

ENROLLED ACT NO. 36, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

AN ACT relating to the board of examiners in optometry; amending definitions; providing for licensure of optometrists; providing authority to practice during an externship; providing for staggered terms for board members; providing for annual election of officers; providing for compensation for board members; providing for background checks including state and national criminal history record information; providing for reciprocal licensure of optometrists; providing for disciplinary proceedings for optometrists; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 7-19-106(a) by creating a new paragraph (xii), 7-19-201(a), 33-23-101, 33-23-102, 33-23-103(a) and by creating a new subsection (c), 33-23-104, 33-23-105, 33-23-106(a), 33-23-109, 33-23-110(a), (b)(intro), (v), (vii), (ix) and (c), 33-23-111(a), (b)(i) and (iv), 33-23-113, 33-23-114, 33-23-115(a) and (b) and 33-23-116 are amended to read:

**7-19-106. Access to, and dissemination of, information.**

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(xii) The board of examiners for optometry for purposes of obtaining background information on applicants for licensure or certification by the board.

**7-19-201. State or national criminal history record information.**

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(a) The following persons shall be required to submit to fingerprinting in order to obtain state and national criminal history record information:

(i) Employees of substitute care providers certified by the department of family services pursuant to W.S. 14-4-101 through 14-4-116; ~~or~~

(ii) State institution, department of family services or department of health employees who may have access to minors, to persons suffering mental illness or developmental disabilities or to the elderly; ~~shall be required to submit to fingerprinting for the purpose of obtaining state and national criminal history record information before employment or transfer to a position where access is acquired. On and after July 1, 1996,~~

(iii) Applicants for initial certification by the professional teaching standards board and employees initially hired by a school district on or after July 1, 1996, who may have access to minors in the course of their employment; ~~shall be required to submit to fingerprinting for the same purposes. For purposes of this article,~~

(iv) All persons applying for licensure to the Wyoming Board of Examiners for Optometry on or after July 1, 2005;

(v) Department of health or department of family services contractors providing specialized home care or respite care to minors. ~~shall be considered departmental employees.~~

**33-23-101. Definitions and exceptions.**

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(a) As used in this act:

(i) "Board" means the Wyoming state board of examiners in optometry;

(ii) "License" means a current license to practice optometry in this state issued by the board;

(iii) "Licensee" means a person licensed by the board under this act;

(iv) "Optometrist" or "doctor of optometry" means a person licensed by the board under this act;

(v) "Physician" means a person holding a valid license issued by the Wyoming state board of medicine under the Medical Practice Act;

(vi) "Controlled substance" means any drug, substance or immediate precursor listed in schedules I through V of article III of the Wyoming Controlled Substances Act of 1971;

(vii) "Ophthalmic lenses" means any type of spectacle or contact lenses;

(viii) "Contact lenses" shall include contact lenses with or without power;

~~(vii)~~ (ix) "This act" means W.S. 33-23-101 through 33-23-117.

~~(a)~~ (b) The practice of optometry is the employment of any means other than the use of therapeutic lasers or surgery for diagnosing and treating ocular pathology and for the measurement of the powers or range of human vision

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or the determination of the accommodative and refractive status of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof.

~~(b)~~ (c) The provisions of this chapter do not prevent a ~~duly licensed physician and surgeon,~~ physician from treating or fitting glasses to the human eye, or a ~~duly licensed physician and surgeon, oculist, or~~ physician or optometrist from filling prescriptions or orders. 7 Nor do ~~they~~ the provisions of this chapter prevent the replacing, duplicating or repairing of ophthalmic lenses or the frames or fittings thereof by persons qualified to write or fill prescriptions or orders under the provisions of this act, nor prevent the doing of the merely mechanical work upon such lenses or upon the frames or fittings thereof. ~~by an optical mechanic.~~

~~(e)~~ (d) It is unlawful for any person to dispense, replace or duplicate ~~an ophthalmic lens or~~ ophthalmic lenses or any contact lenses without a prescription or order from a ~~duly licensed physician and surgeon, oculist or~~ optometrist. ~~Contact lenses may be sold or dispensed in a retail optical dispensary or other permanently established place of business with an optical department only when the prescription specifically states on its face that it is intended for contact lenses and includes the type and specification of the contact lens being prescribed~~ A contact lens prescription shall specifically state that it is intended for contact lenses and include the type and specification of the contact lenses being prescribed. An optometrist shall provide, at no additional cost ~~if requested by a~~ to the patient, a written copy of his contact lens prescription. The prescription shall only be released after the contact lenses have been adequately fitted and no more follow-up visits are necessary to assure

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the contact lenses fit the patient. The essential information necessary to duplicate the prescription shall be defined by rules adopted by the board. All contact lens prescriptions shall have an expiration date after which it shall be unlawful to fill such prescription. The prescribing optometrist shall not be liable for any injury or condition to a patient resulting from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing optometrist. Any person may file a complaint with the board seeking disciplinary action concerning any violation of this subsection. The board shall investigate or cause to be investigated and shall resolve a complaint on its own motion or upon receipt of a written complaint as provided by W.S. 33-23-110. No person shall improperly fill a contact lens prescription or fill an expired prescription.

~~(d)~~ (e) The provisions of this chapter do not prohibit the sale of goggles, sunglasses, colored glasses or occupational eye-protective devices if they do not have refractive values, nor do the provisions of this act prohibit the sale of complete ready-to-wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors.

~~(e)~~ (f) Nothing in ~~W.S. 33-23-101 through 33-23-117~~ this act shall prevent an optometrist from using assistants in his practice under his ~~direct personal~~ general supervision ~~in the office in which the optometrist practices his profession as defined in board rule.~~

**33-23-102. Optometrist's use of certain drugs; limitation.**

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An optometrist ~~licensed according to the statutes of the state of Wyoming~~ shall be allowed to administer and prescribe pharmaceutical agents related to the practice of optometry, excluding the following categories of oral medications: immunosuppressives, steroids, anti-fungals, sedative-hypnotics, and schedule I and II narcotics. No medication shall be given by injection. Oral anti-glaucoma medications may be administered for a period not to exceed forty-eight (48) hours. ~~A licensed~~ An optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician ~~licensed in this state~~ utilizing the same pharmaceutical agents for examination or treatment.

**33-23-103. License required; civil suit; damages.**

(a) It is unlawful for any person in the state of Wyoming to practice or attempt to practice optometry or to advertise, or hold himself out as qualified to fit or adjust any lenses or lens in any manner or form as an aid to human eyesight, without first obtaining a certificate license to practice optometry.

(c) A person who is attending an optometry school accredited by a regional or professional accreditation organization which is recognized or approved by the United States Department of Education (USDE) or the Council on Higher Education Accreditation (CHEA), or their successor agencies, may practice optometry while doing an externship for said school under the direct supervision of an optometrist or physician licensed in this state.

**33-23-104. Board of examiners in optometry; created; composition; designation; duties generally; appointment; qualifications and terms of members; vacancies; oath.**

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The Wyoming state board of examiners in optometry is created to carry out the purposes and enforce the provisions of this act. The board shall consist of three (3) members appointed by the governor. In 2005, one (1) board member shall be appointed for a term of three (3) years, one (1) board member shall be appointed for a term of two (2) years, and one (1) board member shall be appointed for a term of one (1) year. Thereafter, the terms of the office of the members appointed shall be three (3) years or until their successors have qualified. Each member of the board shall be a resident of the state of Wyoming and shall have been engaged in the actual practice of optometry in the state for at least one (1) year prior to appointment. The governor shall make all appointments to fill vacancies caused by death, resignation or removal. The governor may remove any member as provided in W.S. 9-1-202. The members of the board, before entering upon their duties, shall take and subscribe to the oath required to be taken by state officers and shall file the oath in the office of the secretary of state.

**33-23-105. Board of examiners in optometry; officers; powers of members; meetings; quorum; records.**

~~Said~~ The board shall ~~choose at its first meeting, and annually thereafter, one (1) of its members as president, and one (1) as secretary and treasurer thereof elect~~ officers. Each member of the board shall have the power, during his term of office to administer oaths and take affidavits, certifying thereto under his hand and seal provided and kept by the board. ~~Said~~ The board shall meet at least once in each year, for the purpose of holding an examination, and in addition thereto, ~~whenever and wherever the president or secretary, by order of the president, shall call a meeting~~ upon the call of the president or

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request of a majority of its members. A majority of ~~said~~  
the board shall constitute a quorum. The secretary shall  
keep a complete record of the proceedings of the board,  
which record shall be open to public inspection at all  
reasonable times.

**33-23-106. Board of examiners in optometry; per diem  
and expenses of members; disposition of funds.**

(a) Each member of the board may receive as  
compensation ~~ten dollars (\$10.00) for each day actually  
engaged in the duties of his office, and per diem and  
mileage as is allowed state officers~~ the sum paid each day  
to members of the state legislature for each day spent in  
board meetings and per diem and mileage as is paid state  
employees. Expenses shall be paid from the fees, fines and  
assessments received under the provisions of this act. All  
fees, fines, assessments and other ~~moneys~~ monies received  
under the provisions of this act, may be used for meeting  
the expenses of the board and in carrying out the  
provisions of this act. In no event shall any expenses be  
charged against the state.

**33-23-109. Examinations required of applicants for  
licensure; qualifications; existing practitioners, passing  
grade; reexamination; fees; renewal of license; retirement.**

(a) Any applicant for ~~registration~~ licensure under  
this act is required to pass ~~an~~ the examination series  
administered by the National Board of Examiners in  
Optometry, or its successor agency, and any other  
examination specified by the board in rule. The applicant  
shall be a graduate of an optometric school or college  
accredited by a regional or professional accreditation  
organization which is recognized or approved by the council  
on postsecondary accreditation or the United States



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~~Commissioner of Education maintaining not less than a four (4) year course of not less than one thousand (1,000) hours each year covering the following subjects: general anatomy, general mathematics, general optics, theoretical optometry, practical optics, hygiene, optical laboratory work, general physiology, general physics, ocular pathology, theoretical optics, practical optometry, psychology and clinical work. Anyone desiring to commence the practice of optometry after May 22, 1987 shall in addition to these requirements, have satisfactorily completed courses in general and ocular, diagnostic and therapeutic pharmacology given by an institution accredited by a regional or professional accreditation organization, which is recognized or approved by the council on postsecondary accreditation or the United States Commissioner of Education and approved by the Wyoming Board of Examiners in Optometry~~ Department of Education (USDE) or the Council on Higher Education Accreditation (CHEA), or their successor agencies. Examinations shall cover ~~the above~~ subjects, ~~and other subjects~~ designated by the board. Any currently licensed person intending to employ diagnostic or therapeutic pharmaceutical agents in his practice is required to complete and pass a board approved course ~~and pass the board examination~~ pertaining to the use of those agents.

(b) No applicant shall be passed by the board who fails to obtain ~~an average~~ a grade of seventy-five percent (75%) in every subject upon which he is examined. If any applicant fails to pass any examination, he shall be examined at the next or any succeeding examination only in the subject in which he failed to obtain ~~an average~~ a grade of eighty-five percent (85%). The applicant shall apply for his ~~certificate of registration~~ license within six (6) months after he has satisfactorily passed the examination or the examination shall be of no effect. ~~On all certificates awarded on examination, there shall be printed~~

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~~or stamped the words, "Awarded on Examinations".~~ Before engaging in the practice of optometry, and after the ~~certificate~~ license has been delivered to him, each ~~registered~~ licensed optometrist shall notify ~~the secretary of~~ the board in writing of the place where he intends to begin practice and of any subsequent changes of his office location. Notices given to him by the board shall be given by mailing to that address.

(c) In addition to subsections (a) and (b) of this section, an applicant for licensure under this act shall provide the board fingerprints and other information necessary for a criminal history record background check as provided under W.S. 7-19-201.

~~(e)~~ (d) The board of examiners, pursuant to W.S. 33-1-201, shall establish fees for the standard examination, initial ~~registration~~ license and the annual renewal of the ~~certificate of registration~~ license. Every ~~registered~~ optometrist who desires to continue the practice of optometry shall annually, on or before April 1, pay ~~to the secretary of~~ the board the required renewal fee ~~for a renewal of his certificate. The board shall revoke the certificate of a practitioner who fails or refuses to pay the renewal registration fee. No certificate shall be revoked without giving sixty (60) days' notice to the delinquent who within such period may renew the certificate on the payment of the renewal fee, with a penalty of ten dollars (\$10.00). If an optometrist notifies the board that he is retiring from practice in Wyoming, retirement from practice for a period of not exceeding three (3) years shall not deprive the holder of the certificate of the right to renew his certificate on payment of the elapsed fees, and ten dollars (\$10.00) penalty as provided. Upon retirement from active practice, the optometrist shall notify the secretary writing.~~ A license which has expired

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due to failure to renew may be reinstated by the board upon receipt of the renewal fee and reinstatement and late fees set by the board in accordance with W.S. 33-1-201 provided the request for reinstatement is received in the board office no later than June 30 of the year in which the license expired. An optometrist who previously notified the board that he had retired may renew his license by submitting renewal fees for each year in which no license was issued and a reinstatement fee within three (3) years of the expiration date of the last license held. Upon retirement from active practice, an optometrist shall notify the board in writing.

(e) The board may issue a license by endorsement to engage in the practice of optometry to an applicant who is currently licensed in another United States or Canadian jurisdiction with substantially equivalent requirements as Wyoming and who meets Wyoming requirements for licensure by endorsement. Applicants for licensure by endorsement shall comply with standards set forth in board rules.

**33-23-110. Refusal, suspension or revocation of license.**

(a) The board ~~of examiners in optometry shall~~ may suspend, revoke or refuse to issue ~~the certificate of registration provided for in this act~~ a license to any person who has been guilty of unprofessional and dishonest conduct, ~~or unethical conduct, conduct of a character likely to deceive the public, and may suspend or revoke or refuse to renew such certificate for like reasons~~ failure to timely submit a renewal application.

(b) "Unprofessional and dishonest conduct" as used in this act ~~is hereby declared to mean~~ means:

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(v) The use of any other term by a person ~~registered~~ licensed under this act except the term "optometrist" or "doctor of optometry" to designate his profession;

(vii) ~~Cross~~ Incompetence, ~~and~~ malpractice or unethical conduct;

(ix) The board, ~~when necessary for administration of this act,~~ may clarify ~~the~~ definitions stated in this ~~subparagraph (b)~~ subsection by unanimous action of the board, provided that the meaning and effect of this law shall not thereby be added to or diminished properly promulgated rules and regulations.

(c) ~~Said board, after due notice and hearing, shall revoke the certificate issued to any optometrist whose certificate of registration was obtained or issued through error, fraud, or perjury, or who shall have been guilty of grossly unprofessional, unethical and dishonest conduct, or who shall be guilty of an offense involving moral turpitude when such offense shall have been established in a court of competent jurisdiction~~ Board disciplinary proceedings will be conducted in accordance with the Wyoming Administrative Procedure Act and the rules and regulations of the board.

**33-23-111. Limitation on rights conferred by license; prohibited acts.**

(a) Nothing in this act shall be construed as conferring on the holder of ~~any certificate of registration~~ a license issued by the board, the title "doctor of medicine," ~~"oculist" or "ophthalmologist,"~~ or any other word or abbreviation indicating that he is engaged in the practice of medicine. ~~or surgery.~~

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(b) It is unlawful:

(i) For any person to ~~canvass from house to house or at~~ approach any place of employment either in person or through ~~solicitors or~~ agents for the purpose of selling ~~glasses—ophthalmic lenses,~~ eye ~~examination examinations~~ or optometric ~~service. services;~~

(iv) For any person ~~or persons~~ not holding a ~~certificate or any corporation, directly or indirectly,~~ license to practice optometry. ~~by employment of or contract with a person holding a certificate, or otherwise, provided that one holding a certificate may accept employment from a person, partnership, association or corporation to practice optometry with respect to the employees of such person, partnership, association or corporation. This subsection shall not be construed to prohibit practitioners licensed under this act from employing other practitioners licensed under this act, or from forming partnerships or professional associations with other practitioners licensed under this act or with other licensed health care professionals whose primary objective is the diagnosis and treatment of the human body.~~

**33-23-113. License to be displayed.**

Every person holding a ~~certificate—~~ license to practice optometry in the state of Wyoming shall display the ~~said certificate—~~ license, in its entirety, in a conspicuous place in his office, wherein the practice of optometry is conducted. ~~He shall, also, deliver to each person fitted with glasses by him in case the work is not done in his permanent office, a receipt which shall contain his signature, the number of his certificate, and his home post-office address.~~

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**33-23-114. Continuing education courses required.**

All ~~registered~~ optometrists ~~licensed in Wyoming~~ shall take courses of study in subjects relating to the practice of the profession of optometry for the utilization and application of new techniques, scientific and clinical advances, and ~~the~~ achievements of research which will assure expansive and comprehensive care to the public. The board shall prescribe the length of study. Attendance shall be at a course or courses approved by the board. Attendance at any course or courses of study is to be certified to the board upon a form provided by the board and submitted by each ~~registered~~ optometrist to the board. The board may use up to one-half (1/2) of its annual renewal fees for the purposes of contracting with institutions of higher learning, professional organizations, or qualified individuals to provide educational programs that meet this requirement. The board may also 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 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 this state. The board may waive the requirements of this section in cases of certified illness or undue hardship.

**33-23-115. Penalty; injunction; civil penalty; jury trial.**

(a) Any person who violates any provision of W.S. 33-23-101 through ~~33-23-116~~ 33-23-117 is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00) or imprisoned not more than six (6) months in the county jail, or both.

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(b) Any person aggrieved by a violation of W.S. 33-23-101 through ~~33-23-116~~ 33-23-117, the Wyoming state board of examiners of optometry, the attorney general or the district or county attorney may institute suit in the county in which a violation of W.S. 33-23-101 through ~~33-23-116~~ 33-23-117 occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed ten thousand dollars (\$10,000.00) per violation, plus costs.

**33-23-116. Rules and regulations.**

The board may ~~make~~ promulgate rules and regulations ~~not inconsistent with law as may be reasonably necessary for the proper performance of its duties~~ in accordance with the Wyoming Administrative Procedure Act.

**Section 2.** W.S. 33-23-110(d) and (e) is repealed.

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**Section 3.** This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk