
By: **Delegates Arnick, Kach, and Elliott**
Introduced and read first time: February 2, 1998
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Opticians - Certification**

3 FOR the purpose of requiring the certification of certain opticians by the State Board
4 of Physician Quality Assurance; providing that this Act does not limit the rights
5 of certain persons or dealers or require a certain reimbursement for certain
6 services; specifying the qualifications for certification on or before a certain
7 date; providing for the term and renewal of certification on or before a certain
8 date; requiring a certificate holder to display a certain certificate in a certain
9 manner; authorizing the Board to investigate certain complaints and to send a
10 copy of the complaints to the Consumer Protection Division of the Office of the
11 Attorney General; authorizing the Board, subject to certain procedural
12 requirements, to take certain disciplinary action against certain persons on
13 certain grounds; authorizing the Board to impose a fine under certain
14 circumstances for certain purposes; requiring the Board to take certain action
15 after the filing of certain charges; providing for the effectiveness and retention
16 of a certain order of the Board and the disposition of a certain certificate;
17 specifying certain rights of appeal by certain persons; authorizing the Board to
18 adopt certain regulations; requiring the Board to invite and consider proposals
19 from certain persons before adopting certain regulations; prohibiting the
20 unauthorized practice of ophthalmic dispensing without a certain certification
21 and certain other acts; providing a certain penalty for certain violations;
22 defining certain terms; and generally relating to the certification of certain
23 opticians.

24 BY adding to
25 Article - Health Occupations
26 Section 10A-101 through 10A-501, inclusive, to be under the new title "Title
27 10A. Opticians"
28 Annotated Code of Maryland
29 (1994 Replacement Volume and 1997 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Health Occupations

2

TITLE 10A. OPTICIANS.

3

SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

4 10A-101.

5 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

6 (B) "BOARD" MEANS THE STATE BOARD OF PHYSICIAN QUALITY ASSURANCE
7 ESTABLISHED UNDER TITLE 14 OF THIS ARTICLE.

8 (C) "CERTIFICATE" MEANS A CERTIFICATE ISSUED BY THE BOARD TO
9 PRACTICE OPHTHALMIC DISPENSING.

10 (D) "CERTIFIED OPTICIAN" MEANS AN OPTICIAN WHO IS CERTIFIED BY THE
11 BOARD TO PRACTICE OPHTHALMIC DISPENSING.

12 (E) "PRACTICE OPHTHALMIC DISPENSING" MEANS:

13 (1) ON THE BASIS OF A PRESCRIPTION, TO DESIGN, VERIFY, ADJUST, AND
14 DELIVER TO THE INTENDED WEARER, USING STANDARD OPHTHALMIC EQUIPMENT,
15 LENSES, FRAMES, CONTACT LENSES, AND OTHER SPECIALLY FABRICATED OPTICAL
16 DEVICES;

17 (2) TO ANALYZE OR INTERPRET A PRESCRIPTION;

18 (3) TO TAKE MEASUREMENTS TO DETERMINE THE SIZE, SHAPE, AND
19 SPECIFICATIONS OF LENSES, FRAMES, CONTACT LENSES, OR LENS FORMS BEST
20 SUITED TO THE INTENDED WEARER'S NEEDS;

21 (4) TO PREPARE AND DELIVER WORK ORDERS TO LABORATORY
22 TECHNICIANS ENGAGED IN GRINDING LENSES AND FABRICATING EYEWEAR;

23 (5) TO VERIFY THE QUALITY OF FINISHED OPHTHALMIC PRODUCTS,
24 INCLUDING THE ADJUSTMENT OF LENSES OR FRAMES TO THE INTENDED WEARER'S
25 FACE OR EYES; AND

26 (6) TO ADJUST, REPLACE, REPAIR, OR REPRODUCE PREVIOUSLY
27 PREPARED OPHTHALMIC LENSES, FRAMES, CONTACT LENSES, OR OTHER SPECIALLY
28 FABRICATED OPHTHALMIC DEVICES.

29 (F) (1) "PRESCRIPTION" MEANS A WRITTEN OR VERBAL DIRECTION FROM A
30 LICENSED PHYSICIAN OR OPTOMETRIST FOR THERAPEUTIC OR CORRECTIVE
31 LENSES, OR CONTACT LENSES, WHICH CONSIST OF THE REFRACTIVE POWER AND,
32 WHEN NECESSARY, THE VERTEX DISTANCE, CYLINDER AXIS, AND PRISM.

33 (2) "PRESCRIPTION" DOES NOT INCLUDE A REPLACEMENT CONTACT
34 LENS PRESCRIPTION.

1 10A-102.

2 (A) IN THIS SECTION, "SUPERVISION" MEANS THE PROVISION OF:

3 (1) DIRECTION AND CONTROL THROUGH PERSONAL INSPECTION AND
4 EVALUATION OF WORK; AND

5 (2) CONSULTATION AND INSTRUCTION AS NEEDED.

6 (B) THIS TITLE DOES NOT LIMIT THE RIGHT OF:

7 (1) A PERSON TO PRACTICE A HEALTH OCCUPATION THAT THE PERSON
8 IS AUTHORIZED TO PRACTICE UNDER THIS ARTICLE;

9 (2) A DEALER OR PERSON TO SELL EYEGASSES OR LENSES IF THE
10 DEALER OR PERSON DOES NOT PRACTICE OR CLAIM TO PRACTICE OPHTHALMIC
11 DISPENSING; OR

12 (3) A PERSON TO PRACTICE OPHTHALMIC DISPENSING IF THE PRACTICE
13 IS CONDUCTED UNDER THE SUPERVISION OF A LICENSED PHYSICIAN,
14 OPTOMETRIST, OR A CERTIFIED OPTICIAN.

15 (C) NOTWITHSTANDING THAT A CERTIFIED OPTICIAN MAY PROVIDE
16 OPHTHALMIC DISPENSING SERVICES WITHIN THE SCOPE OF THE CERTIFIED
17 OPTICIAN'S PRACTICE, NOTHING IN THIS TITLE REQUIRES A NONPROFIT HEALTH
18 SERVICE PLAN, INSURER, HEALTH MAINTENANCE ORGANIZATION, OR PERSON
19 ACTING AS A THIRD PARTY ADMINISTRATOR TO REIMBURSE A CERTIFIED OPTICIAN
20 FOR ANY SERVICES THE CERTIFIED OPTICIAN RENDERS.

21 SUBTITLE 2. CERTIFICATION.

22 10A-201.

23 EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, AN INDIVIDUAL SHALL BE
24 CERTIFIED BY THE BOARD BEFORE THE INDIVIDUAL MAY PRACTICE OPHTHALMIC
25 DISPENSING IN THIS STATE.

26 10A-202.

27 (A) TO QUALIFY FOR AN INITIAL CERTIFICATE ON OR BEFORE OCTOBER 1,
28 2003, AN INDIVIDUAL SHALL SUBMIT TO THE BOARD SATISFACTORY EVIDENCE OF
29 SCHOLASTIC OR PROFESSIONAL EDUCATION OR EXPERIENCE AT LEAST EQUAL TO
30 THE FOLLOWING:

31 (1) AN AFFIDAVIT THAT THE APPLICANT HAS PRACTICED OPHTHALMIC
32 DISPENSING CONTINUOUSLY FOR A PERIOD OF 5 YEARS IMMEDIATELY BEFORE
33 APPLICATION;

34 (2) A CURRENT AND VALID CERTIFICATION BY THE AMERICAN BOARD
35 OF OPTICIANRY AND, IF APPLICABLE, THE NATIONAL CONTACT LENS EXAMINERS; OR

1 (3) AN ASSOCIATE OF ARTS DEGREE IN OPHTHALMIC DISPENSING OR
2 ITS EQUIVALENT FROM AN ACCREDITED COMMUNITY COLLEGE IN THIS STATE.

3 (B) TO QUALIFY FOR AN INITIAL CERTIFICATION AFTER OCTOBER 1, 2003, AN
4 INDIVIDUAL SHALL SUBMIT TO THE BOARD SATISFACTORY EVIDENCE OF AN
5 ASSOCIATE OF ARTS DEGREE IN OPHTHALMIC DISPENSING OR ITS EQUIVALENT
6 FROM AN ACCREDITED COMMUNITY COLLEGE IN THIS STATE.

7 (C) AN APPLICANT WHO IS CERTIFIED OR LICENSED TO PRACTICE
8 OPHTHALMIC DISPENSING IN ANY OTHER STATE SHALL SUBMIT SATISFACTORY
9 EVIDENCE OF SCHOLASTIC AND PROFESSIONAL EDUCATION THAT IS AT LEAST
10 EQUAL TO THE STANDARDS IN EFFECT AT THE TIME OF THE APPLICANT'S
11 COMPLETION OF SCHOLASTIC AND PROFESSIONAL EDUCATION.

12 10A-203.

13 (A) UNLESS OTHERWISE DETERMINED BY THE BOARD, EACH TERM OF
14 CERTIFICATION IS 1 YEAR.

15 (B) BEFORE A CERTIFICATE EXPIRES, THE CERTIFICATE HOLDER
16 PERIODICALLY MAY RENEW THE CERTIFICATE FOR AN ADDITIONAL TERM, IF THE
17 CERTIFICATE HOLDER:

18 (1) OTHERWISE IS ENTITLED TO BE CERTIFIED;

19 (2) PAYS TO THE BOARD A RENEWAL FEE OF \$100; AND

20 (3) SUBMITS TO THE BOARD A RENEWAL APPLICATION ON THE FORM
21 THAT THE BOARD REQUIRES.

22 (C) TO RENEW A CERTIFICATE ON OR BEFORE OCTOBER 1, 2003, A
23 CERTIFICATE HOLDER SHALL SUBMIT TO THE BOARD SATISFACTORY EVIDENCE OF
24 SCHOLASTIC OR PROFESSIONAL EDUCATION OR EXPERIENCE AT LEAST EQUAL TO
25 THE FOLLOWING:

26 (1) AN AFFIDAVIT THAT THE APPLICANT HAS PRACTICED OPHTHALMIC
27 DISPENSING CONTINUOUSLY FOR A PERIOD OF 5 YEARS IMMEDIATELY BEFORE
28 APPLICATION;

29 (2) A CURRENT AND VALID CERTIFICATION BY THE AMERICAN BOARD
30 OF OPTICIANRY AND, IF APPLICABLE, THE NATIONAL CONTACT LENS EXAMINERS; OR

31 (3) AN ASSOCIATE OF ARTS DEGREE IN OPHTHALMIC DISPENSING OR
32 ITS EQUIVALENT FROM AN ACCREDITED COMMUNITY COLLEGE IN THIS STATE.

33 (D) TO RENEW A CERTIFICATE AFTER OCTOBER 1, 2003, A CERTIFICATE
34 HOLDER SHALL SUBMIT TO THE BOARD SATISFACTORY EVIDENCE OF SCHOLASTIC
35 OR PROFESSIONAL EDUCATION AT LEAST EQUAL TO THE FOLLOWING:

1 (1) A CURRENT AND VALID CERTIFICATION BY THE AMERICAN BOARD
2 OF OPTICIANRY AND, IF APPLICABLE, THE NATIONAL CONTACT LENS EXAMINERS; OR

3 (2) SUCCESSFUL COMPLETION OF AN EQUIVALENT COURSE OF STUDY
4 FROM AN ACCREDITED COMMUNITY COLLEGE IN THIS STATE.

5 (E) THE BOARD SHALL RENEW THE CERTIFICATE OF EACH CERTIFICATE
6 HOLDER WHO MEETS THE REQUIREMENTS OF THIS SECTION.

7 10A-204.

8 EACH CERTIFICATE HOLDER SHALL DISPLAY THE CERTIFICATE
9 CONSPICUOUSLY AT ALL TIMES IN THE CERTIFICATE HOLDER'S OFFICE OR PLACE
10 OF EMPLOYMENT WHILE ENGAGING IN THE PRACTICE OF OPHTHALMIC
11 DISPENSING.

12 SUBTITLE 3. MISCELLANEOUS PROVISIONS

13 10A-301.

14 THE BOARD MAY INVESTIGATE ANY COMPLAINT REGARDING CERTIFICATION
15 OR QUALITY OF CARE IN OPHTHALMIC DISPENSING AND SHALL SEND A COPY OF
16 EACH COMPLAINT THE BOARD RECEIVES TO THE CONSUMER PROTECTION DIVISION
17 OF THE OFFICE OF THE ATTORNEY GENERAL.

18 10A-302.

19 SUBJECT TO THE HEARING PROVISIONS OF § 10A-303 OF THIS SUBTITLE, THE
20 BOARD, ON THE AFFIRMATIVE VOTE OF A MAJORITY OF ITS FULL AUTHORIZED
21 MEMBERSHIP, MAY DENY A CERTIFICATE TO ANY APPLICANT OR REPRIMAND ANY
22 CERTIFICATE HOLDER, PLACE ANY CERTIFICATE HOLDER ON PROBATION, OR
23 SUSPEND OR REVOKE A CERTIFICATE IF THE CERTIFICATE HOLDER:

24 (1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO
25 OBTAIN A CERTIFICATE FOR THE APPLICANT OR CERTIFICATE HOLDER OR FOR
26 ANOTHER;

27 (2) FRAUDULENTLY OR DECEPTIVELY USES A CERTIFICATE;

28 (3) IS GUILTY OF IMMORAL OR UNPROFESSIONAL CONDUCT IN THE
29 PRACTICE OF OPHTHALMIC DISPENSING;

30 (4) IS PROFESSIONALLY, PHYSICALLY, OR MENTALLY INCOMPETENT;

31 (5) IS ADDICTED TO, OR HABITUALLY ABUSES, ANY NARCOTIC OR
32 CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN ARTICLE 27 OF THE CODE;

33 (6) PROVIDES PROFESSIONAL SERVICES:

34 (I) WHILE UNDER THE INFLUENCE OF ALCOHOL; OR

1 (II) WHILE USING ANY NARCOTIC OR CONTROLLED DANGEROUS
2 SUBSTANCE, AS DEFINED IN ARTICLE 27 OF THE CODE, OR OTHER DRUG THAT IS IN
3 EXCESS OF THERAPEUTIC AMOUNTS OR WITHOUT VALID MEDICAL INDICATION;

4 (7) AS DETERMINED BY THE BOARD, FAILS TO MEET APPROPRIATE
5 STANDARDS AS DETERMINED BY APPROPRIATE PEER REVIEW FOR THE DELIVERY OF
6 QUALITY OPHTHALMIC DISPENSING SERVICES;

7 (8) FAILS TO DISPLAY THE CERTIFICATE AS REQUIRED UNDER § 10A-106
8 OF THIS TITLE;

9 (9) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED
10 BY THE BOARD; OR

11 (10) VIOLATES ANY REGULATION ADOPTED BY THE BOARD.

12 10A-303.

13 (A) EXCEPT AS OTHERWISE PROVIDED IN THE ADMINISTRATIVE PROCEDURE
14 ACT, BEFORE THE BOARD TAKES ANY ACTION UNDER § 10A-302 OF THIS SUBTITLE, IT
15 SHALL GIVE THE INDIVIDUAL AGAINST WHOM THE ACTION IS CONTEMPLATED AN
16 OPPORTUNITY FOR A HEARING BEFORE A HEARING OFFICER.

17 (B) THE HEARING OFFICER SHALL GIVE NOTICE AND HOLD THE HEARING IN
18 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT EXCEPT THAT FACTUAL
19 FINDINGS SHALL BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

20 (C) THE INDIVIDUAL MAY BE REPRESENTED AT THE HEARING BY COUNSEL.

21 (D) IF AFTER DUE NOTICE THE INDIVIDUAL AGAINST WHOM THE ACTION IS
22 CONTEMPLATED FAILS OR REFUSES TO APPEAR, NEVERTHELESS THE HEARING
23 OFFICER MAY HEAR AND REFER THE MATTER TO THE BOARD FOR DISPOSITION.

24 (E) AFTER PERFORMING ANY NECESSARY HEARING UNDER THIS SECTION,
25 THE HEARING OFFICER SHALL REFER PROPOSED FACTUAL FINDINGS TO THE BOARD
26 FOR THE BOARD'S DISPOSITION.

27 (F) THE BOARD MAY ADOPT REGULATIONS TO GOVERN THE TAKING OF
28 DEPOSITIONS AND DISCOVERY IN THE HEARING OF CHARGES.

29 (G) THE HEARING OF CHARGES MAY NOT BE STAYED OR CHALLENGED BY ANY
30 PROCEDURAL DEFECTS ALLEGED TO HAVE OCCURRED PRIOR TO THE FILING OF
31 CHARGES.

32 10A-304.

33 (A) IF AFTER A HEARING UNDER § 10A-303 OF THIS SUBTITLE, THE BOARD
34 FINDS THAT THERE ARE GROUNDS UNDER § 10A-302 OF THIS SUBTITLE TO SUSPEND
35 OR REVOKE A CERTIFICATE TO PRACTICE OPHTHALMIC DISPENSING, OR TO

1 REPRIMAND A CERTIFICATE HOLDER, THE BOARD MAY IMPOSE A FINE SUBJECT TO
2 THE BOARD'S REGULATIONS:

3 (1) INSTEAD OF SUSPENDING THE CERTIFICATE HOLDER; OR

4 (2) IN ADDITION TO SUSPENDING OR REVOKING THE CERTIFICATE OR
5 REPRIMANDING THE CERTIFICATE HOLDER.

6 (B) THE BOARD SHALL PAY ANY FINES COLLECTED UNDER THIS SECTION
7 INTO THE GENERAL FUND OF THE STATE.

8 10A-305.

9 (A) AFTER CHARGES ARE FILED, IF A MAJORITY OF THE FULL AUTHORIZED
10 MEMBERSHIP OF THE BOARD FINDS THAT THERE ARE GROUNDS FOR ACTION UNDER
11 § 10A-302 OF THIS SUBTITLE, THE BOARD SHALL PASS AN ORDER IN ACCORDANCE
12 WITH THE ADMINISTRATIVE PROCEDURE ACT.

13 (B) AFTER THE CHARGES ARE FILED, IF THE BOARD FINDS THAT THERE ARE
14 NO GROUNDS FOR ACTION UNDER § 10A-302 OF THIS SUBTITLE, THE BOARD:

15 (1) SHALL IMMEDIATELY DISMISS THE CHARGES AND EXONERATE THE
16 CERTIFICATE HOLDER;

17 (2) (I) SHALL EXPUNGE ALL RECORDS OF THE CHARGES 3 YEARS
18 AFTER THE CHARGES ARE DISMISSED; OR

19 (II) IF THE CERTIFICATE HOLDER EXECUTES A DOCUMENT
20 RELEASING THE BOARD FROM ANY LIABILITY RELATED TO THE CHARGES, SHALL
21 IMMEDIATELY EXPUNGE ALL RECORDS OF THE CHARGES; AND

22 (3) MAY NOT TAKE ANY FURTHER ACTION ON THE CHARGES.

23 10A-306.

24 (A) AN ORDER OF SUSPENSION OR REVOCATION IS EFFECTIVE, IN
25 ACCORDANCE WITH ITS TERMS AND CONDITIONS, AS SOON AS THE BOARD FILES IT
26 UNDER THIS TITLE.

27 (B) ON SUSPENSION OR REVOCATION OF ANY CERTIFICATE, THE
28 CERTIFICATE HOLDER SHALL SURRENDER THE CERTIFICATE TO THE BOARD.

29 (C) AT THE END OF THE SUSPENSION PERIOD, THE BOARD SHALL RETURN TO
30 THE CERTIFICATE HOLDER ANY LICENSE CERTIFICATE SURRENDERED UNDER THIS
31 SECTION.

32 (D) THE BOARD SHALL KEEP A COPY OF THE ORDER OF SUSPENSION OR
33 REVOCATION AS A PERMANENT RECORD.

1 10A-307.

2 (A) EXCEPT AS PROVIDED IN THIS SECTION FOR AN ACTION UNDER § 10A-302
3 OF THIS SUBTITLE, ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD IN
4 A CONTESTED CASE, AS DEFINED IN THE ADMINISTRATIVE PROCEDURE ACT, MAY:

5 (1) APPEAL THAT DECISION TO THE BOARD OF REVIEW; AND

6 (2) THEN TAKE ANY FURTHER APPEAL ALLOWED BY THE
7 ADMINISTRATIVE PROCEDURE ACT.

8 (B) (1) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD
9 UNDER § 10A-302 OF THIS SUBTITLE MAY NOT APPEAL TO THE SECRETARY OR BOARD
10 OF REVIEW BUT MAY TAKE A DIRECT JUDICIAL APPEAL.

11 (2) THE APPEAL SHALL BE MADE AS PROVIDED FOR JUDICIAL REVIEW
12 OF FINAL DECISIONS IN THE ADMINISTRATIVE PROCEDURE ACT.

13 (C) AN ORDER OF THE BOARD MAY NOT BE STAYED PENDING REVIEW.

14 (D) THE BOARD MAY APPEAL FROM ANY DECISION THAT REVERSES OR
15 MODIFIES ITS ORDER.

16 10A-308.

17 (A) THE BOARD MAY ADOPT REGULATIONS NECESSARY TO CARRY OUT THIS
18 TITLE.

19 (B) BEFORE IT ADOPTS ANY REGULATION TO CARRY OUT THIS TITLE, THE
20 BOARD SHALL INVITE AND CONSIDER PROPOSALS FROM INDIVIDUALS OR HEALTH
21 GROUPS THAT MAY BE AFFECTED BY THE REGULATION.

22 SUBTITLE 4. PROHIBITED ACTS; PENALTIES.

23 10A-401.

24 EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT
25 PRACTICE, ATTEMPT TO PRACTICE, OR OFFER TO PRACTICE OPHTHALMIC
26 DISPENSING UNLESS CERTIFIED BY THE BOARD.

27 10A-402.

28 UNLESS A PERSON IS CERTIFIED TO PRACTICE OPHTHALMIC DISPENSING, THE
29 PERSON MAY NOT:

30 (1) REPRESENT TO THE PUBLIC BY TITLE, DESCRIPTION OF SERVICES,
31 METHODS, OR PROCEDURES, OR OTHERWISE, THAT THE PERSON IS CERTIFIED BY
32 THE BOARD TO PRACTICE OPHTHALMIC DISPENSING IN THIS STATE;

33 (2) USE ANY TITLE, ABBREVIATION, SIGN, CARD, OR OTHER
34 REPRESENTATION THAT THE PERSON IS A CERTIFIED OPTICIAN; OR

