examination; refuse to grant or renew a license or certificate; reprimand, place on probation, or impose a monetary penalty on a licensee; or impose such terms as it may designate, suspend for a stated period of time, or revoke any license or certificate for any of the following causes:

1. Fraud or deceit in his practice;

2. Conviction of any felony under the laws of the Commonwealth, another state, the District of Columbia, or any United States possession or territory or of any misdemeanor under such laws involving moral turpitude;

3. Conducting his practice in such a manner as to endanger the health and welfare of his patients or the public;

4. Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry;

5. Knowingly and willfully employing an unlicensed person to do anything for which a license to practice optometry is required;

6. ~~Practicing optometry while suffering from any infectious or contagious disease;~~

7. Neglecting or refusing to display his license and the renewal receipt for the current year;

~~8.~~ 7. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;

~~9.~~ 8. Advertising which that directly or indirectly deceives, misleads, or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;

~~10.~~ 9. Employing, procuring, or inducing a person not licensed to practice optometry to so practice;

~~11.~~ 10. Aiding or abetting in the practice of optometry any person not duly licensed to practice in this the Commonwealth;

~~12.~~ 11. Advertising, practicing, or attempting to practice optometry under a name other than one's own name as set forth on the license;

~~13.~~ 12. Lending, leasing, renting, or in any other manner placing his license at the disposal or in the service of any person not licensed to practice optometry in this the Commonwealth;

~~14.~~ 13. Splitting or dividing a fee with any person or persons other than with a licensed optometrist who is a legal partner or comember of a professional limited liability company formed to engage in the practice of optometry;

~~15.~~ 14. Practicing optometry where any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not licensed in ~~Virginia the Commonwealth~~ to practice optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment, including but not limited to the level or type of care or services rendered, of the licensed optometrist;

~~16.~~ 15. Violating other standards of conduct as adopted by the Board;

~~17.~~ 16. Violating, assisting, inducing, or cooperating with others in violating any provisions of law relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the Board.

§ 54.1-3219. Continuing education.

A. As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to complete 20 hours of continuing education relating to optometry, as approved by the Board, each year. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle. The courses shall include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances, and new achievements of research. The Board shall prescribe criteria for approval of courses of study. ~~The Board may approve alternative courses upon timely application of any licensee.~~ Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

B. Of the 20 hours of continuing education relating to optometry required pursuant to subsection A:

1. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer

may communicate with one another;

2. No more than two hours may consist of courses related to recordkeeping, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products; and

3. For TPA-certified optometrists, at least 10 hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

C. Nothing in this ~~subsection~~ section shall prevent or limit the authority of the Board to require additional hours or types of continuing education as part or in lieu of disciplinary action.

Article 4.

Certification for Administration of Diagnostic Pharmaceutical Agents.

§ 54.1-3221. "Diagnostic pharmaceutical agents" defined; utilization; acquisition.

A. ~~Certified optometrists~~ *Optometrists certified to administer diagnostic pharmaceutical agents or optometrists licensed after June 30, 1997,* may administer diagnostic pharmaceutical agents only by topical application to the human eye. ~~"Diagnostic~~ For purposes of this section, "diagnostic pharmaceutical agents" shall be defined as means Schedule VI controlled substances as set forth in the Drug Control Act (§ 54.1-3400 et seq.) that are used for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures.

B. Any optometrist who utilizes diagnostic pharmaceutical agents without being certified as required by this article to administer diagnostic pharmaceutical agents or licensed after June 30, 1997, shall be subject to the disciplinary sanctions provided in this chapter.

C. Licensed drug suppliers or pharmacists are authorized to supply optometrists with diagnostic pharmaceutical agents upon presentation of evidence of Board certification for administration of such drugs or an optometrist license issued after June 30, 1997.

§ 54.1-3222. TPA certification; certification for treatment of diseases or abnormal conditions with therapeutic pharmaceutical agents (TPAs).

A. The Board shall certify an optometrist to prescribe for and treat diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents (TPAs), if the optometrist files a written application, accompanied by the fee required by the Board and satisfactory proof that the applicant:

1. Is licensed by the Board as an optometrist and certified to administer diagnostic pharmaceutical agents pursuant to Article 4 (§ 54.1-3220 et seq.);

2. Has satisfactorily completed such didactic and clinical training programs for the treatment of diseases and abnormal conditions of the eye and its adnexa as are determined, after consultation with a school or college of optometry and a school of medicine, to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients; and

3. Passes such examinations as are determined to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients.

B. TPA certification shall enable an optometrist to prescribe and administer, within his scope of practice, Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III through VI controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) to treat diseases and abnormal conditions of the human eye and its adnexa as determined by the Board, within the following conditions:

1. Treatment with oral therapeutic pharmaceutical agents shall be limited to (i) analgesics included on Schedule II controlled substances as defined in § 54.1-3448 of the Drug Control Act (§ 54.1-3400 et seq.) consisting of hydrocodone in combination with acetaminophen, and analgesics included on Schedules III through VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act, which are appropriate to alleviate ocular pain and (ii) other Schedule VI controlled substances as defined in § 54.1-3455 of the Drug Control Act appropriate to treat diseases and abnormal conditions of the human eye and its adnexa.

2. Therapeutic pharmaceutical agents shall include topically applied Schedule VI drugs as defined in § 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.).

3. Administration of therapeutic pharmaceutical agents by injection shall be limited to the treatment of chalazia by means of injection of a steroid included in Schedule VI controlled substances as set forth in § 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.). A TPA-certified optometrist shall provide written evidence to the Board that he has completed a didactic and clinical training course provided by an accredited school or college of optometry that includes training in administration of TPAs by injection prior to administering TPAs by injection pursuant to this subdivision.

4. Treatment of angle closure glaucoma shall be limited to initiation of immediate emergency care.

5. Treatment of infantile or congenital glaucoma shall be prohibited.

6. Treatment through surgery or other invasive modalities shall not be permitted, except as provided in subdivision 3 or for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.

7. Entities permitted or licensed by the Board of Pharmacy to distribute or dispense drugs, including, but not limited to, wholesale distributors and pharmacists, shall be authorized to supply TPA-certified optometrists with those therapeutic pharmaceutical agents specified by the Board on the TPA-Formulary.

§ 54.1-3223. Regulations relating to therapeutic pharmaceutical agents; TPA-Formulary Committee.

A. The Board shall promulgate such regulations governing the treatment of diseases and abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents by TPA-certified optometrists as are reasonable and necessary to ensure an appropriate standard of medical care for patients, including, but not limited to, determinations of the diseases and abnormal conditions of the human eye and its adnexa that may be treated by TPA-certified optometrists, treatment guidelines, and the drugs specified on the TPA-Formulary.

~~In establishing standards of instruction and training, the Board shall consult with a school or college of optometry and a school or college of medicine and shall set a minimum number of hours of clinical training to be supervised by an ophthalmologist. The didactic and clinical training programs may include, but need not be limited to, programs offered or designed either by schools of medicine or schools or colleges of optometry or both or some combination thereof.~~

~~The Board may prepare, administer, and grade appropriate examinations for the certification of optometrists to administer therapeutic pharmaceutical agents or may contract with a school of medicine, school or college of optometry, or other institution or entity to develop, administer, and grade the examinations.~~

In order to maintain a current and appropriate list of therapeutic pharmaceuticals on the TPA-Formulary, current and appropriate treatment guidelines, and current and appropriate determinations of diseases and abnormal conditions of the eye and its adnexa that may be treated by TPA-certified optometrists, the Board may, from time to time, amend such regulations. Such regulations shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), except to any extent that they may be specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031; the Board's regulations shall, however, comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.). The Board shall, however, conduct a public hearing prior to making amendments to the TPA-Formulary, the treatment guidelines or the determinations of diseases and abnormal conditions of the eye and its adnexa that may be treated by TPA-certified optometrists. Thirty days prior to conducting such hearing, the Board shall give written notice by mail or *electronic means* of the date, time, and place of the hearing to all currently TPA-certified optometrists and any other persons requesting to be notified of the hearings and publish notice of its intention to amend the list in the Virginia Register of Regulations. During the public hearing, interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any TPA-Formulary amendments. Proposed and final amendments of the list shall also be published, pursuant to § 2.2-4031, in the Virginia Register of Regulations. Final amendments to the TPA-Formulary shall become effective upon filing with the Registrar of Regulations. The TPA-Formulary shall be the inclusive list of the therapeutic pharmaceutical agents that a TPA-certified optometrist may prescribe.

B. To assist in the specification of the TPA-Formulary, there shall be a seven-member TPA-Formulary Committee, as follows: three Virginia TPA-certified optometrists to be appointed by the Board of Optometry, one pharmacist appointed by the Board of Pharmacy from among its licensees, two ophthalmologists appointed by the Board of Medicine from among its licensees, and the chairman who shall be appointed by the Board of Optometry from among its members. The ophthalmologists appointed by the Board of Medicine shall have demonstrated, through professional experience, knowledge of the optometric profession. In the event the Board of Pharmacy or the Board of Medicine fails to make appointments to the TPA-Formulary Committee within 30 days following the Board of Optometry's requesting such appointments, or within 30 days following any subsequent vacancy, the Board of Optometry shall appoint such members.

The TPA-Formulary Committee shall recommend to the Board those therapeutic pharmaceutical agents to be included on the TPA-Formulary for the treatment of diseases and abnormal conditions of the eye and its adnexa by TPA-certified optometrists.

2. That § 54.1-3220 of the Code of Virginia is repealed.