

SOUTH CAROLINA BOARD OF EXAMINERS IN OPTICIANRY

SIGN IN SHEET

FEBRUARY 16, 2017

**PLEASE PRINT AND LEAVE A BUSINESS CARD**

**NAME**

**EMAIL**

**ORGANIZATION NAME**

Don HARRIS

\_\_\_\_\_

SC ASSOC

Jim Morris

jmorris@abo-ncle.org

ABO-NCLE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SOUTH CAROLINA BOARD OF EXAMINERS IN OPTICIANRY**  
**BOARD MEETING AGENDA**  
February 16, 2017 at 9:00 A.M.  
110 Centerview Drive, Kingstree Building, Room 204  
Columbia, South Carolina

**Public Notice of this meeting was properly posted at the Opticianry Board Office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with the South Carolina Freedom of Information Act, Section 30-4-80.**

**Call to Order**

**Approval of Agenda**

**Approval / Disapproval of Absent Board Member(s)**

**Approval of November 17, 2016 Board Meeting Minutes**

**Legislative Update – Rebecca Leach**

- a. Code of Regulation Chapter 10 Application Fee – Holly Beeson

**Office of Investigations and Enforcement (OIE) Statistical Report – David Love, Chief of Investigations**

**Investigative Review Committee (IRC) Report – David Love, Chief of Investigations**

**Office of Disciplinary Counsel (ODC) Report – Shanika Johnson, ODC**

**Overview of Office of Investigations and Enforcement Process – Christa Bell, OIE**

**Overview of Office Disciplinary Counsel Process – Shanika Johnson, ODC**

**Office of Advice Counsel (OAC) Training for Board Members on Selected Legal and Ethical Topics-Darra Coleman, Attorney OAC**

**New Business**

1. SC Practical Exam sold to American Board of Opticianry- James Morris, Esquire
2. Freedom of Lab Choice -Virginia House Bill No 1444 – Ron Harbert
3. Model Optician Mobility Act – Ron Harbert
4. Approval of alternate Continuing Education Course- Sharon Batey

**Unfinished Business**

1. Dispensing – Dan Gosnell

**Reports / Information**

**Administrative Report – April Koon**

- a. Licensee Totals Report
- b. S.C. Practical Examination
- c. Financial Report

**Election of Board Officers**

**Public Comments**

**Announcements**

**S.C. Practical Examination, June 6, 2017      Upcoming Board Meeting Date – June 15, 2017**

**Adjournment**

**South Carolina Department of Labor, Licensing and Regulation (SCLLR)**  
**Board of Examiners in Opticianry**  
**Board Meeting Minutes**  
**November 17, 2016**  
**110 Centerview Drive, Kingtree Building, Room 204**  
**Columbia, South Carolina**

**BOARD MEMBERS PRESENT:**

Daniel B. Gosnell, Chairman  
Keith Hayes, Vice Chair  
Grant Brown  
Emily Mikell  
James L. Rhodes

**ABSENT BOARD MEMBERS:**

John Hollis Inabinet, Esquire, Public Member

**VACANT POSITION:**

Public Member (One)

**SCLLR STAFF PRESENT:**

Stacey Hewson, Esquire, Office of Advice Counsel  
April Koon, Administrator  
Missy L. Jones, Administrative Assistant

*For IRC Report:*

Serrena Swartz, Investigator, Office of Investigations and Enforcement

**PRESENT:**

M. Sean Cary, Court Reporter, Creel Court Reporting, Inc.  
Shannon Scott Greene, Licensee  
Sarah McMahan, Licensee

Public notice of this meeting was properly posted at the South Carolina Board of Examiners in Opticianry, Synergy Business Park, Kingtree Building and provided to all requesting persons, organizations, and news media in compliance with section 30-4-80 of the South Carolina Freedom of Information Act. A quorum was present at all times.

**CALL TO ORDER:** Chairman Gosnell called the meeting to order at 9:01 a.m.

**APPROVAL OF AGENDA:** A **motion** was made by Mr. Rhodes to accept the November 17, 2016 Agenda. The motion was seconded by Mr. Hayes and carried unanimously.

**APPROVAL/DISAPPROVAL OF ABSENT BOARD MEMBER(S):** A **motion** was made by Mr. Hayes to approve the absence of Mr. Inabinet. The motion was seconded by Mr. Brown and carried unanimously.

**APPROVAL OF MINUTES:** A **motion** was made by Mr. Brown to accept the June 30, 2016 minutes as written. The motion was seconded by Mr. Rhodes and carried unanimously.

**OFFICE OF INVESTIGATIONS AND ENFORCEMENT (OIE) STATISTICAL REPORT:** Ms. Swartz provided the OIE Statistical Report; the Board accepted this as information.

**INVESTIGATIVE REVIEW COMMITTEE (IRC) REPORT:** Ms. Swartz provided the IRC Report from the September 21, 2016 IRC meeting. It was recommended to dismiss case #2016-2, case # 2016-3, case #2016-7, case 2016-8, and case #2016-9. A **motion** was made by Mr. Hayes to accept the IRC dismissal recommendations. The motion was seconded by Mr. Rhodes and carried unanimously.

**OFFICE OF DISCIPLINARY COUNSEL (ODC) REPORT:** Mrs. Koon reported that there were no cases pending in the Office of Disciplinary Counsel.

**REINSTATEMENT OF LICENSE HEARING – SHANNON SCOTT GREENE:** A **motion** was made by Mr. Hayes to go into Executive Session to receive legal advice. The motion was seconded by Mr. Rhodes and carried unanimously. A **motion** was made by Mr. Rhodes to come out of Executive Session. The motion was seconded by Mr. Hayes and carried unanimously. A **motion** was made by Mr. Hayes to accept the application for reinstatement upon payment of all fees and approval of Continuing Education hours (20 Optical and 5 Contact Lens) by the approving Board member, Mr. Brown. The motion was seconded by Ms. Mikell and carried unanimously.

**APPLICATION HEARING – SARAH MCMAHAN:** A **motion** was made by Mr. Brown to go into Executive Session to receive legal advice. The motion was seconded by Mr. Hayes and carried unanimously. A **motion** was made by Mr. Rhodes to come out of Executive Session. The motion was seconded by Mr. Hayes and carried unanimously. A **motion** was made by Mr. Brown to approve Ms. McMahan's apprentice application. The motion was seconded by Mr. Rhodes and carried unanimously.

#### **REPORTS / INFORMATION**

Information provided by Ms. Koon concerning the following topics:

- **Licensee Totals Report** – 825 S.C. licensed opticians; 691 opticians practice in S.C.; 134 practice out-of-state, 115 registered apprentices.
- **S.C. Practical Examination** –Twenty-two candidates signed up for the December 5, 2016 S.C. Practical Exam.
- **Financial Report** – presented as information.

#### **NEW BUSINESS**

**CLARIFICATION OF APPRENTICESHIP PROGRAM COMPLETION:** A **motion** was made by Mr. Rhodes to approve the Apprenticeship Program Completion form. The motion was seconded by Mr. Brown and carried unanimously.

**EXEMPTION REQUEST FOR FEDERAL INSTALLATION AS A NON-LICENSING STATE:** An apprenticeship exemption request was made to the Board for an individual based on the number of years in the Optical field with supervision while working on a federal base. A **motion** was made by Mr. Hayes to deny the exemption request. The individual must complete the apprentice program to become a licensed Optician in South Carolina. The motion was seconded by Ms. Mikell and carried unanimously.

**DISPENSING:** Mr. Gosnell requested that the Board look into having a basic definition of dispensing glasses.

A **motion** was made by Ms. Mikell to go into Executive Session to receive legal advice. The motion was seconded by Mr. Rhodes and carried unanimously. A **motion** was made by Mr. Hayes to come out of Executive Session. The motion was seconded by Mr. Brown and carried unanimously.

A **motion** was made by Mr. Brown for the Board to work with Advice Counsel to revise the proposed Chapter 38 Bill eliminating Section 40-38-20 (7) lines one through four of the Bill and to change the Board's Position statement from "Dispensing" to "Delivery of contact lenses" and change "medical device" to "contact lenses" within the statement. The motion was seconded by Mr. Hayes and carried unanimously.

**2017 BOARD MEETING DATES:** A **motion** was made by Mr. Hayes for the 2017 Board Meeting date to be February 16, 2017, June 15, 2017, and October 19, 2017. The motion was seconded by Mr. Rhodes and carried unanimously.

### **PUBLIC COMMENTS**

There were no public comments.

### **ANNOUNCEMENTS**

The next South Carolina Board Examiners in Opticianry Board Meeting will be held February 16, 2017.

The next South Carolina Practical Examination in Opticianry will be administered December 5, 2016, 110 Centerview Drive, Columbia, South Carolina, Kingstree Building, Room 115.

### **ADJOURNMENT**

A **motion** was made by Mr. Rhodes to adjourn the meeting. The motion was seconded by Mr. Brown and unanimously carried. Mr. Gosnell adjourned the meeting at 11:05 a.m.

*These minutes are a record of the official actions taken by the Board and a summary of the meeting provided by April Koon, Administrator. Minutes are presented to the Board for final approval.*

**Date: February 16, 2017**

**South Carolina Board of Examiners in  
Opticianry**

**IRC Board Case Recommendation Report**

**IRC held on September 21, 2016**

**Cease and Desist -1**

**IRC Members**

**Shanika Johnson – Attorney  
Ray Sansbury – IRC Advisor  
April Koon- Administrator  
Adrian Rivera – Investigator  
David Love – Chief Investigator**

**DISMISS - CEASE AND DESIST**

<b>Case #</b>	<b>Investigator</b>	<b>Initial Complaint Allegations</b>	<b>IRC Logic</b>
<b>2016-1</b>	Adrian Rivera	The complaint alleges Respondent; an apprentice optician with a lapsed license is dispensing glasses.	IRC met on 09/21/2016 and recommended a dismissal with a C&D.
<b>Total Cases: 1</b>			

Agency Name: Board of Examiners in Opticianry - Labor, Licensing and Regulation  
 Statutory Authority: 40-1-50, 40-1-70, 40-38-60, and 40-38-250  
 Document Number: 4723  
 Proposed in State Register Volume and Issue: 40/10  
 House Committee: Regulations and Administrative Procedures Committee  
 Senate Committee: Medical Affairs Committee  
 120 Day Review Expiration Date for Automatic Approval: 05/10/2017  
 Status: Pending  
 Subject: Examinations; Apprenticeship; and Continuing Education Requirements

History: 4723

<u>By</u>	<u>Date</u>	<u>Action Description</u>	<u>Jt. Res. No.</u>	<u>Expiration Date</u>
-	10/28/2016	Proposed Reg Published in SR		
-	01/10/2017	Received by Lt. Gov & Speaker		05/10/2017
H	01/10/2017	Referred to Committee		
S	01/10/2017	Referred to Committee		
S	02/08/2017	Resolution Introduced to Approve	371	

Document No. 4723  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF EXAMINERS IN OPTICIANRY**  
CHAPTER 96

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-38-60, and 40-38-250

96-105. Examinations.

96-106. Apprenticeship Registration and Program Provisions.

96-107. Reinstatement of Lapsed License or Lapsed Apprenticeship.

**Synopsis:**

The South Carolina Board of Examiners in Opticianry proposes to amend its regulations to clarify the waiting period after unsuccessful examination attempts; to clarify that apprenticeship is a training period and not a subclass of practice; and to adjust continuing education requirements to comport with biennial licensure.

A Notice of Drafting was published in the *State Register* on September 23, 2016.

**Instructions:**

Regulations 96-105, 96-106, and 96-107 are amended as shown below.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

96-105. Examinations.

(A) All applicants for initial licensure must take and pass an opticianry competency examination and an examination in practical areas of opticianry. Any applicant who passes one (1) of these two (2) separate examinations but fails the other examination will only be required to apply for and be reexamined on the examination which was not passed, provided that, if the time of filing the application, a period not greater than five (5) years has elapsed since the applicant took the examination which was passed. If more than five (5) years have elapsed, the Board may inquire into the applicant's training, work and study during that period and may require the applicant to retake both examinations, if, in the Board's opinion, the applicant has not had sufficient training, work or study to keep his knowledge or proficiency in the practice of opticianry current.

(1) The opticianry competency examination may be taken as many times and as often as necessary until the applicant passes it.

(2) The practical examination may be taken twice before the following restrictions apply. Upon taking and failing to pass twice, an applicant will not be permitted to take the examination within ~~the calendar~~ a year following notice of the second or succeeding failures. Application to take the practical examination the third and succeeding times shall be accompanied by a statement of additional training, work or study completed by the applicant since the time of the most recent notice of failure of the examination.

(B) All applicants for additional licensure as contact lens dispensing opticians must take and pass a qualifying contact lens examination. The examination may be taken as many times and as often as necessary until the applicant passes it.

96-106. Apprenticeship Registration and Program Provisions.

(A) South Carolina Registered Apprenticeships must:

- (1) be registered and approved in writing before the apprenticeship commences; and
- (2) be for a period of ~~not fewer than~~ two (2) continuous years; and
- (3) be served under the direct supervision of an approved state licensed optician, optometrist or ophthalmologist who does not train more than two (2) registered apprentices at a time, and must be full-time employment training in the practice of opticianry. Full-time is defined as a minimum of thirty-two (32) hours a week

(B) Any applicant desiring to be registered in the apprenticeship program must:

- (1) submit an application on a form approved by the Board, along with the required fee; and
- (2) submit proof satisfactory to the Board that the applicant is a graduate of an accredited public or private high school or secondary school of an equal grade approved by the Board or completed an equivalent course of study approved by the Board; and
- (3) submit an apprenticeship agreement form approved by the Board, providing the name of the South Carolina licensed optician, optometrist or ophthalmologist to be approved as the sponsor to provide the two-year training program, the nature of the program, the proposed curriculum, and the facilities and equipment of the apprenticeship location; and
- (4) submit, upon the request of the Board, proof that the apprenticeship has not been altered or otherwise changed from the Board-approved apprenticeship program; and
- (5) annually submit an evaluation of the apprenticeship signed by the apprentice and approved sponsor.

(C) The state licensed optician, optometrist or ophthalmologist under whom the applicant shall conduct his apprenticeship shall provide the Board with a statement agreeing to supervise the apprenticeship and to conduct training for the applicant and shall have facilities and equipment determined by the Board to be adequate for training in order for the apprenticeship to be approved.

(D) The Board shall consider the following criteria when approving an apprenticeship:

- (1) nature of the apprenticeship program; and
- (2) proposed curriculum; and
- (3) facilities and equipment of the apprenticeship location; and
- (4) documentation of the sponsor's statement to supervise and to conduct training.

(E) Any change in the information supplied in the apprenticeship application shall be immediately transmitted to the Board by the approved optician, optometrist or ophthalmologist responsible for the apprentice.

(F) The Board may extend the apprenticeship for an additional year upon request of the apprentice for good cause shown, and payment of a fee as specified by the Board. The request must be accompanied by a statement signed by the apprentice's sponsor providing the proposed curriculum for the extended apprenticeship period, to be approved by the Board. A written evaluation signed by the apprentice and the sponsor shall be submitted at the conclusion of the extended period. If the apprentice does not take the opticianry examination with five (5) years from the commencement of the apprenticeship, the apprentice must begin training over, but must wait for one year from the conclusion of the apprenticeship before recommencing the training period.

~~(F)~~(G) The Board may rescind its approval of any apprenticeship or apprenticeship program when the curriculum is not being followed or taught, when it determines that the facilities and equipment available to the apprentice are not adequate, when the apprentice is not being properly trained or supervised by an approved sponsor, or when the apprentice is engaged in conduct which would cause the Board to discipline a licensed optician.

96-107. Reinstatement of Lapsed License or Lapsed Apprenticeship.

(A) If a license or an apprenticeship lapses, the optician or apprentice must:

- (1) apply for reinstatement on a form approved by the Board; and

(2) pay all fees for each twelve (12) month period during which the license or the apprenticeship was lapsed; and

(3) submit proof satisfactory to the Board that the applicant for reinstatement has completed continuing education hours for each twelve (12) month period during which the license or the apprenticeship was lapsed; and

(4) pay a fifty (\$50.00) dollar reinstatement fee for reinstatement of the license or the apprenticeship.

(B) If a license or an apprenticeship has been lapsed more than two (2) years, the optician or apprentice must:

(1) appear before the Board to determine if the license or apprenticeship should be reinstated and the terms under which the reinstatement is to be made; and

(2) meet all the qualifications as set forth in Section (A) above.

~~(C) Apprenticeships may only be reinstated when the apprenticeship training has been continuous.~~

**Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions for these regulations.

**Statement of Rationale:**

The updated regulations will clarify the waiting period after unsuccessful examination attempts; to clarify that apprenticeship is a training period and not a subclass of practice; and to adjust continuing education requirements to comport with biennial licensure.

**Code of Regulation Chapter 10 Application Fee**

10–27. Board of Examiners in Opticianry. The Board shall charge the following fees:

**A. Applications:**

1. Optician: \$100
2. Contact Lens Dispenser: \$100
3. Apprentice Application: \$20

**B. Certificate of Licensure: \$25**

**C. Biennial Renewal:**

1. Active Resident Optician: \$200
2. Nonresident or Inactive Optician: \$120
3. Active Resident Contact Lens Dispenser: \$100
4. Nonresident or Inactive Contact Lens Dispenser: \$60
5. Apprentice Renewal Fee (Annual only): \$50

**D. Late Renewal Fee: \$25**

**E. Reinstatement Fee: \$50**

**HISTORY: Added by State Register Volume 38, Issue No. 6, Doc. No. 4437, eff June 27, 2014**

**Date: February 16, 2017**

**South Carolina Board of Examiners in  
Opticianry**

**Statistical Board Report**

<b>Case Status (Optician cases received from 1/1/15 thru 12/31/15)</b>	<b>Total</b>
<b>Closed (Avg. days: 198) (OPTICIANRY)</b>	<b>3</b>
<b>Total</b>	<b>3</b>

<b>Case Status (Optician cases received from 1/1/16 thru 2/1/17)</b>	<b>Total</b>
<b>Active Investigation (Avg days: 172) (OPTICIANRY)</b>	<b>1</b>
<b>Closed (Avg days: 160) (OPTICIANRY)</b>	<b>8</b>
<b>Pending Board Action (Avg days: 346) (OPTICIANRY)</b>	<b>1</b>
<b>Total</b>	<b>10</b>



**CONTRACT  
BETWEEN THE STATE OF SOUTH CAROLINA,  
DEPARTMENT OF LABOR, LICENSING AND REGULATION,  
BOARD OF EXAMINERS IN OPTICIANRY  
AND  
THE AMERICAN BOARD OF OPTICIANRY & NATIONAL CONTACT LENS  
EXAMINERS, INC.**

This Contract, by and between the State of South Carolina, Department of Labor, Licensing and Regulation, hereinafter referred to as the "State" and the American Board of Opticianry & National Contact Lens Examiners, Inc., hereinafter referred to as the "Contractor," is for the provision of practical examination for dispensing opticians, as further defined in the "SCOPE OF SERVICES."

The Contractor's address is:  
6506 Loisdale Road, Suite 330  
Springfield, VA 22150

The Contractor's place of organization is the District of Columbia.

A. SCOPE OF SERVICES:

A. 1. The Contractor shall:

a. TEST DEVELOPMENT

Written Examination and/or Practical (Hands On) Competency Evaluation

- (1) Provide a statewide examination that consists of a written and/or practical version of exams for qualified dispensing opticians.
- (2) Use dispensing optician professionals who hold appropriate licensure in South Carolina or another state that meet the requirements for dispensing opticians in the State of South Carolina and have a license in good standing for a period of at least five (5) years to devise, review, administer, monitor and evaluate test materials and testing procedures. In addition, the contractor shall structure the examination so that it includes but will not be limited to:
  - (a) From a pair of mounted progressive addition lenses:
    - neutralize the distance portion of the lenses;
    - determine the add power;
    - measure the base curve;
    - quote and apply ANSI Z80.1-2005 standards;
    - identify the manufacturer's product name using the hidden identifying logo;
    - identify the manufacturer's recommended minimum height;
    - measure prism reference point height;
    - measure fitting cross height;
    - measure prism thinning;
    - analyze the lenses for unwanted vertical prism;
    - measure monocular P.D.
  - (b) From a pair of mounted bifocal lenses:
    - neutralize the distance portion of the lenses;
    - determine the add power;
    - determine the meridian of highest absolute power;
    - measure the distance between prism reference points;
    - measure the base curve;

measure the distance between optical centers;  
measure the "near P.D."  
determine the frame "B" measurement;  
measure the seg height;  
identify the seg width;  
analyze the lenses for unwanted vertical prism;  
measure the lens center thickness.

- (c) From two pairs of mounted single vision lenses:
  - neutralize the distance portion of the lenses;
  - measure the distance between optical centers;
  - measure the lens center thickness;
  - analyze the lenses for possible vertical prism;
  - measure the base curve.
- (d) Given a spectacle frame and Rx for progressive lenses:
  - determine the monocular decentration;
  - determine the fitting cross drop/raise;
  - determine the prism reference height.
- (e) Given a spectacle frame and Rx for visible bifocals:
  - determine the binocular distance decentration;
  - determine the binocular seg inset;
  - determine the total inset;
  - determine the binocular seg drop/raise;
  - determine the best minimum blanksize.
- (f) Using the provided material/information:
  - calculate the distance compensated power using a vertex compensation chart;
  - calculate specialty lens power (TV, Reading, Computer, Piano, Intermediate, etc.);
  - calculate vertical imbalance;
  - determine bicentric grinding placement;
  - split prism for best cosmetic effect;
  - transpose a prescription;
  - calculate the "power" of the cylinder in an oblique meridian.

(3) It reflects current Statutes and Regulations of the South Carolina Board of Examiners in Opticianry

(4) Annually review exam items, and any on-going monitoring of testing process.

(5) Assure that the statistical parameters used in construction of each element of the technical exam are psychometrically sound.

b. TEST ADMINISTRATION

(1) Structure the examination so that licensed dispensing opticians administer written and/or practical (hands on) versions of the examination.

(2) Establish exams two (2) or more times a year in Columbia; provide all materials for examining and all exam personnel.

c. TEST LOCATIONS

(1) Submit annually a publication of exam schedules and sites to the State of South Carolina, Department of Labor, Licensing and Regulation, Board of Examiners in Opticianry

d. REPORTING

- (1) Provide annual written reports to the Department on the use, reuse, and nonuse of all exam items.
- (2) After each examination and within thirty (30) days submit reports of the pass/fail rates for the examination to the Department of Labor on Windows-compatible computer media that contains information, by facility, of which dispensing opticians registered to take the exam, the number who passed and failed, and the number who registered but did not take the exam. Transmit detailed exam scores to Department of Labor and to exam candidates within thirty (30) days of completion of exam for each individual that passed the exam, those that failed the exam and the specific reason for the failure.
- (3) Meet with the Department of Labor on an annual basis, or more often if needed, to discuss how to most effectively perform the Scope of Services and resolve any problems incurred in performance of this contract.

e. RECORDKEEPING

- (1) Maintain each candidate's exam scores and associated records for at least five (5) years.

f. POLICIES AND PROCEDURES

- (1) Provide the Department the specific written criterion-referenced passing scores that the Department of Labor will use for all components and forms for the exam, and for the entire examination.
- (2) Maintain written procedures for use in the administration of the technical exam.
- (3) Establish and implement all procedures used to receive, process, and maintain registration forms.
- (4) Establish procedures for accommodating and examining candidates with special needs, including, but not limited to compliance with the American Disabilities Act.
- (5) Provide information to the Department regarding its policies and procedures about defending the validity and reliability of its exams, its examining and re-examining procedures, grievance procedures and any other aspect of the competency evaluation that may be subject to legal challenge. Defense of any legal challenge from any party concerning the development and administration of this examination shall rest with the Contractor.
- (6) Develop procedures for applicant to retake the exam if they fail.

g. EXAM SECURITY

- (1) Establish and maintain measures to protect the integrity and security of the competency evaluation examination, including but not limited to:
  - (a) Providing for the secure development, storage, and shipment of component evaluation materials;
  - (b) Accounting for and replacing of materials lost or damaged in transit to the exam site;
  - (c) Being responsible for conducting and paying for the investigation of actual or alleged security breaches;
  - (d) Assuming liability of the agents, employees, or subcontractors of the Contractor service cause loss of, or compromise, the evaluation materials. Should a breach of security occur that results in a compromise to the integrity of the exam, the vendor will be responsible for developing a new exam at no cost to the department.
  - (e) Assuring that the rights and obligations of exam candidates are clearly specified, and enforced;

- (f) Establishing and maintaining reexamining procedures if any examining irregularities occur during the administration of the exam; and
- (g) Immediately notifying the Department by telephone or email if a breach in security is suspected or has occurred. Written confirmation must be provided by the Contractor within (3) days following the initial notification which includes, at a minimum, a corrective action plan.

h. STUDY MATERIALS AND CANDIDATE INFORMATION

- (1) The Contractor is responsible for developing exam preparation materials and providing this to exam candidates before the administration of the exam.
- (2) Provide each candidate a training program manual that describes the testing process in detail.
- (3) Design and produce an Exam Candidate's Guide that is customized to the needs of the State and distribute sufficient quantities free of charge to approved schools and the State. The "Guide" shall be revised as needed with the latest information concerning requirements and procedures.

A. 2. The Department shall:

- a. Provide the Contractor a list of eligible candidates who will take the examination. This list shall be provided to the Contractor at least thirty (30) days prior to the examination.

B. TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on \_\_\_\_\_, and ending on \_\_\_\_\_. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least ninety (90) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. There shall be no cost to the State for the performance of services under this contract as described in Section A. of this contract. The Contractor shall charge and collect from each candidate requested for an examination the appropriate fee.

**Cost Per Examination**

**\$295.00**

The contractor agrees that the maximum rates detailed herein are firm for the duration of the Contract and are not subject to escalation for any reason. The rates may be increased after December 30, 2017.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable South Carolina laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate South Carolina State officials in accordance with applicable South Carolina State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State.
- D.6. Conflicts of Interest. The Contractor warrants that no amount shall be paid directly or indirectly to an employee or official of the State of South Carolina as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation of services rendered under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice by the State.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, or their duly appointed representatives.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create a employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any

purpose whatsoever. The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of South Carolina. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of South Carolina in actions that may arise under this Contract.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

\_\_\_\_\_, Administrator  
South Carolina Department of Labor, Licensing and Regulation  
South Carolina Board of Examiners in Opticianry  
Synergy Business Park, Kingstree Building  
110 Centerview Drive, Suite 202  
Columbia, South Carolina 29210  
PO Box 11329  
Columbia, South Carolina 29211  
Telephone Number (803) 896-4665  
Facsimile Number (803) 896-4719

The Contractor:

James M. Morris, Esq.  
American Board of Opticianry & National Contact Lens Examiners, Inc.  
6506 Loisdale Road, Suite 330  
Springfield, VA 22150  
Telephone Number (703) 719-5800  
Facsimile Number (703) 719-9144

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. EST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Printing Authorization. The Contractor agrees that no publication be printed unless printing authorization has been obtained.
- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
  - b. All Clarifications and addenda made to the Contractor's Proposal
  - c. The Request for Proposal and its associated amendments
  - d. Technical Specifications provided to the Contractor
  - e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.6. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.7. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of South Carolina law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.8. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of South Carolina as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.9. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.10. Date/Time Hold Harmless. The contractor shall hold harmless and indemnify the State of South Carolina; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.11. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of South Carolina as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof.

South Carolina Labor, Licensing and Regulation

ABO & NCLE

\_\_\_\_\_, Director

\_\_\_\_\_  
James M. Morris, Esq.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**HOUSE BILL NO. 1444**  
Offered January 14, 2015  
Prefiled December 29, 2014

*A BILL to amend and reenact §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.19, relating to payments for certain services provided by optometrists, opticians, and ophthalmologists.*

-----

Patrons-- Ware, DeSteph, Edmunds, Filler-Corn, Greason, Helsel, Howell, Hugo, Joannou, Kilgore, Landes, Mason, O'Bannon, O'Quinn, Rasoul, Robinson, Rust, Simon, Spruill, Villanueva and Ward; Senator: Miller

-----  
Referred to Committee on Commerce and Labor  
-----

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.19 as follows:

§ 38.2-3407.19. *Payment for services by optometrists, opticians, and ophthalmologists.*

*A. As used in this section, unless the context requires a different meaning:*

*"Covered materials" includes lenses, devices containing lenses, prisms, lens treatments and coatings, contact lenses, and devices to correct, relieve, or treat defects or abnormal conditions of the human eye and its adnexa.*

*"Covered services" means the health care services for which benefits under a policy, contract, or evidence of coverage are payable by a vision care plan carrier, including services paid by the insureds, subscribers, or enrollees because the annual or periodic payment maximum established by the vision care plan has been met.*

*"Enrollee" means any person entitled to health care services under a vision care plan.*

*"Optometric services plan" has the same meaning ascribed thereto in § 38.2-4501.*

*"Participating provider agreement" means a contract or agreement between an optometrist, optician, or ophthalmologist and a vision care plan carrier in which the optometrist, optician, or ophthalmologist has agreed to provide vision-related health care services to enrollees and to hold those enrollees harmless from payment with an expectation of receiving payment, other than copayments or deductibles, directly or indirectly from a vision care plan.*

*"Vision care plan" means (i) an individual or group accident and sickness insurance policy providing hospital, medical, and surgical or major medical coverage on an expense-incurred basis; (ii) an individual or group accident and sickness subscription contracts; (iii) an optometric services plan; (iv) a health care plan provided by a health maintenance organization; or (v) an integrated or stand-alone vision benefit plan or a vision care insurance policy or contract that provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials, under which policy, contract, or plan an enrollee is eligible to receive a benefit for covered services or covered materials.*

*"Vision care plan carrier" means (i) an insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical, and surgical or major medical coverage on an expense-incurred basis; (ii) a nonstock corporation providing individual or group accident and sickness subscription contracts; (iii) a nonstock corporation offering an optometric services plan; (iv) a health maintenance organization providing a health care plan; and (v) an entity that creates, promotes, sells, provides, advertises, or administers (a) an integrated or stand-alone vision benefit plan or (b) a vision care insurance policy or contract that provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials.*

*B. No participating provider agreement shall establish the fee or rate that the optometrist, optician, or ophthalmologist is required to accept for the provision of health care materials or services, or require that an optometrist, optician or ophthalmologist accept the reimbursement paid as payment in full, unless the health care materials and services are covered materials or covered services under the applicable vision care plan.*

*C. Reimbursement paid by the vision care plan carrier for covered services and covered materials shall be reasonable and shall not provide nominal reimbursement in order to claim that services and materials are covered services or covered materials under the applicable vision care plan.*

*D. No vision care plan shall require an optometrist, optician or ophthalmologist to use a particular optical laboratory, manufacturer, or third-party supplier as a condition of participation in a vision care plan.*

*E. Any changes to a participating provider agreement proposed by the vision care plan carrier shall be submitted in writing to the optometrist, optician or ophthalmologist at least 30 days prior to the effective date of such proposed changes.*

*F. This section shall apply with respect to any participating provider agreement that is entered into, amended, extended, or renewed on or after July 1, 2015.*

*G. Any person who violates any provision of this section shall be civilly liable for liquidated damages of \$10,000 and reasonable attorney fees, plus provable damages caused as a result of such violation, and shall be subject to such other remedies, legal or equitable, including injunctive relief, as may be available to the party damaged by such violation. Any such action to*

*which an optometrist, optician, or ophthalmologist is a party shall be brought in the circuit court of a city or county where the optometrist, optician, or ophthalmologist resides or practices.*

*H. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of this section.*

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3406.2, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.18~~ 38.2-3407.19, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3501, 38.2-3502, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, §§ 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541 through 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), §§ 38.2-3600 through 38.2-3607, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) of this title shall apply to the operation of a plan.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.18~~ 38.2-3407.19, 38.2-3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.17, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or

health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect to the activities of its health maintenance organization.

C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

§ 38.2-4509. Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-326, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-

600 through 38.2-620, 38.2-900 through 38.2-904, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, Articles 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.), and 6 (§ 38.2-1335 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.1, 38.2-3407.4, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, 38.2-3407.17, 38.2-3407.19, 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

D. The provisions of § 38.2-3407.1 shall apply to claim payments made on or after January 1, 2014. No optometric or dental services plan shall be required to pay interest computed under § 38.2-3407.1 if the total interest is less than \$5.

**From:** Ronnie Harbert  
**To:** [April Koon](mailto:April.Koon)  
**Subject:** Fwd: Model Optician Mobility Act  
**Date:** Tuesday, November 15, 2016 2:58:42 PM

---

\*\*\* SCDLLR NOTICE \*\*\*

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

----- Forwarded message -----

**From:** Charleston Vision Center Harbert <[charlestonvisioncenter@gmail.com](mailto:charlestonvisioncenter@gmail.com)>  
**Date:** Tue, Oct 25, 2016 at 5:05 PM  
**Subject:** Fwd: Model Optician Mobility Act  
**To:** Ronnie Harbert <[ronnieharbert@gmail.com](mailto:ronnieharbert@gmail.com)>

----- Forwarded message -----

**From:** Christopher Allen <[chris\\_allen14@att.net](mailto:chris_allen14@att.net)>  
**Date:** Fri, Oct 21, 2016 at 3:05 PM  
**Subject:** Re: Model Optician Mobility Act  
**To:** Charleston Vision Center Harbert <[charlestonvisioncenter@gmail.com](mailto:charlestonvisioncenter@gmail.com)>

**Ronnie -**

**Here is what I put together for the South Carolina Association of Opticians to present to the Licensing Board. Please review and let me know your thoughts...**

The South Carolina Association of Opticians (SCAO) and the Opticians Association of America (OAA), the national umbrella organization representing opticians throughout the US, respectfully requests the South Carolina Board of Examiners in Opticianry either adopt new rules or support new legislation to allow certified, experienced opticians from other states to become licensed in South Carolina without undue burden.

Increasing the mobility of experienced, certified opticians wishing to practice in a new state was recently affirmed as a top priority by the participants in the Optician Collaboration Forums. The participants included representatives from the Opticians Association of America, the American Board of Opticianry and National Contact Lens Examiners, the National Association of Optometrists and Opticians, the National Academy of Opticianry, the National Conference of State Optical Regulatory Boards, and the National Federation of Optical Schools. The participants agreed that the best way to achieve this objective was to encourage states to adopt the concepts embodied in a "Model Optician Mobility Act" which could be customized to work as a new rule or as the basis for legislation as appropriate.

The SCAO and the OAA support the approach to establish or expand "licensure by credentials" in addition to or instead of "reciprocity" to improve the ability of competent, experienced and credentialed opticians to become licensed in South Carolina. We believe other states will follow in turn; Kentucky has recently adopted this approach, and several other states have successfully used licensure by credentials for some time (e.g. NV, WA.) Broader recognition of credentialed and experienced opticians will advance the recognition and reputation of opticians in the vision community and with consumers.

All opticians benefit when optician associations collaborate on matters of importance to the profession. Now is the time for all opticians to work together reduce licensing barriers for qualified opticians who wish to practice in multiple licensed states or who want to relocate to a Licensed State. The patchwork of regulations from state to state relating to optician licensing creates burdens for patients to gain access to quality eye care, and makes it difficult for opticians to practice across state lines or to move from state to state. In turn, this hurts the image of the profession by limiting the recognition of qualified opticians. The value of both professional licensing and certification to the professional is diminished when the credentials and experience developed and confirmed in one state are not portable to another.

Below you will find the draft Model Optician Mobility Act that can be customized to ensure that opticians entering the State of South Carolina meet the current requirements in your state. We look forward to the opportunity to work with the Board as you determine how best to achieve the goals of enhanced optician mobility and promoting entry into the state of well-qualified opticians, while preserving the health, safety and welfare of the residents of South Carolina.

#### **Licensure by Credentials as Dispensing Optician; Expedited Apprenticeship.**

**1. The Board shall issue a license as a dispensing optician to an applicant who:**

- (a) Is at least eighteen (18) years of age;**
- (b) Is of good moral character;**
- (c) Is a citizen of the United States or is lawfully entitled to remain and work in the United States;**
- (d) Is a graduate of an accredited high school or its equivalent;**
- (e) Has passed a nationally recognized optician certification examination such as the National Opticianry Competency Examination of the American Board of Opticianry and has maintained a current optician certification such as that issued by the American Board of Opticianry;**
- (f) *Has passed a nationally recognized contact lens specialty certification for opticians such as the Contact Lens Registry Examination of the National Contact Lens Examiners and has maintained a current contact lens specialty certification such as that***

*issued by the National Contact Lens Examiners; [OPTIONAL LANGUAGE depending on the state's current requirement or lack thereof of a contact lens certification];*

**(g) Has passed an examination on state laws related to opticianry adopted and administered by the Board [IF ONE EXISTS AND IS REQUIRED FOR OTHER CANDIDATES FOR LICENSURE]; and**

**(h) Has either:**

**(1) An active license as a dispensing optician issued by the District of Columbia or any state or territory of the United States; or**

**(2) Not less than [INSERT NUMBER OF HOURS/YEARS FOR APPRENTICESHIP PROGRAM] of experience as a dispensing optician.**

- 2. Expedited Apprenticeship: The Board shall establish a process to provide a candidate for licensure with credit towards a requirement of experience (e.g., an apprenticeship), such credit to be equivalent to the work experience of the candidate as an optician outside the state.**
- 3. An applicant for either a license based on credentials or an expedited apprenticeship shall submit sufficient proof, as determined by rule of the board, of the completion of the experience of the applicant. The Board shall establish standards for determining and verifying experience; such standards should be reasonable. The Board shall seek to make such standards substantially equivalent to the standards used by other states, and shall accept reasonable proof of experience, including attestation of experience by the applicant, with verification by one or more persons who is familiar with the applicant's experience. This may include an employer, supervisor or licensed optometrist or physician who can confirm any portion of the applicant's experience. The experience need not all be at the same location or with the same employer, supervisor or business establishment. The intent of this section is to encourage and ease the ability of experienced opticians who are licensed, credentialed or certified to obtain a license to practice in the state.**
- 4. A person practicing ophthalmic dispensing pursuant to a license as provided in this section is subject to the provisions of this chapter in the same manner as a person practicing ophthalmic dispensing pursuant to a license issued pursuant to [INSERT SECTION DETAILING IN-STATE LICENSURE PROCESS], including, without limitation, the provisions of this chapter governing the renewal, inactivity, or reactivation of a license.**

We look forward to working with the Board to promote the concept of licensure by credentials in South Carolina.

---

**From:** Charleston Vision Center Harbert <charlestonvisioncenter@gmail.com>  
**To:** Christopher Allen <chris\_allen14@att.net>  
**Sent:** Friday, October 21, 2016 7:19 AM  
**Subject:** Re: Model Optician Mobility Act

chris sounds good. I really think is time to move in sc. in sc we are called licensed opticians and they make a stink if we use dispensing optician(see why problems.means same thing). in our state you don't have to be licensed for contacts unless you plan to dispense them.our statutes are open cleaning up verbage so I feel we need to go after mobility and I would also like to see how yall helped va with free choice of labs.i think I am right that yall were involved in in them passing that also. the licensing board will be meeting as soon as they can get together after cancelling because of hurricane.i feel that if we could get on agenda it would be advantageous to act fast since we have them softening up on dispensing. that has been a 4 year fight which now they say they are finally willing to work with me on it.i never understood why it has been a fight but now added a new member that seems to have same views as myself. thanks for any help but I do feel we have to move fast before we close statutes and they will be in discussion over dispensing. thanks for any help Ronnie btw you should try returning phone calls because I feel like a redheaded stepchild.

On Thu, Oct 20, 2016 at 4:19 PM, Christopher Allen <chris\_allen14@att.net> wrote:  
*Here is a draft of what we are going to try and do in Georgia. Take a look at it and let me know if you want me and Wally to put together something for your state...*

*The Optician Association of Georgia (OAG), and the Optician Association of America (OAA), the national umbrella organization representing opticians throughout the US, respectfully request the Georgia State Board of Dispensing Opticians to either adopt new rules or support new legislation to allow certified, experienced opticians from other states to become licensed in Georgia without undue burden.*

*Currently, opticians who have been working in other states that do not license opticians or in licensed states that don't have reciprocity agreements in place with the State of Georgia must register as apprentices for an additional 3000 hours of supervised training, no matter how well-qualified and experienced they may be.*

*Increasing the mobility of experienced, certified opticians wishing to practice in a new state was recently affirmed as a top priority by the participants in the Optician Collaboration Forums. The participants included representatives from the OAA, the American Board of Opticianry and National Contact Lens Examiners, the National Association of Optometrists and Opticians, the National Academy of Opticianry, the National Conference of State Optical Regulatory Boards, and the National Federation of Optical Schools. The participants agreed that the best way to achieve this objective was to encourage states to adopt the concepts embodied in a "Model Optician Mobility Act" which could be customized to work as a new rule or*

as the basis for legislation as appropriate.

The OAG and the OAA support the approach to establish or expand "licensure by credentials" in addition to or instead of "reciprocity" to improve the ability of competent, experienced and credentialed opticians to become licensed in Georgia. We believe other states will follow in turn; Kentucky has recently adopted this approach, and several other states have successfully used licensure by credentials for some time (e.g. NV, WA.) Broader recognition of credentialed and experienced opticians will advance the recognition and reputation of opticians in the vision community and with consumers.

All opticians benefit when optician associations collaborate on matters of importance to the profession. Now is the time for all opticians to work together reduce licensing barriers for qualified opticians who wish to practice in multiple licensed states or who want to relocate to a Licensed State. The patchwork of regulations from state to state relating to optician licensing creates burdens for patients to gain access to quality eye care, and makes it difficult for opticians to practice across state lines or to move from state to state. In turn, this hurts the image of the profession by limiting the recognition of qualified opticians. The value of both professional licensing and certification to the professional is diminished when the credentials and experience developed and confirmed in one state are not portable to another.

We have drafted the following language for Georgia based on the Model Optician Mobility Act and the current Georgia laws and rules regulating opticians. We look forward to the opportunity to work with the Board as you determine how best to achieve the goals of enhanced optician mobility and promoting entry into the state of well-qualified opticians, while preserving the health, safety and welfare of the residents of Georgia.

(a) The Board shall issue a license as a dispensing optician to an applicant who demonstrates credentials as follows::

- (1) Is at least eighteen (18) years of age;
- (2) Is of good moral character;
- (3) Is a citizen of the United States or is lawfully entitled to remain and work in the United States;
- (4) Is a graduate of an accredited high school or its equivalent;
- (5) Has passed a nationally recognized optician certification examination such as the National Opticianry Competency Examination of the American Board of Opticianry and has maintained a current optician certification such as that issued by the American Board of Opticianry;
- (6) Has passed a nationally recognized contact lens specialty certification for opticians such as the Contact Lens Registry Examination of the National Contact Lens Examiners and has maintained a current contact lens specialty certification such as that issued by the National Contact Lens Examiners;

*(7) Has passed a nationally recognized optician practical examination such as the ABO practical exam; and*

*(8) Has either*

*(i) An active license as a dispensing optician issued by the District of Columbia or any state or territory of the United States; or*

*(ii) Not less than 3000 hours of experience as a dispensing optician, which may include formal education hours.*

*(b) Expedited Apprenticeship: The Board shall establish a process to provide an applicant for licensure who resides in a state other than Georgia with credit towards the requirement of 3000 hours of training and experience established in Section 43-29-7 (4), such credit to be equivalent to the education and work experience of the candidate as an optician outside Georgia.*

*(c) An applicant for a license under Paragraph (a) (8) (i) of this Section shall submit proof of his/her active license issued by the District of Columbia or a state or territory of the United States.*

*(d) An applicant for a license based on credentials under Paragraph (a) (8) (ii) or for an expedited apprenticeship under Paragraph (b) of this Section shall submit sufficient written proof, as determined by rule of the board, of the completion of the education, training and experience of the applicant.*

*(1) The Board shall establish standards for determining and verifying experience; such standards should be reasonable.*

*(2) The Board shall accept reasonable proof of experience, including attestation of experience by the applicant, with verification by one or more persons who is familiar with the applicant's experience. This may include an employer, supervisor, licensed dispensing optician, certified optician, licensed optometrist or licensed physician who can confirm any portion of the applicant's experience. The experience need not all be at the same location or with the same employer, supervisor, business establishment, licensed dispensing optician, certified optician, licensed optometrist or licensed physician.*

*The intent of this section is to encourage and ease the ability of experienced opticians who are licensed, credentialed or certified to obtain a license to practice in the state of Georgia, and for opticians in training to receive fair and reasonable recognition of their prior education, training and experience when enrolling in an apprenticeship program in this state.*

*We look forward to working with the Board to promote the concept of licensure by credentials in Georgia.*

--

Charleston Vision Center  
349 Folly Rd.  
Charleston, SC 29412  
(843)795-7917

--

Charleston Vision Center  
349 Folly Rd.  
Charleston, SC 29412  
(843)795-7917

**From:** sharon batey  
**To:** [Contact.Opticlanry](#)  
**Subject:** HOURS IN JAN  
**Date:** Tuesday, January 10, 2017 11:55:04 AM

---

\*\*\* SCDLLR NOTICE \*\*\*

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

Good Morning April,

As we discussed yesterday I have on going Chemo treatment which puts me at a high risk for infections. I am suppose to stay away fro crowded places. I am not going to be finished anytime soon,as I have Stage 4 breast cancer. My hopes I can return to work sometime late this year or sometime in 2018.

I have never missed the local hours in Columbia and would appreciate consideration this year to obtain them not in person this year.

Thank you,  
Sharon Batey

**Administrative Report – April Koon**

**a. Licensee Totals (Totals include OPI & OPC Credentials)**

Total of all licensees – 831

Instate licensee total – 695

Out-of-state licensee total – 136

Total of all apprentices – 123

**b. S.C. Practical Examination**

December 5, 2016 Exam total – 22

Total to pass – 7

Total to fail – 10

Total No Show – 5

Opticianry Board DB0018		June 2015 Cash Balance	June 2016 Cash Balance	Jan 2017 Cash Balance
		<u>FY15</u>	<u>FY16</u>	<u>FY17</u>
Beginning Cash Balance		(115,730.44)	(229,633.31)	(205,242.07)
Total Revenue		9,495.53	128,595.00	7,095.00
Total Direct Expenditures		(73,322.55)	(53,154.63)	(37,320.42)
Indirect Expenditures (Overhead):				
Admin/Dir/Adv Cou- Based on Previous Yr. Expenses	0.597%	(24,230.62)	(29,281.30)	(13,716.31)
POL Admin - Based on Previous Yr Expenses	0.597%	(8,253.04)	(8,730.59)	(3,046.96)
OLC - Former POL Program		0.00	0.00	0.00
OIE - Based on No. of Investigations	0.186%	(2,508.45)	(2,711.31)	(3,739.54)
Legal - Based on No. of Investigations	0.186%	(901.88)	(948.62)	(1,341.02)
Office of Business Services - Based on Prev Yr Exp		0.00	0.00	0.00
Office of Health & Medical Rel Bds - Based on Pre Yr Exp	0.000%	0.00	0.00	0.00
Remittance to General Fund - Proviso 81.3	10.00%	(7,332.26)	(5,315.46)	0.00
Communications-Based on Prev Yr Exp	0.597%	(1,867.45)	(2,052.40)	(1,334.71)
Immigration Proviso 81.8-Based on Prev Yr Exp	0.597%	(1,536.78)	(1,691.27)	(702.65)
Osha Proviso 81.7-Based on Prev Yr Exp	0.597%	(3,445.37)	(1,488.12)	0.00
Total Indirect Expenditures (Overhead)		(50,075.85)	(52,219.07)	(23,881.19)
NET		(113,902.87)	23,221.30	(54,106.61)
Fines Draw			1,169.94	-
Year End Balance		(229,633.31)	(205,242.07)	(259,348.68)

**Overview of the Disciplinary Process  
South Carolina Board of Examiners in  
Opticianry**

**February 16, 2017**

# Investigative Process

- **Initial Complaint**
  - Reviewed by Complaint Analyst.
  - Case is opened for investigation if allegations implicate the practice act.
  - Complainant sent “do not open” letter if allegations fall outside of jurisdiction of Board’s authority under practice act.
  - If additional information is needed for a determination, Complainant sent a letter requesting additional information.

# Investigative Process – cont'd.

- **Investigation**
  - If case is opened, it is assigned to investigator by the respective Chief Investigator.
  - Cases generally investigated in the order in which they come into to the agency unless it is a priority case involving potential imminent danger.
  - Letter to Complainant within 5 days and to Respondent within 30 days.
  - The length of investigations varies depending on the nature of the issues, whether other agencies are investigating the Respondent, or how quickly information can be obtained from relevant sources.
  - Average investigation 60 days to 180 days.

- **Chief Investigator/Supervisor Review**

- Once an investigation is complete, it is submitted to the Chief Investigator to review for completeness and quality of reports.
- If Chief Investigator determines that the case has been fully investigated and all documentation is in order, it is ready for submission to the Investigative Review Committee (IRC).

# Investigative Review Committee (IRC)

- IRC Membership- investigators, chief investigator, ODC attorney, Board administrator, and IRC professional members.
- Reviews the evidence gathered during the course of the investigation and makes a recommendation as disposition of the case to Board.
- Neither Respondent nor Complainant is present at the IRC.
- Recommendations include: dismissal, dismissal with a letter of caution, issuance of a Cease & Desist, or a Formal Complaint (FC).
- The IRC can also refer the case back for further investigation if necessary.

# IRC Board Report

- Chief Investigator for the Board presents IRC recommendations for Board approval. The report will contain a “logic” section which explains why the IRC came to its recommendation.
- The IRC report will not contain any identifying aspects of the case as to avoid any potential taint.
- If the case is approved for dismissal or dismissal with letter of caution, the Dismissals & Letters of Caution are sent by Board staff.
- If approved for Formal Complaint, the file is transferred to Office of Disciplinary Counsel (ODC)

# Integrity of Investigative Process

- Throughout all steps, no communication with Board members in order to avoid taint.
- It is also important for Investigative Review Committee (IRC) members to avoid taint.

## Legal: Office of Disciplinary Counsel (ODC)

- **Duties of ODC Attorney**
  - Advice to investigators and administrators
  - Interactions with other State and Federal Agencies
  - Temporary Suspension Orders/Surrenders/Cease and Desist Orders
  - Review files and attend IRC and Board Meetings
  - Interact with opposing counsel, Pro Se Respondents, Prepare FC/Consent Agreement/MOA/ Consult Witnesses
  - Motions/Emergency Hearings/Preparing for Hearings/Appeals

# Consent Agreements

- A Consent Agreement (CA) is an agreement as to the facts, the violations, and the sanctions.
  - These sanctions were determined by the IRC and cannot be negotiated without IRC approval.
- If CA authorized by IRC, ODC drafts and offers to Respondent for signature.
- The Board Chair has been given the power by the Board to approve or reject a CA. A CA must be accepted or rejected in full.
- If no CA authorized, ODC communicates with Respondent and Investigator to determine appropriate allegations for a Formal Complaint (FC) or Memorandum of Agreement (MOA).

# MOA/FC Presentation

- If MOA is possible, ODC drafts and offers to Respondent for signature and presentation at next disciplinary meeting.
- A MOA is an agreement to the facts and possibly to the statutory violations, but does not include sanctions.
- The Licensee will appear before the Board to present any mitigation and answer any questions from the Board. Sanctions, if any, will be determined by the Board.
- If MOA is not possible, ODC drafts and serves FC; then prepares, schedules and presents to Board with evidentiary hearing.
- Disciplinary Hearings are conducted by the full Board. A Final Order is issued after action by the Board.

# Notice of Hearing/Final Order

- Whether through MOA or full evidentiary (FC) hearing, ODC provides notice to the Respondent of the hearing; sanctions can be set forth by the Board after presentation of case by parties.
- Upon receipt of the Final Order after the hearing, Respondents may appeal to the Administrative Law Court within 30 days. Appeals from ALC are handled by the SC Court of Appeals.

# Respondent's Rights

- Receive notification of the investigation and respond
- Represent her/his self or obtain counsel
- Surrender or deactivate license
- Receive notice of charges and can obtain evidence to be used against them before a hearing is scheduled
- Agree to misconduct thru CA or MOA
- Demand that state present admissible evidence, and Respondent can present evidence
- Appeal to ALC and Court of Appeals

# Disposition Process

- Throughout all steps, no communication with Board members in order to avoid taint.

# ***Selected Board Issues— Office of Advice Counsel***

- Grounds and Sanctions Allowed in Disciplinary Matters
- Preserving Objectivity (What Must Remain Confidential?)
- Freedom of Information Act (What Must Remain Public?)
- Review of Resource Materials

# ***Authority of the Board***

## **Sources of Authority**

The Engine: SC Code Ann. § 40-1-10, et seq.

The Practice Act: SC Code Ann. §40-38-5, et seq.

## **Code of Regulations:**

Chapter 10-27 (Fees)(2014)

Chapter 96 (Standards of Practice)

Chapter 117-308.7 (Dept. of Revenue)

Retail license and sales tax

# ***Grounds for Disciplinary Action***

## **SECTION 40-1-110. Additional grounds for disciplinary action**

In addition to other grounds contained in this article and the respective board's chapter:

- (1) A board may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who:
  - (a) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining licensure under this article;
  - (b) has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;
  - (c) has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article;
  - (d) has intentionally used a fraudulent statement in a document connected with the practice of the individual's profession or occupation;
  - (e) has obtained fees or assisted in obtaining fees under fraudulent circumstances;
  - (f) has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

# ***Grounds for Disciplinary Action***

(§ 40-1-110 CONTINUED)

- (g) lacks the professional or ethical competence to practice the profession or occupation;
- (h) has been convicted of or has pled guilty to or nolo contendere to a felony or a crime involving drugs or moral turpitude;
- (i) has practiced the profession or occupation while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him unfit to practice his profession or occupation;
- (j) has sustained a physical or mental disability which renders further practice dangerous to the public;
- (k) violates a provision of this article or of a regulation promulgated under this article;
- (l) violates the code of professional ethics adopted by the applicable licensing board for the regulated profession or occupation or adopted by the department with the advice of the advisory Board for the professions and occupations it directly regulates.

Each incident is considered a separate violation.

## ***Grounds for Disciplinary Action or Denial of License***

**SECTION 40-38-110.** Grounds for license revocation, suspension, or limitations, or for disciplinary action against licensee.

(A) In addition to the grounds for disciplinary action provided in Section 40-1-110, the board may revoke, suspend, or otherwise restrict or limit the license of an optician or reprimand or otherwise discipline a licensee when it is established upon a satisfactory showing to the board that the licensee:

- (1) has been convicted of a felony or crime involving moral turpitude. Forfeiture of a bond or a plea of nolo contendere is considered a conviction;
- (2) has knowingly performed an act which in any way assists a person to practice opticianry illegally;
- (3) has caused to be published or circulated directly or indirectly fraudulent, false, or misleading statements as to the skill or methods of practice of an optician;
- (4) has failed to provide and maintain reasonable sanitary facilities;
- (5) is guilty of obtaining fees or assisting in obtaining fees under deceptive, false, or fraudulent circumstances;
- (6) has violated a provision of this chapter or a regulation promulgated under this chapter; or
- (7) has been guilty of using third-party solicitation which is untruthful, deceptive, and coercive to obtain patronage.

## ***Grounds for Disciplinary Action or Denial of License***

(B) In addition to all other remedies and actions provided for in this chapter, the license of an optician adjudged mentally incompetent by a court of proper jurisdiction automatically must be suspended by the board until the optician is adjudged by a court of competent jurisdiction or in any other manner provided by law as being restored to mental competency.

# Grounds for Disciplinary Action or Denial of License

**SECTION 40-38-130.** Denial of license on same grounds as for disciplinary actions.

As provided for in Section 40-1-130, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

**SECTION 40-1-130.** Board's authority to sanction.

A board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board. A board must deny authorization to practice to an applicant who has failed to demonstrate the qualifications or standards for licensure contained in the respective board's licensing act. The applicant shall demonstrate to the satisfaction of the board that the applicant meets all the requirements for the issuance of a license.

# Grounds for Disciplinary Action or Denial of License

**SECTION 40-38-140.** Denial of license based on prior criminal record.

A license for opticianry may be denied based on a person's prior criminal record as provided for in Section 40-1-140.

**SECTION 40-1-140.** Effect of prior criminal convictions.

A person may not be refused an authorization to practice, pursue, or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought. However, a board may refuse an authorization to practice if, based upon all information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession or occupation.

# Sanctions

**SECTION 40-38-120.** Disciplinary actions permitted by board; procedures.

In addition to the sanctions the board may take against a person pursuant to Section 40-38-110, the board may take disciplinary action against a person as provided for in Section 40-1-120.

**SECTION 40-1-120.** Sanctions.

(A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take pursuant to its respective licensing act, the board may:

- (1) issue a public reprimand;
  - (2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board;
  - (3) place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs;
  - (4) permanently revoke the license.
- (B) A decision by a board to discipline a licensee as authorized under this section must be by a majority vote of the total membership of the board serving at the time the vote is taken.
- (C) A final order of a board disciplining a licensee under this section is public information.
- (D) Upon a determination by a board that discipline is not appropriate, the board may issue a nondisciplinary DC1 or DC2 of DC3 caution.
- (E) A board may establish a procedure to allow a licensee who has been issued a public reprimand to petition the board for expungement of the reprimand from the licensee's record.

**Slide 22**

---

**DC1** Darra Coleman, 2/15/2017

**DC2** Darra Coleman, 2/15/2017

**DC3** Darra Coleman, 2/15/2017

# Surrender of License

**SECTION 40-38-150.** Voluntary surrender of license by licensee under investigation.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40-1-150.

# Surrender of License

**SECTION 40-1-150.** Voluntary surrender of authorization to practice.

A licensee who is under investigation for a violation provided for in Section 40-1-110 or the licensing act of the applicable board for which disciplinary action may be taken may voluntarily surrender authorization to practice to the board. The voluntary surrender invalidates the authorization to practice at the time of its relinquishment, and no person whose authorization to practice is surrendered voluntarily may practice the profession or occupation unless the board, by a majority vote, reinstates the license. A person practicing a regulated profession or occupation during the period of voluntary surrender is considered an illegal practitioner and is subject to the penalties provided by this article. The surrender of an authorization to practice may not be considered an admission of guilt in a proceeding under this article and does not preclude the board from taking disciplinary action against the licensee as provided for in this article or the board's licensing act including, but not limited to, imposing conditions that must be met before the board reinstates the license.

# *Unauthorized Practice and Injunctive Relief*

**SECTION 40-38-100.** Injunctive actions allowed by board.

The board may seek to enjoin violations of this chapter as provided for in Section 40-1-100.

**SECTION 40-1-100.** Equitable relief; immunity.

(A) When the board has reason to believe that a person is violating or intends to violate a provision of this article or a regulation promulgated under this article, in addition to all other remedies, it may order the person immediately to cease and desist from engaging in the conduct. If the person is practicing a profession or occupation without being licensed under this article, is violating a board order, a provision of this article, or a regulation promulgated under this article, the board also may apply, in accordance with the rules of the Administrative Law Court, to an administrative law judge for a temporary restraining order.

No board member or the Director of the Department of Labor, Licensing and Regulation or another employee of the department may be held liable for damages resulting from a wrongful temporary restraining order.

(B) The board may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this article or a regulation promulgated under this article.

**SECTION 40-1-210.** Civil proceedings before Administrative Law Court.

The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this article, a regulation promulgated under this article, or an order of the board. For each violation the administrative law judge may impose a fine of no more than ten thousand dollars.

# ***Preserving Objectivity***

- Confidentiality of Board materials
- Investigations are confidential
- Secure website for all Boards
- Recusal:
  - \* The recusal must be in writing and on the record.
  - \* LLR will provide forms for execution.
  - \* Board member must leave the room.
- Beware social media!

# Your Recusal is Statutory

**SECTION 40-38-90.** Participation in hearing by board member filing complaint or conducting investigation.

If a board member files a complaint or conducts the initial investigation of a complaint, the board member must not participate in the capacity as board member at the hearing of that complaint.

# ***Freedom of Information Act***

- All business must be done in a public setting and pursuant to public notice;
- Avoid “incidental” meetings, i.e. at cocktail parties, telephone conferences, emails, association meetings, trade shows, etc.;
- Be mindful that no individual member can speak for the Board.

# ***Review Resource Materials***

**QUESTIONS?**

## **CALL TO ORDER**

**This meeting is being held in accordance with the Freedom of Information Act by notice emailed to The State Newspaper, Associated Press, WIS-TV and all other requested organizations or news media. In addition, the notice was posted on the Board's website and on the bulletin board at the main entrance of the Kingstree Building.**

## Missy Jones

---

**From:** Missy Jones  
**Sent:** Wednesday, November 23, 2016 9:39 AM  
**To:** Missy Jones  
**Subject:** South Carolina Board of Examiners in Opticianry

Pursuant to requirements of the Freedom of Information Act 593, this is to advise that the Board of Examiners in Opticianry will hold a Meeting February 16, 2017, beginning at 9:00 a.m., Kingstree Building of the Synergy Business Park, 110 Centerview Drive, Suite 204, Columbia, SC.

Please do not hesitate to contact me if you have any further questions or concerns.

Thank you!

Missy D. Jones  
Administrative Assistant  
Office of Board Services  
S.C. Department of Labor, Licensing and Regulation  
110 Centerview Drive, Columbia, S.C. 29210  
South Carolina Panel for Dietetics 803-896-4651  
South Carolina Board of Examiners in Opticianry 803-896-4681  
South Carolina Board of Examiners in Optometry 803-896-4679  
Mailing Address: PO Box 11329, Columbia, SC 29211  
Telephone: 803-896-4660  
Fax: 803-896-4719  
Email: [missy.jones@llr.sc.gov](mailto:missy.jones@llr.sc.gov)  
[www.llronline.com](http://www.llronline.com)



*Please complete the Customer Service Satisfaction Survey, it will let my supervisor know if you were satisfied or dissatisfied with the service you received from me. It only takes a minute to complete. Please ensure to include my name in the survey. Your comments are greatly appreciated. Thanks.*

Confidentiality Note: This e-mail, including any attachments, contains privileged & confidential info intended only for the use of the individual or entity named above. If the reader of this e-mail is not the intended recipient or the employee/agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this e-mail, including attachments, is strictly prohibited. If you have received this e-mail message in error, please notify us immediately at 803-896-4660. Thank you.