

CHAPTER 361

(HB 886)

AN ACT relating to optometrists.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 320.210 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Board" means the Kentucky Board of Optometric Examiners;
- (2) "Practice of optometry" means:
 - (a) The employment of any means including the administration of pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, except surgery in examination, diagnosis, and treatment of the human eye and its appendages, to determine the visual efficiency of the human eye, or to determine the powers or defects of vision, provided that superficial foreign bodies may be removed from the eye and its appendages;
 - (b) The prescribing, providing, furnishing, adapting, using, or employing lenses, prisms, contact lenses, visual training, orthoptics, ocular exercise, *autofractometry*, or any other means or device including pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, excluding the use of surgery for the aid, relief, or correction of the human eye and its appendages; *and* (c) ***Low vision rehabilitation***;
- (3) "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus;
- (4) "Visual aid glasses" means eyeglasses, spectacles, or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify; ~~and~~
- (5) "~~An~~ Orthoptic technician" *means* ~~is~~ a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter ~~if~~ ~~provided that~~ such training and directions are done pursuant to and under the instructions of a duly-licensed physician, osteopath, or optometrist and consists solely of visual training, orthoptics, or ocular exercises; *and*
- (6) "***Low vision rehabilitation***" *means the evaluation, diagnosis, and management of the low vision patient, including but not limited to, prescription, low vision rehabilitation therapy, education, and interdisciplinary consultation when indicated. Any person who prescribes or provides comprehensive low vision care for the rehabilitation and treatment of the visually impaired or legally blind patient; prescribes corrective eyeglasses, contact lenses, prisms, or filters; employs any means for the adaptation of lenses, low vision devices, prisms, or filters; evaluates the need for, recommends, or prescribes optical, electronic, or other low vision devices; or recommends or provides low vision rehabilitation services independent of a clinical treatment plan prescribed by an optometrist, physician, or*

osteopath is engaged in the practice of optometry. Section 2. KRS 320.220 is amended to read as follows:

- (1) No person shall practice optometry in this Commonwealth or hold himself *or herself* out as being able~~[-so]~~ to do *so* unless he *or she* is the holder of a license duly issued to him *or her* by the board and registered in the manner provided by KRS 320.290.
- (2) A~~[-Such]~~ license to practice optometry shall not be required by physicians or osteopaths *currently*~~[-regularly]~~ licensed to practice medicine or osteopathy at any place in the Commonwealth of Kentucky.
- (3) Nothing in this chapter shall be construed to prohibit persons from fitting, adjusting, or dispensing visual aid glasses or other lenses or appurtenances *if the*~~[-; provided, that such]~~ fitting, adjusting or dispensing is done upon the written prescription of a *currently*~~[-regularly]~~ licensed optometrist, physician or osteopath, *nor shall this chapter be construed*~~[-or]~~ as requiring *these*~~[-such]~~ persons to be licensed under this chapter.

Section 3. KRS 320.230 is amended to read as follows:

- (1) The Kentucky Board of Optometric Examiners shall consist of five (5) members appointed by the Governor. Four (4) members shall be *Kentucky licensed* practicing optometrists *whose licenses are in good standing and who are*~~[-well grounded in the practice of optometry]~~ appointed by the Governor from a list containing three (3) names for each appointment recommended by the Kentucky Optometric Association. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The members shall serve for a term of four (4) years and until their successors are appointed and~~[-have]~~ qualified. They shall receive per diem compensation to be determined by *administrative regulations promulgated by*~~[-regulation of]~~ the board, ~~[-but]~~ not to exceed one hundred twenty-five dollars (\$125) per day for attending board meetings.~~[-and]~~ Members shall be reimbursed for actual expenses incurred in the performance of their duties under this chapter.
- (2) Each optometrist member shall be *a Kentucky*~~[-well grounded in the theory and practice of the profession of optometry and shall have been an actual resident and]~~ licensed practicing optometrist *in good standing*~~[-of this state]~~ for not less than five (5) years immediately preceding his *or her* appointment to the board. *The member*~~[-He]~~ shall not be in any way connected with or interested in any optometric school, college, or institution of learning or optometric supply business.
- (3) Any vacancy occurring on the board as the result of a member not completing the term for which he *or she* was appointed shall be filled, for the unexpired term, in the same manner as is provided in subsection (1) of this section for the appointment of members.
- (4) A majority of the members of the board shall constitute a quorum for the transaction of business.

Section 4. KRS 320.240 is amended to read as follows:

- (1) The board shall meet at least once each year at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board, upon call of its officers, may hold meetings at any time as it deems necessary.~~[-The secretary-treasurer shall keep]~~ A full record of *the board's*~~[-its]~~ proceedings~~[-which]~~ shall be *kept in the office of the board and shall be* open to inspection at all reasonable times.

- (2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.
- (3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.
- (4) Subject to and consistent with the provisions of this chapter, the board shall ~~make and~~ promulgate reasonable administrative regulations and do any and all things *that*~~which~~ it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists.
- (5) The board shall have a common seal.
- (6) The board *may*~~shall have authority to~~ administer oaths and ~~to~~ require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process *that*~~which~~ shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided *for*~~in the event of~~ disobedience of a subpoena or subpoena duces tecum in a civil action.
- (7) The board shall *promulgate*~~make~~ administrative regulations *necessary to regulate and control all matters set forth in*~~governing applicants and applications for registration or license under~~ this chapter~~and governing the conduct of licensing examinations~~.
- ~~(8) The board shall from time to time accredit schools and colleges teaching optometry, the graduates of which shall be eligible to licensing examinations.~~
- ~~(9) The board shall have the right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter.~~
- ~~(9)~~~~(10)~~ — The board *may*~~shall have authority to~~ assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.
- ~~(10)~~~~(11)~~ The board shall have other powers and duties as may be provided in the provisions of this chapter.
- ~~(11)~~~~(12)~~ The board shall ~~make a~~ report~~of~~ its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.
- ~~(12)~~~~(13)~~ The board may *permit*~~authorize~~ persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of *the*~~such~~ diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

~~(13)~~~~(14)~~ The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (13) of this section to utilize and prescribe therapeutic pharmaceutical agents in the examination or treatment of any condition of the eye or its appendages. Any therapeutically-certified optometrist licensed under the provisions of this subsection shall be authorized to prescribe oral medications except controlled substances classified in Schedules I and II for any condition which an optometrist is authorized to treat under the provisions of this chapter and to use injections to administer benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction. The authority to prescribe a Schedule III, IV, or V controlled substance shall be limited to prescriptions for a quantity sufficient to provide treatment for up to seventy-two (72) hours. No refills of prescriptions for controlled substances shall be allowed. The utilization or prescribing of therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education. These six (6) semester hours are in addition to the six (6) semester hours required by subsection (13) of this section, making a total of twelve (12) semester hours.

~~(14)~~~~(15)~~ Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics to be applied topically only. Any optometrist authorized by the board to utilize therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (13) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein. ~~All purchases of pharmaceutical drugs by optometrists shall be upon purchase order forms approved by the board.~~ Section 5. KRS 320.250 is amended to read as follows:

- (1) Licenses to engage in the practice of optometry shall be issued only to those who qualify ~~therefor~~ under the provisions of KRS 320.260 or 320.270, or who successfully pass examinations conducted **or approved by** ~~under the direction of~~ the board at a time and place fixed by the board. Each applicant shall comply with the provisions of KRS 214.615(1). Each license certificate shall be signed by the president and secretary-treasurer and authenticated by the seal of the board.
- (2) The **examinations may** ~~examination shall~~ consist of ~~a~~ written, ~~and~~ clinical, or practical **examinations** ~~examination~~ and shall relate to the skills needed for the practice of optometry in this Commonwealth at the time of the examination and shall seek to determine the applicant's preparedness to exercise these skills. ~~In regard to the written examination,~~ The examining board ~~at its discretion,~~ may:

- (a) Prepare, administer, and grade the examination;
- (b) ~~Approve and administer a standardized examination prepared and graded by or under the direction of the National Board of Examiners in Optometry or any other organization approved by the board as qualified to prepare an examination;~~
- (c) ~~Accept the scores of the applicant from an examination prepared, administered, and graded by the National Board of Examiners in Optometry or any other organization approved by the board as qualified to administer the examination; and (c) **Require passage of an examination on Kentucky optometric law.**~~
- (3) ~~The applicant, except those granted licenses under the provisions of KRS 320.260 or 320.270, shall successfully pass both the written and clinical or practical portions of the examination.~~
- (4) Any person seeking a license to practice optometry *under* ~~pursuant to~~ the provisions of this section shall submit an application to the board on forms furnished by the board. The applicant shall show proof of the following:
- (a) The applicant is not less than eighteen (18) years of age *and is of good moral character*;
- (b) The applicant is a graduate of a school or college of optometry *that is* accredited by a regional or professional accreditation organization ~~that which~~ is recognized or approved by the council on postsecondary accreditation, or by the United States Department of Education, and ~~which~~ is in good standing, as *approved* ~~determined~~ by the board. All applicants shall have transcript credit of at least six (6) semester hours in a course or courses from a school or college as described in this subsection in general and ocular pharmacology with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye and six (6) semester hours in ocular pathology and therapy with emphasis on utilization of therapeutic pharmaceutical agents. All hours shall be from a school or college as described in this subsection; ~~(c) All other information requested by the board as is set out on the application.~~
- (4) ~~(5)~~ The *nonrefundable* fee for each *license application* ~~examination~~ shall not exceed ~~six two~~ hundred dollars (*\$600*) ~~(\$200) for resident applicants and four hundred dollars (\$400) for nonresident applicants~~.
- (5) ~~(6)~~ No *application shall be considered by the board after one (1) year from the date in which the board received the application has lapsed. After the lapse of the one (1) year period, an applicant shall submit a new application and another nonrefundable fee for further consideration by the board* ~~person shall be allowed to take the examination more than three (3) times within the period of any five (5) consecutive years~~.

Section 6. KRS 320.270 is amended to read as follows:

The board may license by endorsement an optometrist who holds a valid license that was obtained by examination from another state or territory of the United States if the applicant for licensure by endorsement:

- (1) *Has engaged in the active practice of optometry for at least five (5) years immediately preceding his or her application for licensure;* ~~Any person who has been licensed to practice optometry in another state, which state has licensing and educational requirements substantially equal to or higher than those of this state and which grants equal licensing privileges to persons licensed in this state, may be issued, without written examination, a~~

license to practice optometry in this state upon satisfactorily complying with all regulations and procedures established by the board relating to the granting of licenses by reciprocity.]

- (2) ***Has not committed any act that would constitute a violation of this chapter and the administrative regulations promulgated under this chapter and is not the subject of any pending or unresolved board action or malpractice suit in this or any other state or territory;***[The applicant shall be required to pass an oral and clinical or practical examination and produce satisfactory evidence that he has actually practiced optometry for at least five (5) years in the state from which he is applying for reciprocity, and shall further comply with all other regulations adopted by the board relating to the granting of a license by reciprocity.]
- (3) ***Meets all of the qualifications for regular state licensure as set forth by the board; and***[The applicant shall further be required to execute and deliver an affidavit to the board stating that said applicant intends to practice optometry in the Commonwealth upon receipt of the license.]
- (4) ***Has completed and submitted an application for licensure by endorsement to the board, submitted a nonrefundable fee to be determined by the board in administrative regulations of no more than seven hundred dollars (\$700), and has authorized any state in which the applicant is licensed to submit information to the board indicating whether or not the applicant is in good standing with the respective state's licensing board***[The granting of a license by reciprocity shall be at the discretion of the board. An applicant seeking a license by reciprocity shall be charged a fee not to exceed four hundred dollars (\$400)].

Section 7. KRS 320.280 is amended to read as follows:

- (1) All optometrists desiring to continue practice shall annually, prior to March 1, secure from the secretary-treasurer of the board a renewal certificate upon the payment of a fee of not more than two hundred dollars (\$200). Not later than February 15 of each year the ***board***[secretary-treasurer] shall notify by mail all optometrists of the renewal date and fee. Application for a renewal shall be upon a form[as is] prescribed by the board and the optometrist shall furnish the information required by the form.
- (2) As a prerequisite for license renewal, all optometrists now or hereafter licensed in the Commonwealth of Kentucky are and shall be required to take annual courses of study in subjects relating to the practice of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research will assure expansive and comprehensive care to the public. The annual courses of study shall include the course described in KRS 214.610(1). The length and content of study shall be prescribed by the board but shall not exceed eight (8) hours in any calendar year, with the exception of those optometrists who are authorized to prescribe therapeutic agents who shall be required to have additional credit hours of continuing education in ocular therapy and pharmacology, the amount of required credit hours to be determined by the board, but not to exceed an additional seventeen (17) credit hours, for a total not to exceed twenty-five (25) credit hours per year. Attendance ***shall***[must] be at a course or ***by a sponsor***[courses] approved by the board. Attendance at any course or courses of study ***is***[are] to be certified to the board upon a form provided by the board and shall be submitted by each licensed optometrist at the time he makes application to the board for the renewal of his license and payment of his renewal fee.[The board is authorized to use a portion of the annual renewal fees for the purpose of contracting with institutions of higher learning, professional organizations, or qualified

individuals for the providing of educational programs that meet this requirement. The board is further authorized to treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state.] The board *may*[*shall*] waive the continuing education requirement in cases of illness or undue hardship.

(3)[(2)] Failure of any optometrist to secure his renewal certificate within sixty (60) days after March 1, shall constitute sufficient cause for the board to revoke his license.

Section 8. KRS 320.290 is amended to read as follows:

~~[(1) Every optometrist shall register his license with the clerk of the county or counties in which he practices. The clerk shall receive a fee pursuant to KRS 64.012 for each registration.]~~

~~(2)]~~ Every practicing optometrist shall display in a conspicuous place at the entrance to his office the true full name of the person practicing therein and shall keep his license certificate conspicuously displayed in his place of practice so that it can easily be seen and read.

Section 9. KRS 320.295 is amended to read as follows:

~~[(1)]~~ No optometrist shall engage in ~~[any]~~ advertising ~~of~~, ~~in~~ any form *that*~~[, which contains a statement or claim which]~~ is false, ~~[or tends to be]~~ misleading, *or* deceptive ~~[or unfair, or which is self laudatory rather than designed to inform the public.]~~

~~(2) No optometrist shall engage in any direct personal solicitation of business, or engage any person to conduct direct personal solicitation on his behalf, unless of an already existing client of that optometrist.~~

~~(3) "Advertise" means to furnish any written, printed, or broadcast information containing an optometrist's name or any other identifying information, with the exception of the following:~~

~~(a) A professional card identifying the optometrist by name and as an optometrist and giving his address and telephone number;~~

~~(b) A brief professional announcement card stating the information contained in paragraph (a) of this subsection or any changed associations or addresses or phone numbers which may be mailed to other optometrists, patients, former patients, personal friends, and relatives;~~

~~(c) A routine telephone book listing containing only the information set forth in paragraph (a) of this subsection;~~

~~(d) A sign on or near the optometrist's office and in the building directory identifying the optometrist's office and containing only the information specified in paragraph (a) of this subsection; and~~

~~(e) A letterhead of an optometrist containing the information set forth in paragraph (a) of this subsection and the name of any other optometrists in his office.~~

~~(4) The board may establish regulations to govern advertising under this section and by regulation may institute a procedure requiring prepublication approval of advertisements by the board.~~

- (5) ~~In the event that the board disapproves any advertisement pursuant to its regulations, the optometrist submitting the advertisement may request a hearing before the board. The board may consider any additional information submitted to it by the optometrist, or other individuals, and shall issue its final decision concerning the advertisement in writing.~~
- (6) ~~Any optometrist aggrieved by a final decision of the board concerning an advertisement may appeal to the Franklin Circuit Court in the same manner provided in this chapter for appeals from disciplinary actions.~~

Section 10. KRS 320.300 is amended to read as follows:

It shall be unlawful and a violation of the provisions of this chapter for any person:

- (1) To sell, fit, or dispense visual *aids* ~~[aid glasses]~~ except upon the written prescription of an optometrist, physician, or osteopath regularly licensed to practice optometry, medicine, or osteopathy;
- (2) To practice optometry, directly or indirectly, or to hold *oneself out* ~~[himself]~~ as being able so to do without first having obtained a license from the board ~~[and filing the license with the clerk of the county or counties in which he practices];~~
- (3) ~~Who~~ ~~[if he]~~ writes a prescription for visual aid glasses, to receive any part of the price paid to a third person for filling *the* ~~[such]~~ prescription ~~[;]~~ or for *the* ~~[such]~~ third person to pay to the person writing the prescription any part of the price paid for filling the prescription;
- (4) To practice optometry under any name other than his own, except as permitted by the board in its regulations.

Section 11. KRS 320.310 is amended to read as follows:

- (1) The board *may* ~~[shall have the power to]~~ refuse to ~~[grant,]~~ issue, *refuse to* ~~[or]~~ renew, *limit or restrict*, ~~[any license to practice optometry, to]~~ revoke, or suspend *a* ~~[any]~~ license ~~[to practice optometry]~~, *may* ~~[to]~~ place *on* ~~[any optometrist upon terms and conditions of]~~ probation, ~~[to limit the license privileges of an optometrist, or to issue a private]~~ or ~~[public]~~ reprimand *a licensee, may order restitution, may impose a fine not to exceed one thousand dollars (\$1,000) for each violation of this chapter or the corresponding administrative regulations, or may impose any combination of these penalties if it finds that an applicant or a licensee has* ~~[for any of the following causes]:~~
 - (a) *Engaged in any* ~~[Presentation to the board of any license, certificate, or graduation diploma illegally or fraudulently obtained, or the]~~ practice of fraud or *deceit in obtaining or attempting to obtain a license* ~~[deception in passing an examination];~~
 - (b) *Been convicted of a felony or misdemeanor involving moral turpitude. A record of the conviction or a certified copy of the record shall be conclusive evidence* ~~[Conviction of a felony or any crime which involves acts which relate to the optometrist's qualifications, ability, or moral fitness to continue to practice optometry or which may create a danger to the public];~~
 - (c) Chronic or persistent inebriety or addiction to a drug habit to an extent that *continued practice is dangerous to patients or to the public safety* ~~[disqualifies from practicing with safety to the public];~~

- (d) ***Been granted a license upon a mistake of material fact***~~{Loaning, selling, or fraudulently obtaining any optometry diploma, license, record, or certificate, or aiding or abetting therein};~~
- (e) ***Engaged in***~~{Gross}~~ incompetence, as determined by the board;
- (f) ***Practiced***~~{Grossly unprofessional or dishonorable conduct, as determined by the board;~~
- (g) ~~The obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient or patients;~~
- (h) ~~Affliction with a contagious or infectious disease which, in the opinion of the board, renders practice of optometry by the licensee or applicant for license dangerous to the public health;~~
- (i) ~~Practicing}~~ as an itinerant, ***peddled***~~{peddling}~~ from door to door, ***established***~~{establishing}~~ a temporary office, or ***practiced***~~{practicing}~~ optometry outside of or away from his regular office or place of practice;
- (g)~~{j}~~ ***Employed, procured, induced, aided, or abetted***~~{Employing, procuring, inducing, aiding or abetting}~~ any person, not holding a ***Kentucky*** license, to practice optometry ***or in practicing optometry***;
- ~~{k} Seeking patronage by means of solicitors, canvassers, cappers, steerers, or agents;}~~
- (h)~~{l}~~ ***Used***~~{Using}~~ the title "doctor" or its abbreviation without further qualifying this title or abbreviation with the word "optometrist" ***or suitable words or letters designating an optometry degree***;
- ~~{m} Use by an optometrist of the words "infirmary," "hospital," "school," "college," "university," or "institute" in English or any other language in connection with any place where optometry may be practiced or demonstrated; Provided, however, That nothing in this section shall prevent an optometric clinic, approved by the board, from being conducted on a nonprofit basis by a school or college of optometry or an association of registered optometrists;}~~
- (i)~~{n}~~ ***Engaged in*** any conduct~~{ which, in the opinion of the board, is of a character}~~ likely to deceive or defraud the public;
- ~~{o} Receipt by an optometrist of any part of the price paid to another person for filling a prescription prepared by the optometrist;}~~
- (j)~~{p}~~ ***Violated***~~{Violation of}~~ any order~~{ of suspension, order limiting privileges, or terms or conditions of any order of probation}~~ issued by the board;
- (k) ~~{q}~~ ~~Has }~~Had his license to practice optometry in any other jurisdiction revoked, suspended, ***limited***, placed on conditions of probation, or subjected to ***any*** other disciplinary action by the licensing authority thereof;
- ~~{r} Receipt of any fees for services not rendered;}~~
- (l)~~{s}~~ ***Prescribed***~~{Prescription of}~~ any therapeutic agent in~~{ such}~~ an amount that the optometrist knows, or ***should***~~{has reason to}~~ know, is excessive under accepted and prevailing standards, or which the optometrist knows, or has reason to know, will be used or is likely to be used other than for an accepted therapeutic purpose;

~~(m)(t)~~ **Developed** ~~[Development of]~~ a physical or mental disability, or other condition, which renders the continued practice by the optometrist dangerous to ~~the~~ patients or the public; ~~or~~ ~~and~~

~~(n)(u)~~ **Violated** ~~[Violation of]~~ any statute under this chapter **or administrative regulation promulgated under those statutes** ~~[pertaining to professional advertising of optometrists]~~.

~~(2)~~ ~~Nothing in this section shall be construed to prohibit a licensed optometrist from issuing appointment cards to his patients when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on a professional card. For the purpose of this section, the professional card shall contain only the name, title, profession, degrees, address, telephone number, and office hours of the licensed optometrist.~~

~~(3)~~ Nothing in this section shall prevent an optometrist from establishing **branch offices if each** ~~[not more than one (1) branch office, providing any]~~ office contains minimum equipment as ~~shall be~~ required by **administrative** regulation of the board, **ensures patient care as necessary**, and **has** ~~[provided further, that]~~ a **Kentucky** ~~[duly]~~ licensed optometrist ~~[shall be]~~ in charge of the office.

Section 12. KRS 320.312 is amended to read as follows:

- (1) When the board has reason to believe, based upon its own information or a complaint or inquiry directed to the board, that an optometrist is suffering from a physical or mental condition that might impede his ability to practice competently, the board may order the optometrist to undergo a physical or mental examination by persons designated by the board, **at the expense of the optometrist**.
- (2) Failure of an optometrist to submit to an examination when directed shall constitute an admission that the concerned optometrist has developed a physical or mental disability, or other conditions, that continued practice is dangerous to patients or to the public and the board may act accordingly pursuant to KRS 320.310.
- (3) The board may limit the optometrist's license privileges pursuant to this section in addition to the other alternatives set forth in KRS 320.310.
- (4) An optometrist whose license has been suspended, limited, or revoked under this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that he is able to resume the competent practice of optometry with reasonable skill and safety to patients.

Section 13. KRS 320.321 is amended to read as follows:

- (1) **Grievances may be submitted by an individual, organization, or entity, including the board based upon information within the board's knowledge.** The board may investigate any suspected grounds for disciplinary action and may hire persons to investigate on its behalf. The board shall have the power to issue investigatory subpoenas for the appearance before the board of any person within the jurisdiction of the Commonwealth of Kentucky and to require production of any record, document, or other item. The board may seek enforcement of investigatory subpoenas in the courts of the Commonwealth as may be necessary. **A copy of the grievance shall be mailed to the licensee at the last address that the board has on record. If the licensee chooses to respond to the grievance, he or she shall submit a response within ten (10) days after the date on which the grievance was mailed.**

- (2) The board may initiate disciplinary proceedings based upon information within its knowledge or received from other persons. A majority of the board members may direct the issuance of a complaint; in these instances, the board shall prepare a written complaint, ***in accordance with KRS Chapter 13B, that*** ~~which~~ shall be signed by the chairman of the board and ~~which~~ shall contain sufficient information to apprise the named optometrist of the nature of the charges. A ***copy of the*** complaint shall be delivered to the charged optometrist by personal delivery or ***sent*** by certified mail to the optometrist's last ~~known~~ address ***that the board has on record***. The optometrist shall file a response within twenty (20) days after the ***complaint was sent or personally served upon the optometrist*** ~~[date of delivery]~~. ***Failure to submit a timely response or avoidance of service may be taken by the board as an admission of the charges contained in the complaint.*** The board may then review the ***grievance, information obtained by the board, and the*** optometrist's response, and dismiss the ***grievance*** ~~[complaint]~~, issue a ***complaint and notice of hearing , or investigate further*** ~~[private and confidential reprimand to the optometrist, or schedule further proceedings]~~.
- (3) ~~[If the board decides to schedule the matter for further proceedings, it shall assign the matter for full hearing by the board, or if the board directs, by any individual member of the board or a hearing officer.]~~The hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The board may ***impose discipline upon the licensee under Section 11 of this Act if the board finds a violation of this chapter or administrative regulations promulgated under this chapter, after a hearing*** ~~[revoke or suspend a license, place an optometrist on terms and conditions of probation, limit an optometrist's license privileges, or issue a private or public reprimand]~~.
- (5) ~~[If a board member serves as a hearing officer for a prehearing, informal conference, or a hearing, he shall abstain from voting on any final order which results from the hearing.]~~
- ~~(6)~~All costs of the proceeding may be assessed against the charged optometrist if a finding of guilt is made by the board.

Section 14. KRS 320.331 is amended to read as follows:

An optometrist who, by final order of the board has been subjected to any disciplinary action may file an appeal. The action on appeal shall be filed with the Circuit Court of the county in which the violation occurred in accordance with KRS Chapter 13B. The ***commencement of proceedings under this section shall not operate as a stay on the board's order, unless specifically ordered otherwise by the court*** ~~[board's order shall be stayed until final determination of the appeal, unless the court, upon motion of the board, finds that irreparable harm may result to the public unless the order is enforced during the pendency of the appeal]~~.

Section 15. KRS 320.360 is amended to read as follows:

All fees imposed and collected under the provisions of this chapter shall be paid to the ~~[secretary/treasurer of the]~~board for the use of the board, and shall be deposited in the State Treasury to the credit of an agency fund for the use of the board. The board may make such expenditures from the fund as may, in the opinion of the board, serve to further the purposes of this chapter, including payment for professional services.

Section 16. KRS 320.990 is amended to read as follows:

Any person who violates any of the provisions of this chapter shall be ***guilty of a Class A misdemeanor*** ~~[fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for~~

~~the first offense, and shall be fined one hundred dollars (\$100) and confined in jail for thirty (30) days for each subsequent offense].~~

Section 17. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;
- (2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act;
- (3) "Cabinet" means the Cabinet for Health Services or its designee; (4) "Color" means but is not limited to black, white, and intermediate grays;
- (5) "Color additive" means a material that:
 - (a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or
 - (b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;
- (6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;
- (7) "Cosmetic" means:
 - (a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of those articles, except that the term shall not include soap;
- (8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:
 - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;

- (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;
- (11) "Drug" means:
- (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;
- (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;
- (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;
- (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;
- (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether

in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;

- (17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (18) "Food" means:
- (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
- (a) A pesticide chemical in or on a raw agricultural commodity;
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;
- (20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments;
- (21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

- (22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;
- (23) "Immediate container" does not include package liners;
- (24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:
 - (a) The number of potential illnesses or injuries; or
 - (b) The nature, severity, and duration of the anticipated illness or injury;
- (25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;
- (26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (27) "Labeling" means all labels and other written, printed, or graphic matter:
 - (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";
- (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;
- (30) "New drug" means:
 - (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- (31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (32) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;

- (33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;
- (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act; 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;
- (35) "Practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in *subsections (12) to (14) of Section 4 of this Act* [~~KRS 320.240(13), (14), and (15)~~], advanced registered nurse practitioners as authorized in KRS 314.011 and 314.042, and physician assistants when administering or prescribing pharmaceutical agents as authorized in KRS 311.560(3) and (4);
- (36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;
- (38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;

- (44) "Secretary" means the secretary of the Cabinet for Health Services;
- (45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (46) "Traffic" has the same meaning as it does in KRS 218A.010;
- (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;
- (48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body; and
- (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment.

Section 18. The following KRS section is repealed:

320.255 Inactive status for license.

Approved April 6, 2000