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SENATE BILL NO. 375

Senate Amendments in [] - February 7, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 54.1-2400.01:1, 54.1-3200, and 54.1-3201 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 32 of Title 54.1 an article numbered 6, consisting of a section numbered 54.1-3225, relating to optometrists; laser surgery.

Patron Prior to Engrossment—Senator Petersen

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400.01:1, 54.1-3200, and 54.1-3201 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 32 of Title 54.1 an article numbered 6, consisting of a section numbered 54.1-3225, as follows:

§ 54.1-2400.01:1. Surgery defined; who may perform surgery.

A. For the purposes of this subtitle, except as used in Chapter 38 (§ 54.1-3800 et seq.) related to veterinary medicine, "surgery" means the structural alteration of the human body by the incision or cutting into of tissue for the purpose of diagnostic or therapeutic treatment of conditions or disease processes by any instrument causing localized alteration or transposition of live human tissue, but does not include the following: procedures for the removal of superficial foreign bodies from the human body, punctures, injections, dry needling, acupuncture, or removal of dead tissue. For the purposes of this section, incision shall not mean the scraping or brushing of live tissue.

B. No person shall perform surgery unless he is (i) licensed by the Board of Medicine as a doctor of medicine, osteopathy, or podiatry; (ii) licensed by the Board of Dentistry as a doctor of dentistry; (iii) jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner; (iv) a physician assistant acting under the supervision of a doctor of medicine, osteopathy, or podiatry; (v) a licensed midwife in the performance of episiotomies during childbirth; or (vi) *licensed by the Board of Optometry as an optometrist and certified to perform laser surgery pursuant to § 54.1-3225; or (vii) acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.*

C. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of practice in effect on January 1, 2012, of any profession licensed by any of the health regulatory boards within the Department of Health Professions.

§ 54.1-3200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Optometry.

"Optometrist" means any person practicing the profession of optometry as defined in this chapter and the regulations of the Board.

"Practice of optometry" means the examination of the human eye to ascertain the presence of defects or abnormal conditions which may be corrected or relieved by the use of lenses, prisms or ocular exercises; visual training or orthoptics; the employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye; the use of testing appliances for the purpose of the measurement of the powers of vision; the examination, diagnosis, and optometric treatment in accordance with this chapter, of conditions and visual or muscular anomalies of the human eye; the use of diagnostic pharmaceutical agents set forth in § 54.1-3221; and the prescribing or adapting of lenses, prisms or ocular exercises, visual training or orthoptics for the correction, relief, remediation or prevention of such conditions. An optometrist may treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents only as permitted under this chapter. The practice of optometry also includes the evaluation, examination, diagnosis, and treatment of abnormal or diseased conditions of the human eye and its adnexa by the use of medically recognized and appropriate devices, procedures, or technologies. However, the practice of optometry does not include treatment through surgery, including laser surgery, other invasive modalities, or the use of injections, including venipuncture and intravenous injections, except as provided in § 54.1-3222 or for the treatment of emergency cases of anaphylactic shock with intramuscular epinephrine practice in accordance with the provisions of § 54.1-3201.

"TPA-certified optometrist" means an optometrist who is licensed under this chapter and who has successfully completed the requirements for TPA certification established by the Board pursuant to Article 5 (§ 54.1-3222 et seq.). Such certification shall enable an optometrist to prescribe and administer

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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, including abnormal conditions, of the human eye and its adnexa, as determined by the Board. Such certification shall not, however, permit treatment through surgery, including, but not limited to, laser surgery, other invasive modalities, or the use of injections, including venipuncture and intravenous injections, except as provided in § 54.1-3222 or for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.

The foregoing shall not restrict the authority of any optometrist licensed or certified under this chapter for the removal of superficial foreign bodies from the human eye and its adnexa or from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by optometrists, if such activities or functions are authorized by and performed for such optometrists and responsibility for such activities or functions is assumed by such optometrists.

§ 54.1-3201. What constitutes practice of optometry.

A. The practice of optometry includes:

1. Examination of the human eye to ascertain the presence of defects or abnormal conditions that may be corrected or relieved by the use of lenses, prisms or ocular exercises, or visual training or orthoptics and the prescribing or adapting of lenses, prisms or ocular exercises, or visual training or orthoptics for the correction, relief, remediation, or prevention of such conditions;

2. Employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye;

3. Use of testing appliances for the purpose of the measurement of the powers of vision;

4. Examination, diagnosis, and optometric treatment in accordance with this chapter of conditions and visual or muscular anomalies of the human eye;

5. Evaluation, examination, diagnosis, and treatment of abnormal or diseased conditions of the human eye and its adnexa by the use of medically recognized and appropriate devices, procedures, or technologies;

6. Preoperative and postoperative care related to the human eye and adnexa; and

7. Use of diagnostic pharmaceutical agents set forth in § 54.1-3221.

B. Except as provided in §§ 54.1-3222 and 54.1-3225, the practice of optometry does not include treatment through:

1. Surgery, including:

a. Retina laser procedures; laser procedures into the vitreous chamber of the eye to treat vitreous, retinal, or macular disease; laser in situ keratomileusis and photorefractive keratectomy eye surgery; or other laser surgery;

b. Penetrating keratoplasty and corneal transplants;

c. Surgery (i) related to removal of the eye; (ii) requiring a full-thickness incision or excision of the cornea or sclera; (iii) requiring physical incision of the iris and ciliary body, including the diathermy, and cryotherapy; (iv) requiring incision of the vitreous humor or retina; (v) requiring full-thickness conjunctivoplasty with a graft or flap; (vi) of the eyelid for incisional cosmetic or functional repair, or blepharochalasis, ptosis, or tarsorrhaphy treatment; (vii) of the bony orbit, including orbital implants; (viii) requiring surgical extraction of the crystalline lens; or (ix) requiring surgical anterior or posterior chamber intraocular implants; or

d. Incisional or excisional surgery of the (i) extraocular muscles; (ii) lacrimal system, other than probing or related procedures; or (iii) pterygium surgery;

2. Cryotherapy of the ciliary body;

3. Iodizing radiation;

4. The use of injections, including venipuncture and intravenous injections;

5. Administration of or surgery using general anesthesia; or

6. Other invasive modalities.

C. An optometrist may (i) treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents as permitted under this chapter and (ii) administer intramuscular epinephrine for the treatment of emergency cases of anaphylactic shock.

D. Any person who in any way advertises himself as an optometrist or uses the title of doctor of optometry (O.D.) or any other letters or title in connection with his name which in any way conveys the impression that he is engaged in the practice of optometry shall be deemed to be practicing optometry within the meaning of this chapter.

Article 6.

Certification to Perform of Laser Surgery.

§ 54.1-3225. Certification to perform laser surgery.

A. The Board shall certify an optometrist to perform laser surgery consisting of peripheral iridotomy,

selective laser trabeculoplasty, and YAG capsulotomy for the medically appropriate and recognized treatment of the human eye through revision, destruction, or other structural alteration of the tissue of the eye using laser technology upon submission by the optometrist of evidence satisfactory to the Board that he:

1. Is certified by the Board to prescribe for and treat diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents pursuant to § 54.1-3222; and

2. Has satisfactorily completed such didactic and clinical training programs provided by an accredited school or college of optometry that includes training in the use of lasers for the medically appropriate and recognized treatment of the human eye as the Board may require.

B. The Board shall indicate on any license issued pursuant to this chapter to an optometrist certified to perform laser surgery pursuant to this section that the optometrist is so certified.

[2. That the Board of Optometry shall promulgate regulations establishing criteria for certification of an optometrist to perform certain procedures limited to peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy for the medically appropriate and recognized treatment of the human eye through revision, destruction, or other structural alteration of the tissue of the eye using approved laser technology. The regulations shall include provisions for: (i) promotion of patient safety; (ii) identification and categorization of procedures for the purpose of issuing certificates; (iii) establishment of an application process for certification to perform such procedures; (iv) establishment of minimum education, training, and experience requirements for certification to perform such procedures; (v) development of protocols for proctoring and criteria for requiring such proctoring; and (vi) implementation of a quality assurance review process for such procedures performed by certificate holders.

3. That the Board of Optometry (the Board) shall promulgate regulations requiring optometrists to annually register with the Board and to report certain information as deemed appropriate by the Board. The regulations shall include required reporting for: (i) any disciplinary action taken against a person licensed by the Board in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation; (ii) any malpractice judgment against a person licensed by the Board; (iii) any settlement of a malpractice claim against a person licensed by the Board; and (iv) any evidence that indicates a reasonable belief that a person licensed by the Board is or may be professionally incompetent, has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, has or may have engaged in unprofessional conduct, or may be mentally or physically unable to engage safely in the practice of his profession.]

[4. That an optometrist certified to perform laser surgery pursuant to § 54.1-3225 of the Code of Virginia, as created by this act, shall report quarterly to the Board of Optometry (the Board) the following information: (i) the number and type of laser surgeries performed by the optometrist, (ii) the conditions treated for each laser surgery performed, and (iii) any adverse treatment outcomes associated with such procedures that required a referral to an ophthalmologist for treatment. The Board shall report annually to the Governor and the Secretary of Health and Human Resources regarding the performance of laser surgery by optometrists during the previous 12-month period and shall make such report available on the Board's website. The provisions of this enactment shall expire on July 1, 2025.]

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