

## **ARTICLE 8. OPTOMETRISTS.**

### **§30-8-1. Evidence of qualification to practice and registration required.**

Any person practicing or offering to practice optometry in this state shall be required to submit evidence that he is qualified so to practice, and shall be registered as hereinafter provided, and it shall be unlawful for any person to practice or offer to practice optometry in this state, except under the provisions of this article.

### **§30-8-2. Practice of optometry defined.**

Any one or any combination of the following practices shall constitute the practice of optometry:

(a) The examination of the human eye, with or without the use of drugs, prescribable for the human eye which drugs may be used for diagnostic or therapeutic purposes, for topical application to the anterior segment of the human eye and, by any method other than surgery, to diagnose, treat or refer for consultation or treatment any abnormal condition of the human eye or its appendages;

(b) The employment without the use of surgery of any instrument, device, method or diagnostic or therapeutic drug intended for the purpose of investigating, examining, treating, diagnosing, improving or correcting any visual defect or abnormal condition of the human eye or its appendages;

(c) The prescribing, fitting, application, replacement, duplication or alteration of lenses, prisms, contact lenses, orthoptics, vision training, vision rehabilitation, diagnostic or therapeutic drugs, or the furnishing or providing of any prosthetic device, or any other method other than surgery necessary to correct or relieve any defects or abnormal conditions of the human eye or its appendages.

(d) Nothing in this section shall be construed to permit an optometrist to perform surgery, use drugs by injection or to use or prescribe any drug for other than the specific purposes authorized by this article.

### **§30-8-2a. Prescriptive authority.**

Notwithstanding the provisions of section two of this article, the board of optometry may grant qualified optometrists prescriptive authority for oral antibiotics, oral nonsteroidal anti-inflammatory drugs, and oral carbonic anhydrase inhibitors: *Provided*, That the board has proposed rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, defining a certification process for individual optometrists that provide standards for education, training and adequate insurance coverage determined by the board to be conditions precedent to certification authorizing the individual optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article but authorized by this section, and the optometrist desiring to employ the use of these pharmaceutical agents has met the necessary qualifications as established by rule.

### **§30-8-2b. Expanded prescriptive authority.**

Notwithstanding the provisions of section two of this article, on or before the thirty-first day of December, one thousand nine hundred ninety-seven, the board of optometry shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, defining a certification process and drug formulary which is authorized by this section, except that no emergency rules may be

proposed. The board shall provide a formulary classifying those categories of oral drugs rational to the diagnosis and treatment of conditions or diseases of the human eye and its appendages, which may be prescribed by optometrists from Schedules III, IV and V of the Uniform Controlled Substances Act, article two, chapter sixty-a of this code. The board shall consult with other appropriate boards, including the board of pharmacy, in the development of the formulary. The rules shall further provide for individual certification of optometrists for this expanded scope of prescriptive authority. The rules shall provide standards for education and training determined by the board to be conditions precedent to individual certification authorizing an optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article and included in a drug formulary to be adopted by the board; procedures for certification by the board of education and training courses; procedure standards for certification and recertification of individual optometrists for an expanded scope of practice prescriptive authority, which shall include a continuing education requirement; administrative fees necessary for the certification and recertification; procedures and standards for certification and training courses; procedures and standards for determining successful completion of education and training; and standards to ensure adequate insurance coverage, as well as compliance with the provisions of this section.

**§30-8-3. Board of optometry; duties; disposition of moneys collected; compensation and expenses.**

There shall be a state board of examiners in optometry, known as the "West Virginia board of optometry," which shall consist of five optometrists and two lay members, who shall be appointed by the governor, by and with the advice and consent of the Senate. Each optometric member of the board, at the time of his or her appointment, shall have been a resident and a registered practicing optometrist of this state for a period of not less than three years immediately preceding his or her appointment.

The optometric members of the board in office on the first day of July, two thousand one, shall, unless sooner removed, continue to serve until their successors have been appointed and have qualified. On or before the first day of July, two thousand one, and annually thereafter, as their respective terms expire, the governor shall appoint their successors so that one year he or she shall appoint one member and in each of the two succeeding years he or she shall appoint two members, each for a term of three years commencing on the first day of July. Any member shall be eligible for reappointment.

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. The compensation for the members of the board and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the general funds of this state.

The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, which are not inconsistent with any other provision or section of this article:

- (a) For the proper performance of its duties;
- (b) To govern the ethical practice of optometry for the safety, protection and welfare of the public; and
- (c) To provide for examinations, licensure requirements, continuing education

requirements, fees, and to further effectuate the provisions of this article, article one of this chapter, and any other provisions set forth in state or federal law.

**§30-8-3a. Registration of optometric corporations.**

When one or more optometrists duly registered to practice optometry in the state of West Virginia wish to form an optometric corporation, such optometrist or optometrists shall file a written application with the board of optometry, on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer is a duly registered optometrist, or if there be more than one that all the signers of such application are such duly registered optometrists. A fee as determined by legislative rule shall accompany each such application, no part of which may be refundable.

The board shall notify the secretary of state that a certificate of authorization has been issued to the individual or individuals signing such application, to form an optometric corporation.

When the secretary of state receives notification from the board of optometry that an individual or individuals, duly registered to practice optometry in the state of West Virginia have been issued a certificate of authorization, he or she shall attach such authorization to the agreement of incorporation and upon compliance by the corporation with the applicable provisions of chapter thirty-one of this code, shall notify the incorporators that such corporation, through a duly registered optometrist or optometrists, may engage in the practice of optometry.

**§30-8-3b. Practice of optometry by optometric corporations; limitations; optometrist-patient relationship not affected; biennial registration; penalty; severability.**

(a) An optometric corporation may practice optometry only through an individual optometrist or optometrists duly registered to practice optometry in the state of West Virginia, but such optometrist or optometrists may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in sections three-a and ten and this section of this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the optometrist-patient relationship nor is it meant or intended to change in any way the personal character of the optometrist-patient relationship. A corporation holding such certificate of authorization shall register biennially, on or before the thirtieth day of June, on a form prescribed by the board of optometry and shall pay a biennial registration fee as determined by legislative rule.

(b) An optometric corporation holding a certificate of authorization shall cease to engage in the practice of optometry upon being notified by the board of optometry that any of its shareholders is no longer a duly registered optometrist in this state, or when any shares of such corporation have been sold or disposed of to a person who is not a duly registered optometrist: *Provided*, That the personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting the existence of such corporation or its right to continue to operate for all lawful purposes other than the practice of optometry.

(c) No corporation shall practice optometry, or any of its branches, or hold itself out as being capable of doing so, without a certificate from the board, or after its certificate has been revoked, or if suspended, during the term of such suspension. A certificate signed by the secretary of the board of optometry to which is affixed the official seal of the board to the effect that it appears from the records of the board that no such certificate to practice optometry or any of its branches in the state has been issued to any such corporation specified therein or that such certificate has been revoked or suspended shall be admissible in evidence in all courts of this state and shall be prima facie evidence of the facts stated therein.

(d) Any officer, shareholder or employee of such corporation who participates in a violation of any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars.

**§30-8-4. Registration prerequisite to practice of optometry; exceptions.**

No person shall practice or offer to practice optometry in this state without first applying for and obtaining a certificate of registration for such purpose from the West Virginia board of optometry; but the following persons, firms and corporations are exempt from the operation of this article, except as hereinafter provided:

(a) Persons authorized under the laws of this state to practice medicine and surgery or osteopathy;

(b) Persons, firms and corporations who sell eyeglasses or spectacles in a store, shop or other permanently established place of business on prescriptions from persons authorized under the laws of this state to practice either optometry or medicine and surgery;

(c) Persons, firms and corporations who manufacture or deal in eyeglasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry.

**§30-8-5. Qualifications of applicant for registration; examination; duties of board as to examinations and certifications; education necessary for use of pharmaceutical agents.**

(a) An applicant for registration shall present satisfactory evidence that he or she is at least twenty-one years of age, of good moral character and has graduated from a school or college of optometry accepted by said board. No school or college of optometry shall be accepted by the West Virginia board of optometry unless at first it has been accredited by a regional or professional accreditation organization which is recognized by the national commission on accreditation or the United States commission of education. Each applicant shall submit to and be examined in all phases of optometry as is provided by a school or college of optometry.

(b) The West Virginia board of optometry shall be responsible to determine the educational training received by the applicant from the schools and colleges of optometry, the educational qualifications of each applicant and the administering of the examination and certification of each applicant commensurate with his or her education. No optometrist shall be registered or certified to practice optometry in the state of West Virginia in any area that is beyond the scope of his or her educational training as

determined by the West Virginia board of optometry: *Provided*, That any optometrist presently registered in the state of West Virginia and who desires to employ the use of pharmaceutical agents must submit to the West Virginia board of optometry evidence of satisfactory completion of all necessary educational requirements as made mandatory by the West Virginia board of optometry: *Provided, however*, That the West Virginia board of optometry shall provide for continuing educational requirements to be completed from time to time by all optometrists desiring to employ the use of pharmaceutical agents.

(c) The board may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to provide for licensure by endorsement for applicants licensed by other states whose licensure requirements are equivalent to those of this state, and who meet the requirements as set forth in this article and in the legislative rules of the board.

**§30-8-6. Certificate of registration or exemption shall be displayed.**

Every person practicing optometry shall display his or her certificate of registration in a conspicuous place in the principal office wherein he or she practices optometry and, whenever required, shall exhibit such certificate to the board of examiners or its authorized representatives.

**§30-8-7. Biennial renewal of registration; restoration of expired certificate.**

Every registered optometrist who desires to continue in active practice or service shall, biennially, on or before the first day of August, of that year, renew his or her certificate of registration and pay a biennial renewal fee as determined by legislative rule. Every certificate of registration which has not been renewed shall expire on the first day of August of that year. A registered optometrist whose certificate of registration has expired for three years or less may have the same restored only upon payment of all required renewal and late fees for each lapsed year, and submit proof of accumulated continuing education hours for each year that has lapsed.

**§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.**

The board may either refuse to issue, or may refuse to renew, or may suspend or revoke any certificate of registration for any one, or any combination, of the following causes: Violation of a rule or regulation governing the ethical practice of optometry promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had; the obtaining of, or the attempt to obtain, a certificate of registration, or practice in the profession of optometry, or money, or any other thing of value, by fraudulent misrepresentation; gross malpractice; continued practice by a person knowingly having an infectious disease; alcohol or substance abuse; advertising, practicing, or attempting to practice under a name other than one's own; advertising by means of knowingly false or deceptive statements. All advertising, whether by means of newspapers, or in any manner, whatsoever, of the following statements, or statements of similar import, that are "false and deceptive" within the meaning of this law, shall be prohibited. False and deceptive advertising shall include, but not be limited to the following: (a) Advertising "free examination of eyes," or words of similar import and meaning; (b) advertising

frames or mountings for glasses, contact lenses, or other optical devices which does not accurately describe the same in all its component parts.

**§30-8-9. Offenses; penalties; jurisdiction of magistrates.**

Each of the following shall constitute a misdemeanor punishable, upon conviction, for the first offense, by a fine of not less than one thousand nor more than five thousand dollars and, upon conviction for a second or subsequent offense, by a fine of not less than five thousand nor more than ten thousand dollars, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment, at the discretion of the court: The practice of, or an attempt to practice, optometry, without a certificate of registration as a registered optometrist, except as hereinbefore provided; permitting any person in one's employ, supervision or control, to practice optometry, unless such person has a certificate of registration as a registered optometrist in the state of West Virginia when such certificate is required by this article; the obtaining of, or an attempt to obtain, a certificate of registration, or practice in the profession, or money, or anything of value, by fraudulent misrepresentation; the making of any willfully false oath or affirmation, whenever an oath or affirmation is required by this article; the violation of the provisions of section six of this article.

**§30-8-10. Unlawful practice of optometry by or for a corporation, etc.; practice in connection with commercial or mercantile establishment; penalties; injunctions.**

Except as provided in sections three-a and three-b of this article, no corporation or voluntary association shall practice, or assume to practice, or in any manner hold itself out to the public as being entitled to practice the profession of optometry, or advertise the title of optometrist in such manner as to convey the impression to the public that it is entitled to practice optometry, or furnish optometric advice and services, or advertise that, either alone or together with or by or through any person, whether a duly registered and licensed optometrist or not, it has, owns, conducts or maintains an office or place for practice of optometry. Except as provided in sections three-a and three-b of this article, no duly registered and licensed optometrist shall associate himself or herself with any corporation or voluntary association for the practice of optometry, or in any manner practice such profession, on a salary or commission basis, for any such corporation or voluntary association. Any corporation or voluntary association violating any of the provisions of this section, or any officer, trustee, director, agent, or employee of such corporation or voluntary association who, either directly or indirectly, engages in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars. The fact that any such officer, trustee, director, agent or employee shall be a duly registered and licensed optometrist shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons hereinbefore mentioned for a violation of this section. Any duly registered and licensed optometrist who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, and each and every day such violation continues shall constitute a separate offense; and in addition to the foregoing penalties, such offending optometrist shall have his or her license suspended for a period

of one year by the court in which such conviction is had: *Provided*, That this section shall not apply to a partnership of two or more duly registered and licensed optometrists who practice under their own names.

It shall be unlawful for any registered optometrist to practice his or her profession as an employee, lessee, or sublessee of any commercial or mercantile establishment or to practice his or her profession in connection therewith, or to advertise either in person or through any commercial or mercantile establishment that he or she is a duly registered practitioner, and is practicing or will practice optometry as an employee, lessee, or sublessee of any such commercial or mercantile establishment or in connection therewith. But nothing herein shall be construed to prohibit or prevent 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 services is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any person violating this provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars, and each and every day such violation continues shall constitute a separate offense.

The circuit court of any county in which the violation occurred shall have jurisdiction to restrain by injunction the violation of any of the provisions of this article.

**§30-8-11. Continuation of the board.**

The West Virginia board of optometry shall continue to exist until the first day of July, two thousand eighteen, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.