
COLORADO REVISED STATUTES

Title 12 **Professions and Occupations**

Article 40 **Optometrists**

Effective July 1, 2011

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12-40-101. Legislative declaration.

The practice of optometry in the state of Colorado is declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is declared to be a learned profession, and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article be limited to qualified persons having been examined and meeting this state's minimum acceptable level of competence and having been admitted to the practice of optometry under the provisions of this article. The priority of this article shall be to protect the consumers of the services provided through appropriate disciplinary procedures. This article shall be liberally construed to carry out these objects and purposes in accordance with this declaration of policy.

12-40-102. Practice of optometry defined.

(1) (a) The “practice of optometry” means the evaluation, diagnosis, prevention, or treatment of diseases, disorders, or conditions of the vision system, eyes, and adjacent and associated structures, including the use or prescription of lenses, prisms, vision therapy, vision rehabilitation, and prescription or nonprescription drugs including schedule III, IV, and V controlled narcotic substances for ocular disease, so long as an optometrist is practicing within the scope of his or her education as is commonly taught in accredited schools and colleges of optometry and is practicing in accordance with applicable federal and Colorado law and board rules.

(b) The following are part of the practice of optometry:

(I) The removal of superficial foreign bodies from the human eye or its appendages;

(II) Postoperative care in the following situations:

(A) With referral from a physician;

(B) If ninety days have expired after the surgery unless the physician justifies medically indicated reasons for extending the postoperative period; and

(C) If the patient has been released by the physician;

(III) The treatment of anterior uveitis;

(IV) The treatment of glaucoma with all topical and oral antiglaucoma drugs;

(V) Epilation;

(VI) Dilation and irrigation of the lacrimal system;

(VII) Punctal plug insertion and removal;

(VIII) Anterior corneal puncture;

(IX) Corneal scraping for cultures;

(X) Debridement of corneal epithelium; and

(XI) Removal of corneal epithelium.

(c) Any person who is engaged in the prescribing or performing without referral of visual training or orthoptics, the prescribing of any contact lenses, including plano or cosmetic contact lenses, the fitting or adaptation of such contact lenses to the human eye, the use of scientific instruments to train the visual system or any abnormal condition of the eyes for the correction or improvement of, or the relief to, the visual function, or who holds oneself out as being able to do so, is engaged in the practice of optometry.

(d) The “practice of optometry” does not include:

(I) Surgery of or injections into the globe, orbit, eyelids, or ocular adnexa. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.

(II) The use of schedule I or II narcotics;

(III) Treatment of posterior uveitis; or

(IV) The use of injectable drugs, except for the use of an epinephrine auto-injector to counteract anaphylactic reaction.

(2) A licensed optometrist who uses or prescribes prescription or nonprescription drugs shall provide the same level and standard of care to his or her patients as the standard of care provided by an ophthalmologist using or prescribing the same drugs.

(3) A therapeutic optometrist is an optometrist licensed pursuant to this article who meets the requirements of section 12-40-109.5 (1.5) and (3). A licensed optometrist shall not use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose unless he or she is a therapeutic optometrist.

(4) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(5) (a) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(b) Nothing in this section prohibits an optometrist from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug, as long as the drug delivered by the ophthalmic device is not a schedule I or II controlled substance.

(6) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(7) (a) An optometrist who meets the requirements established by the board pursuant to sections 12-40-107 (1) (n) and 12-40-109.5 (3) may treat anterior uveitis and glaucoma.

(b) (Deleted by amendment, L. 2002, p. 60, § 5, effective July 1, 2002.)

12-40-103. Proprietor defined.

(1) The term "proprietor", as used in this article, includes any person, group, association, or corporation not licensed under this article who:

(a) For financial gain employs optometrists in the operation of an optometry office;

(b) Places, directly or indirectly, in possession of an optometrist such materials or equipment as may be necessary for the operation of an optometrist's office on the basis of any fee splitting, income division, profit sharing, or similar agreement or on any basis that has the effect of any such agreement, but the term "proprietor" does not include the bona fide seller of optometry equipment or material secured by chattel mortgage, conditional sales contract, or other title retention agreements or the bona fide leasing of such equipment by the manufacturer or by his or her franchised dealer; or

(c) Under the guise of a rental percentage lease or sublease or other leasing or rental arrangement, participates in the direction and control of a licensee's practice and business or in the receipts or profits accruing therefrom, but a bona fide percentage sale lease basing the rental of the premises let upon a percentage of gross income of not to exceed the reasonable, going rate for like quarters and location, as determined by the board after investigation, shall not be deemed an avoidance of the provisions of this section. Certified copies of all such leasing and rental arrangements and renewals thereof shall be filed with the board by the licensee within thirty days after execution.

12-40-104. Persons entitled to practice optometry-title protection of optometrists.

It shall be unlawful for any person to practice optometry in this state, except those who are duly licensed optometrists before July 1, 1961, pursuant to the law of this state and those who are duly licensed optometrists pursuant to the provisions of this article. A person licensed as an optometrist pursuant to the provisions of this article may use the title “optometrist”, the initials “O.D.”, or the term “doctor of optometry”. No other person shall use the title “optometrist”, “O.D.”, “doctor of optometry”, or any other word or abbreviation to indicate or induce others to believe that one is licensed to practice optometry in this state.

12-40-105. Persons excluded from operation of this article.

(1) This article does not apply to:

(a) Professional practice by a physician or surgeon licensed to practice medicine under the laws of the state of Colorado and ancillary or technical assistants working under the direction of any such physician or surgeon, with the exception of the fitting of contact lenses which must be done under the physician's or surgeon's direct supervision;

(b) The practice of optometry in the discharge of their official duties by optometrists or physicians and surgeons in the service of the United States armed forces, public health service, Coast Guard, or veterans administration;

(c) Opticians, persons, firms, and corporations who duplicate or repair spectacles or eyeglasses; opticians, persons, firms, and corporations who supply or sell spectacles, eyeglasses, or ophthalmic lenses, including but not limited to contact lenses, if such spectacles, eyeglasses, and ophthalmic lenses are provided pursuant to a valid prescription;

(d) Persons serving a post-doctorate residency or an optometry student internship under the supervision of an optometrist licensed in Colorado as part of a curriculum from an accredited college of optometry.

12-40-106. State board of optometry-subject to termination.

(1) (a) The state board of optometry, referred to in this article as the “board”, is under the supervision and control of the division of registrations as provided by section 24-34-102, C.R.S. The board consists of five optometrists and two members-at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. Each member of the board, except for the members-at-large, must have been actually engaged and licensed in the practice of optometry in Colorado for the five years preceding the member's appointment. At least one of the two members-at-large must not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services.

(b) Any four members of the board constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board.

(c) The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. The governor may remove a member of the board for misconduct, incompetency, or neglect of duty.

(d) A board member having a personal or private interest in any matter before the board shall disclose such fact to the board and shall not participate in related discussions or votes.

(2) The board shall organize annually by electing one of its members as president and one as vice-president.

(3) (a) Repealed.

(b) (Deleted by amendment, L. 92, p. 2021, § 5, effective July 1, 1992.)

12-40-107. Powers and duties of the board-rules.

(1) In addition to all other powers and duties conferred upon the board by this article, the board has the following powers and duties:

(a) To determine acceptability of scores from tests administered by any approved or accredited national testing organization.

(b) To prescribe rules to carry out effectively the provisions of this article. The board shall set the passing score of any examination at a minimum acceptable level of competence for the practice of optometry.

(c) Repealed.

(d) To grant licenses in conformity with this article to such applicants as have been found qualified;

(e) and (f) Repealed.

(g) To adopt and promulgate such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article;

(h) Repealed.

(i) (Deleted by amendment, L. 92, p. 2022, § 6, effective July 1, 1992.)

(j) To aid the several district attorneys of this state in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions;

(k) To establish programs of education for optometrists wishing to enter new, proven, and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(l) To prepare and distribute to consumers as is reasonably necessary written communication providing information concerning the board and the regulation of optometry in Colorado;

(m) (I) To make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the

court as a contempt of court.

(n) To prescribe rules authorizing optometrists to utilize therapeutic procedures and therapeutic techniques in the practice of optometry as defined in section 12-40-102. These rules shall in no way expand the practice of optometry as defined in section 12-40-102 nor shall such rules include the use of therapeutic or cosmetic lasers. Such rules shall specify approved programs of education offered by an accreditation organization recognized or approved by the commission on recognition of postsecondary accreditation or the United States department of education or their successors.

(2) Repealed.

12-40-107.2. Volunteer optometrist license.

(1) A person licensed to practice optometry pursuant to this article may apply to the board for volunteer licensure status. The board shall designate the form and manner of the application. The board may:

(a) Grant the application by issuing a volunteer license; or

(b) Deny the application if the licensee has been disciplined for any of the causes set forth in section 12-40-118.

(2) A person applying for a license under this section:

(a) Must either:

(I) Hold an active and unrestricted license to practice optometry in Colorado and be in active practice in this state; or

(II) Have been on inactive status pursuant to article 70 of this title for not more than two years; and

(b) Shall:

(I) Pay a reduced license fee in lieu of the fee authorized by section 24-34-105, C.R.S. The director shall reduce the volunteer optometrist license fee from the license fee charged pursuant to section 12-40-113 (1) (a).

(II) Attest that, after a date certain, the applicant will no longer earn income as an optometrist;

(III) Maintain liability insurance as provided in section 12-40-126; and

(IV) Comply with the continuing education requirements established in section 12-40-113 (1) (f); except that the board may establish lesser continuing education requirements for volunteer licensees.

(3) The face of each volunteer license issued pursuant to this section shall plainly indicate the volunteer status of the licensee.

(4) The board may conduct disciplinary proceedings pursuant to section 12-40-119 against any person licensed under this section for an act committed while the person was licensed pursuant to this section.

(5) A person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve such application and issue a license to practice optometry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-40-118.

(6) An optometrist with a volunteer license shall provide optometry services only if the services are performed on a limited basis for no fee or other compensation.

12-40-107.5. Limitation on authority.

The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

12-40-108. Application for license-licensure by endorsement.

(1) A person who desires to practice optometry in the state may file with the board an application for a license, giving the information required in a form and manner approved by the board. The applicant shall demonstrate that he or she possesses the following qualifications:

(a) The applicant has attained the age of twenty-one years.

(b) The applicant has graduated with the degree of doctor of optometry from a school or college of optometry accredited by a regional or professional accreditation organization that is recognized or approved by the council on postsecondary accreditation or the United States commissioner of education. The board has the authority, upon its investigation and approval of the standards thereof, to approve any other college of optometry.

(c) The applicant has successfully passed the written examination of the national board of examiners in optometry. The board shall have the authority, upon its investigation and approval of the examination standards, to approve some body other than the national board of examiners in optometry as the examining body.

(c.5) Repealed.

(d) The applicant is not addicted to or dependent on, and has not habitually or excessively used or abused, intoxicating liquors, habit-forming drugs, or controlled substances as defined in section 12-22-303 (7).

(e) After July 1, 1988, the applicant has satisfied the requirements of section 12-40-109.5 or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(f) After July 1, 1996, the applicant has satisfied the requirements of section 12-40-109.5 (3) or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(2) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 446, § 14, effective April 22, 2011.)

(3) (a) The board may issue a license by endorsement to engage in the practice of optometry to an applicant who:

(I) (A) Is currently licensed and is in practice and good standing in another state or territory of the United States or in a foreign country if the applicant presents proof satisfactory to the board at the time of application for a Colorado license by endorsement;

(B) Pays a fee as prescribed by the board; and

(II) (A) Possesses credentials and qualifications that are substantially equivalent to requirements for licensure by examination; or

(B) Has demonstrated competency as an optometrist as determined by the board.

(b) The board shall specify by rule what shall constitute substantially equivalent credentials and qualifications or competency.

12-40-108.5. Current licensees-treatment and therapeutic practice.

On and after July 1, 1988, a person who is licensed under this article as an optometrist on June 30, 1988, and who is otherwise qualified under this article may use prescription or nonprescription drugs for examination purposes. However, such optometrist may use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose only if he or she meets the requirements of section 12-40-109.5 (1.5) and (3) on or after July 1, 1988.

12-40-109. Examination-licenses.

(1) The applicant shall take and submit test scores from the board-approved exam. The examination shall be of such a character as to test the qualifications of the applicant to practice optometry.

(2) Each person who makes a passing grade on the practical and clinical examination and who is otherwise qualified shall be granted a license signed by the board. The license provided for in this section shall be in such form and wording as may be adopted by the board. The optometrist shall display his or her license for viewing by his or her patients, as provided in section 12-40-115. An application for initial licensure as an optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to section 24-34-105, C.R.S.

(3) Any person denied a license under this article and believing himself aggrieved thereby may pursue the remedy for review as provided under article 4 of title 24, C.R.S., if such action is instituted within a period of sixty days after the date of denial.

(4) A person who fails to pass the examination provided for in this section may retake the examination the next time said examination is given.

12-40-109.5. Use of prescription and nonprescription drugs.

(1) Notwithstanding section 12-22-121, a licensed optometrist may purchase, possess, and administer prescription or nonprescription drugs for examination purposes only if, after July 1, 1983, the optometrist has complied with the following minimum requirements: Successful completion, by attendance and examination, of at least fifty-five classroom hours of study in general, ocular, and clinical pharmacology which must have been completed within twenty-four months preceding the application for certification; except that, in the event that such classroom hours have been completed since 1976, only six of such classroom hours must have been completed within twenty-four months preceding the application for certification. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the council on postsecondary education or the United States department of education or their successors.

(1.5) Notwithstanding section 12-22-121, a licensed optometrist may purchase, possess, administer, and prescribe prescription or nonprescription drugs for treatment on and after July 1, 1988, only if the optometrist has complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the council of postsecondary education or the United States department of education or their successors.

(2) The optometrist shall successfully complete a course in cardiopulmonary resuscitation within twenty-four months before using prescription or nonprescription drugs and shall pass a written and clinical examination approved by the board.

(3) In addition to the requirements of section 12-40-108.5, each therapeutic optometrist shall meet all

requirements prescribed by the board before commencing treatment of glaucoma or anterior uveitis.

12-40-109.7. Prescriptions-requirement to advise patients.

(1) An optometrist licensed under this article may advise the optometrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) An optometrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the optometrist's professional license issued under this article.

12-40-110. Examination fees. (Repealed)

12-40-111. Disposition of fees-reports-publications.

(1) All fees prescribed in this article shall be determined and collected pursuant to section 24-34-105, C.R.S.

(2) and (3) Repealed.

12-40-112. Retention of examination papers. (Repealed)

12-40-113. License renewal-requirements-fee-failure to pay.

(1) (a) On or before a date designated pursuant to a schedule established by the director of the division of registrations within the department of regulatory agencies, licenses shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of registrations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of registrations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(b) The board shall establish a questionnaire to accompany the renewal form. Said questionnaire shall be designed to determine if the licensee has acted in violation of or has been disciplined for actions that might be considered as violations of this article or that might make the licensee unfit to practice optometry with reasonable care and safety. Failure of the applicant to answer the questionnaire accurately shall be considered unprofessional conduct as specified in section 12-40-118.

(c) Repealed.

(d) and (e) (Deleted by amendment, L. 2004, p. 1841, § 89, effective August 4, 2004.)

(f) Effective April 1, 1993, in addition to all other requirements of this section for license renewal, the board shall require that each optometrist seeking to renew a license shall have completed twenty-four hours of board-approved continuing education. Any optometrist desiring to renew a license to practice optometry in this state shall submit to the board the information the board believes is necessary to show that the optometrist has fulfilled the continuing education requirements of this paragraph (f). Implementation of this paragraph (f) shall occur within existing appropriations.

(2) Repealed.

12-40-114. Change of address.

(1) Repealed.

(2) Repealed

(3) Every person licensed under this article shall notify the board in writing within thirty days of any change in mailing address.

12-40-115. Licenses to be displayed.

Every practitioner of optometry shall post and keep conspicuously displayed his or her license in the office wherein he or she practices. If an optometrist practices at several locations in the state, the optometrist shall display his or her license number and name in a manner that can be easily recognized by his or her patients. Each association of persons who engage in the practice of optometry under the name of a partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the entrance of its place of business the name of each person engaged or employed in said partnership or association in the practice of optometry.

12-40-116. Records to be kept by the board.

The board shall keep a record of all persons to whom licenses have been granted under this article. A copy of said records, certified by the board, shall be admitted in any of the courts of this state, in lieu of the originals, as prima facie evidence of the facts contained in said records. A copy of said records certified by the board of a person charged with a violation of any of the provisions of this article shall be evidence that such person has not been licensed to practice optometry.

12-40-117. Patient's exercise of free choice-release of patient records.

(1) No person shall interfere with any patient's exercise of free choice in the selection of practitioners licensed to perform examinations for refractions and visual training or corrections within the field for which their respective licenses entitle them to practice.

(2) An optometrist shall release to a patient all medical records pursuant to section 25-1-802, C.R.S.

(3) The optometrist shall release to the patient, upon written request, a valid, written contact lens prescription at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. The board shall promulgate rules and regulations defining the components of a valid written contact lens prescription.

12-40-118. Unprofessional conduct defined.

(1) The term "unprofessional conduct", as used in this article, means:

(a) Deceiving or attempting to deceive the board or its agents with reference to any proper matter under investigation by the board;

(b) Publishing or circulating, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to optometry services or ophthalmic materials or devices;

(c) Employing or offering compensation or merchandise of value to any salesman, runner, patient, or other person as an inducement to secure his or her services or assistance in the solicitation of patronage for the performing, rendering, supplying, or selling of optometry services or ophthalmic materials or devices;

(d) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking any examination provided for in this article;

(e) The habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 12-22-303 (7);

(f) (Deleted by amendment, L. 2002, p. 62, § 11, effective July 1, 2002.)

(g) Repealed.

(h) Disobeying the lawful rule or order of the board or its officers;

(i) Practicing optometry while license is suspended;

(j) Practicing optometry as the partner, agent, or employee of or in joint venture or arrangement with any proprietor or with any person who does not hold a license to practice optometry within this state, except as permitted in section 12-40-122. Any licensee holding a license to practice optometry in this state may accept employment from any person, partnership, association, or corporation to examine and prescribe for the employees of such person, partnership, association, or corporation.

(k) An act or omission constituting grossly negligent optometry practice or two or more acts or omissions that fail to meet generally accepted standards of optometry practice;

(l) Sharing any professional fees with any person, partnership, or corporation which sends or refers patients to him, except with licensed optometrists with whom he may be associated in practice;

(m) Failing to:

(I) Notify the board, in a manner and within a period determined by the board, of a physical or mental illness or condition that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of an optometrist;

(II) Act within the limitations created by a physical or mental illness or condition that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of an optometrist; or

(III) Practice within the limitations created by the physical or mental illness or condition as specified in a confidential agreement between the optometrist and the board entered into pursuant to section 12-40-118.5 (5).

(n) Failing to refer a patient to the appropriate health care practitioner when the services required by the patient are beyond the scope of competency of the optometrist or the scope of practice of optometry;

(o) Aiding or abetting, in the practice of optometry, any person not licensed to practice optometry as defined under this article or any person whose license to practice is suspended;

(p) Interfering with the free choice of any person selecting a physician or other health care practitioner;

(q) Any disciplinary action against a licensee to practice optometry in another state or country, which action shall be deemed to be prima facie evidence of unprofessional conduct if the grounds for the disciplinary action would be unprofessional conduct or otherwise constitute a violation of any provision of this article;

(r) Failing to notify the board of a malpractice final judgment or settlement within thirty days;

(s) Any act or omission which fails to meet generally accepted standards of care whether or not actual injury to a patient is established;

(t) Conviction of a felony or the acceptance of a plea of guilty or nolo contendere, or a plea resulting in a deferred sentence to a felony;

(u) Representing that a noncorrectable condition can be permanently corrected;

(v) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying or making incorrect essential entries or failing to make essential entries on patient records;

- (w) Conduct which is likely to deceive or defraud the public;
- (x) Repealed.
- (y) Negligent malpractice;
- (z) (Deleted by amendment, L. 92, p. 2026, § 12, effective July 1, 1992.)
- (aa) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.; or
(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;
- (bb) Administering, dispensing, or prescribing any prescription drug, as defined in section 12-22-102 (30), or any controlled substance, as defined in section 12-22-303 (7), other than in the course of legitimate professional practice;
- (cc) Dispensing for a fee any prescription drug, as defined in section 12-22-102, or any controlled substance, as defined in section 12-22-303, except as permitted in sections 12-22-121 (6) (c) and 12-40-102 (5) (b);
- (dd) Engaging in any of the following activities and practices:
 - (I) Repeatedly ordering or performing demonstrably unnecessary laboratory tests or studies that lack clinical justification;
 - (II) Administering treatment that is demonstrably unnecessary and lacks clinical justification; or
 - (III) Ordering or performing any service, X ray, or treatment that is contrary to recognized standards of the practice of optometry, as interpreted by the board, and lacks clinical justification;
- (ee) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;
- (ff) Failing to report to the board any optometrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this article;
- (gg) Failing to report to the board any surrender of a license to, or any adverse action taken against a licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of this article;
- (hh) Engaging in a sexual act with a patient while a patient-optometrist relationship exists. For the purposes of this paragraph (hh), “patient-optometrist relationship” means that period of time beginning with the initial evaluation through the termination of treatment. For the purposes of this paragraph (hh), “sexual act” means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.
- (ii) Failing to provide a patient with copies of patient medical records as required by section 25-1-802, C.R.S.;
- (jj) Failing to provide a patient with a valid written contact lens prescription as required by section 12-40-117 (3);
- (kk) A violation of any provision of this article;
- (ll) Practicing beyond the scope of education and training prescribed by rules adopted by the board.
- (mm) Failing to respond in an honest, materially responsive, and timely manner to a complaint pursuant to section 12-40-119 (1) (b).

12-40-118.5. Mental and physical examination of licensees.

(1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require the licensee to submit to a mental or physical examination by a physician or qualified health care provider designated by the board. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend the licensee's license until an examination has occurred, the results of the examination are known, and the board has made a determination of the licensee's fitness to practice. The board shall proceed with the order for examination and the determination in a timely manner.

(2) An order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the licensee shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a physician chosen by such licensee and pertaining to any condition which the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(4) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

(5) (a) The board may enter into an agreement with an optometrist whose practice is or may be affected by a physical or mental illness or condition that renders the optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of any optometrist if:

(I) The board believes that one or more limitations of the optometrist's practice would both enable the optometrist to treat with reasonable skill and safety and would protect the health and safety of persons under the care of the optometrist; and

(II) The optometrist enters into an enforceable agreement with the board to so limit the optometrist's practice.

(b) An agreement entered into pursuant to this subsection (5):

(I) Is confidential and not subject to disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.; and

(II) May include provisions for monitoring and reevaluation of the optometrist. The parties may modify or dissolve the agreement as necessary based on the results of the monitoring or reevaluation.

(c) The board may require the licensee to submit to an examination pursuant to this section to evaluate the extent of the illness or condition and its impact on the licensee's ability to practice with reasonable skill and with safety to patients.

(d) By entering into an agreement with the board pursuant to this section to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the licensee fails to comply with an agreement entered into pursuant to this section, the failure constitutes unprofessional conduct pursuant to section 12-40-118 and the licensee becomes subject to discipline in accordance with section 12-40-119.

(e) For purposes of this subsection (5), "physical or mental illness or condition" does not include the habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined

in section 12-22-303 (7).

12-40-119. Revocation, suspension, supervision, probation procedure-professional review-reconsideration and review of action by board-rules.

(1) (a) With respect to licenses issued pursuant to this article, the board may:

(I) Impose probation, with or without supervision, on a licensee, issue a letter of admonition to a licensee, or suspend, revoke, or refuse to renew any license provided for by this article for any reason stated in section 12-40-118 or for violating any term of probation of the board;

(II) Summarily suspend a license upon the failure of the licensee to comply with any condition of a stipulation or order imposed by the board until the licensee complies with the condition, unless compliance is beyond the control of the licensee; and

(III) Impose a fine not to exceed five thousand dollars on a licensee for a violation of this article or a rule promulgated pursuant to this article other than a violation related to a standard of practice. The board shall, by rule, promulgate a fining schedule with lesser amounts for first violations and increasing amounts for subsequent violations of this subparagraph (III).

(b) Upon its own motion or upon a signed complaint, an investigation may be made if there is reasonable cause to believe that an optometrist licensed by the board has committed an act of unprofessional conduct pursuant to section 12-40-118 or, while under probation, has violated the terms of the probation.

(c) If a licensee requests a hearing to dispute formal board action or if the board finds such probability great and a hearing is conducted, such hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.

(d) The board may revoke, suspend, deny, issue, reissue, or reinstate licenses granted pursuant to this article or under the previous laws of this state, and the board may take such other intermediate action as may be deemed necessary under the circumstances of each case pursuant to this section.

(2) (a) Repealed.

(b) and (c) Repealed.

(d) The hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may use an administrative law judge, who shall perform all of those functions indicated in section 24-4-105 (4), C.R.S.

(e) The action of the board in refusing to grant or renew, revoking, or suspending a license, issuing a letter of admonition, or placing a licensee on probation or under supervision pursuant to subsection (1) of this section may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(f) (I) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(II) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.1) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(2.3) No person whose license is revoked by the board may reapply for a new license under the provisions of this article for at least two years after any such revocation.

(2.5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(3) (a) Repealed.

(b) Any member of the board or of a professional review committee authorized by the board, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(4) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license, the imposition of any discipline, or the ordering of probation, as provided in this section, may reconsider its prior action and grant, reinstate, or restore such license, terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, rests in the sole discretion of the board.

(b) Upon the receipt of such application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of the application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(5) Upon dismissal of a complaint, which has gone to hearing, the board shall notify the complainant that he or she may receive a copy of the investigation report and the response of the optometrist or other person alleged to have violated the act upon payment of costs of copying and mailing such information.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (7), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8) and such other evidence related to the matter as the board deems appropriate. The board shall issue such order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (8), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued, and shall be a final order for purposes of judicial review.

(9) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(10) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(11) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

12-40-120. Use of forged or invalid certificate.

It is unlawful for any person to use or attempt to use as his or her own a diploma of an optometry school or college, or a license of another person, or a forged diploma or license, or any forged or false identification.

12-40-121. Sale or forgery of degree or license.

(1) It is unlawful:

(a) To sell or offer to sell a diploma conferring an optometry degree or a license granted pursuant to this article or prior optometry practice laws;

(b) To procure a diploma or license with intent that it be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom such license was granted;

(c) With fraudulent intent to alter such diploma or license or to use or attempt to use it when it is so altered.

12-40-122. Corporate practice prohibited-exceptions.

The practice of optometry in a corporate capacity is prohibited, but this prohibition does not apply to a professional corporation formed pursuant to this article or to an optometry practice carried on by a nonprofit organization operating to assist indigent persons.

12-40-123. Enforcement-injunction-defense.

(1) When the board has reasonable cause to believe that any person is violating any provision of this article or any lawful rule or regulation issued under this article, it may, in addition to all actions provided for in this article and without prejudice thereto, enter an order requiring such person to desist or refrain from such violation. An action may be brought on the relation of the people of the state of Colorado by the attorney general and the board to enjoin such person from engaging in or continuing such violation or from doing any act in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(2) When legal actions are instituted against a board member or authorized personnel for acts occurring while acting in their official capacities and such actions are free of malice, fraud, or willful neglect of duty, the member or employee served shall forthwith transmit any process served upon him to the attorney general who shall furnish counsel and defend against such action without cost to the board member or employee.

12-40-124. Unauthorized practice-penalties.

Any person who practices or offers or attempts to practice optometry without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person who commits a second or any subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

12-40-125. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of optometry-definitions.

(1) Persons licensed to practice optometry by the board may form professional service corporations for the practice of optometry under the “Colorado Corporation Code”, [FN1] if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words “professional company” or “professional corporation” or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of optometry only through persons licensed by the board to practice optometry in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons who are licensed by the board to practice optometry in the state of Colorado and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, and time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of optometry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters as defined in this article or in the rules and regulations as promulgated by the board.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing professional liability insurance which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law in the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice optometry.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice optometry employed by the corporation; the policy may provide for an aggregate maximum limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice optometry employed by the corporation; but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of optometry, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled,

operated, or managed by the insured corporation in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing which, if done by a person employed by it and licensed to practice optometry in the state of Colorado, would violate the standards of professional conduct, as provided for in this article. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice optometry.

(4) Nothing in this section shall be deemed to diminish or change the obligation of each person employed by the corporation and licensed to practice optometry in this state to conduct his practice in accordance with the standards of professional conduct provided for in this article; any person licensed by the board to practice optometry who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(5) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) Except as provided in this section, corporations shall not practice optometry.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

12-40-126. Financial responsibility-rules.

(1) Every optometrist who provides health care services within the state of Colorado shall establish financial responsibility as follows:

(a) By maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of one million dollars per incident

and three million dollars annual aggregate per year; or

(b) By maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(c) By depositing cash or cash equivalents as security with the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(d) By providing any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.

(2) (a) The board may, by rule, establish lesser financial responsibility standards than those required in subsection (1) of this section for classes of license holders who have an inactive license or who render limited or occasional optometry services because of administrative or other nonclinical duties, partial or complete retirement, or for other reasons that render the limits provided in paragraph (a) of subsection (1) of this section unreasonable or unattainable.

(b) Nothing in this section precludes or otherwise prohibits a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for such care so warrant.

(3) Each optometrist, as a condition of receiving and maintaining an active license to provide optometry services in this state, shall furnish the board evidence of compliance with subsection (1) of this section. No license shall be issued or renewed unless such evidence of compliance has been furnished.

(4) Notwithstanding the amounts specified in subsection (1) of this section, if the board receives two or more reports concerning any optometrist pursuant to section 12-40-127 during any one-year period, the minimum financial responsibility requirement shall be two times the amount specified in subsection (1) of this section. However, upon motion filed by the optometrist and the presentation of sufficient evidence to the board that one or more such reports involved an action or claim which did not represent any substantial failure to adhere to accepted professional standards of care, the board may reduce such additional amount to that which would be fair and conscionable.

(5) Repealed.

12-40-127. Judgments and settlements-reporting.

Any final judgment, settlement, or arbitration award against an optometrist for malpractice shall be reported within fourteen days by such optometrist's malpractice insurance carrier in accordance with section 10-1-125, C.R.S., or by such optometrist if no commercial malpractice insurance coverage is involved to the board for review, investigation, and, where appropriate, disciplinary or other action. Any optometrist who knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. Such penalty shall be determined and collected in an action brought by the board in the district court in the city and county of Denver, which court shall have exclusive jurisdiction in such matters. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

12-40-128. Repeal of article-subject to sunset law.

(1) This article is repealed, effective September 1, 2022.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the functions performed pursuant to this article.