

[CORRECTED COPY]
CHAPTER 115

AN ACT concerning the practice of optometry and revising parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.45:12-1 is amended to read as follows:

Practice of optometry defined.

45:12-1. Optometry is hereby declared to be a profession, and the practice of optometry is defined to be the employment of objective or subjective means, or both, for the examination of the human eye and adnexae for the purposes of ascertaining any departure from the normal, measuring its powers of vision and adapting lenses or prisms for the aid thereof, or the use and prescription of pharmaceutical agents, excluding injections, except for injections to counter anaphylactic reaction, and excluding controlled dangerous substances as provided in sections 5 and 6 of P.L.1970, c.226 (C.24:21-5 and C.24:21-6), for the purposes of treating deficiencies, deformities, diseases, or abnormalities of the human eye and adnexae including the removal of superficial foreign bodies from the eye and adnexae.

An optometrist utilizing pharmaceutical agents for the purposes of treatment of ocular conditions and diseases shall be held to a standard of patient care in the use of such agents commensurate to that of a physician utilizing pharmaceutical agents for treatment purposes.

A person shall be deemed to be practicing optometry within the meaning of this chapter who in any way advertises himself as an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid thereof, practice, offer or attempt to practice optometry as herein defined, either on his own behalf or as an employee or student of another, whether under the personal supervision of his employer or perceptor or not, or to use testing appliances for the purposes of measurement of the powers of vision or diagnose any ocular deficiency or deformity, visual or muscular anomaly of the human eye and adnexae or prescribe lenses, prisms or ocular exercise for the correction or the relief thereof, or who uses or prescribes pharmaceutical agents for the purposes of diagnosing and treating deficiencies, deformities, diseases or abnormalities of the human eye and adnexae or who holds himself out as qualified to practice optometry.

2. Section 6 of P.L.1991, c.385 (C.45:12-9.8) is amended to read as follows:

C.45:12-9.8 Credentialing, certification process; rules, regulations.

6. a. The New Jersey State Board of Optometrists shall establish a comprehensive credentialing and certification process for optometrists to receive certification in the use and prescription of pharmaceutical agents in the practice of optometry and promulgate the rules and regulations necessary to effectuate the purposes of P.L.1991, c. 385 (C.45:12-9.8 et seq.).

b. The comprehensive credentialing and certification process established in accordance with subsection a. of this section shall include courses offered by a school that is accredited by the United States Department of Education and the Council on Postsecondary Accreditation.

3. Section 7 of P.L.1991, c.385 (C.45:12-9.9) is amended to read as follows:

C.45:12-9.9 Credentialing requirements.

7. The New Jersey State Board of Optometrists shall establish the credentialing requirements which shall be fulfilled before a person may be certified to use or prescribe pharmaceutical agents for treatment purposes in the practice of optometry. In addition, the board shall establish continuing education requirements for the renewal of certification for the use and prescription of pharmaceutical agents for treatment purposes in the practice of optometry. No licensee shall be tested by the board for certification to use or prescribe pharmaceutical agents for treatment purposes in the practice of optometry before having first satisfactorily completed all educational requirements in ocular pharmacology at a school duly accredited by the United States Department of Education and the Council on Postsecondary Accreditation. These educational standards shall be no less than that required of currently enrolled students as part of their requirements for graduation from that school. This

credentialing and certification process shall be required of all persons seeking to utilize pharmaceutical agents for treatment purposes in the practice of optometry regardless of licensure either prior or subsequent to the effective date of P.L.1991, c.385 (C.45:12-9.8 et seq.); except that licensees shall be immediately certified at their current level of practice and those licensees currently certified to use and prescribe pharmaceutical agents for treatment purposes pursuant to P.L.1991, c.385 (C.45:12-9.8 et seq.) shall be immediately credentialed and certified to use and prescribe those pharmaceutical agents authorized by that act for treatment purposes in the practice of optometry but not orally until certified, except for injections to counter anaphylactic reactions.

The board shall maintain a list of all approved credentialing courses, which list shall be made available upon request to licensees or other interested persons. Upon receipt of verification of satisfactory completion of an approved credentialing course of study, the board shall certify the optometrist applicant as certified in the use and prescription of those pharmaceutical agents.

Title amended.

4. The title of P.L.2003, c.96 is amended to read as follows:

AN ACT concerning the dissemination of certain information about physicians, podiatrists and optometrists to the public, amending P.L.1983, c.248 and P.L.1989, c.300 and supplementing Title 45 of the Revised Statutes.

5. Section 2 of P.L.2003, c.96 (C.45:9-22.22) is amended to read as follows:

C.45:9-22.22 Collection, maintenance of information regarding physicians, podiatrists, optometrists.

2. a. The Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the State Board of Medical Examiners and the New Jersey State Board of Optometrists, shall collect and maintain information concerning all physicians, podiatrists and optometrists, respectively, licensed in the State for the purpose of creating a profile of each physician, podiatrist and optometrist pursuant to this act. The profiles shall be made available to the public through electronic and other appropriate means, at no charge to the public. The division shall establish a toll-free telephone number for members of the public to contact the division to obtain a paper copy of a physician, podiatrist or optometrist profile and to make other inquiries about the profiles.

b. A physician, podiatrist or optometrist shall be required to provide the appropriate board or division or its designated agent with any information necessary to complete the profile as provided in section 3 of this act.

c. Either board may request any additional information it deems necessary to complete the profiles on the biennial license renewal form submitted by physicians, podiatrists and optometrists, as applicable.

d. The appropriate board shall provide to the division or its designated agent any information required pursuant to this act that is available to the board concerning a physician, podiatrist or optometrist, for the purpose of creating the physician, podiatrist and optometrist profiles.

6. Section 3 of P.L.2003, c.96 (C.45:9-22.23) is amended to read as follows:

C.45:9-22.23 Information included in profile of physician, podiatrist, optometrist.

3. a. The following information shall be included for each profile of a physician, podiatrist or optometrist, as applicable:

- (1) Name of all medical or optometry schools attended and dates of graduation;
- (2) Graduate medical or optometry education, including all internships, residencies and fellowships;
- (3) Year first licensed;
- (4) Year first licensed in New Jersey;
- (5) Location of the physician's, podiatrist's or optometrist's office practice site or sites, as

applicable;

(6) A description of any criminal convictions for crimes of the first, second, third or fourth degree within the most recent 10 years. For the purposes of this paragraph, a person shall be deemed to be convicted of a crime if the individual pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction. The description of criminal convictions shall not include any convictions that have been expunged. The following statement shall be included with the information about criminal convictions: "Information provided in this section may not be comprehensive. Courts in New Jersey are required by law to provide information about criminal convictions to the State Board of Medical Examiners (or the New Jersey State Board of Optometrists).";

(7) A description of any final board disciplinary actions within the most recent 10 years, except that any such disciplinary action that is being appealed shall be identified;

(8) A description of any final disciplinary actions by appropriate licensing boards in other states within the most recent 10 years, except that any such disciplinary action that is being appealed shall be identified. The following statement shall be included with the information about disciplinary actions in other states: "Information provided in this section may not be comprehensive. The State Board of Medical Examiners (or the New Jersey State Board of Optometrists) receives information about disciplinary actions in other states from physicians (or optometrists) themselves and outside sources.";

(9) In the case of physicians and podiatrists, a description of: the revocation or involuntary restriction of privileges at a health care facility for reasons related to the practitioner's competence or misconduct or impairment taken by a health care facility's governing body or any other official of the health care facility after procedural due process has been afforded; the resignation from or nonrenewal of medical staff membership at the health care facility for reasons related to the practitioner's competence or misconduct or impairment; or the restriction of privileges at a health care facility taken in lieu of or in settlement of a pending disciplinary case related to the practitioner's competence or misconduct or impairment. Only those cases that have occurred within the most recent 10 years and that were reported by the health care facility pursuant to section 1 of P.L.1983, c.247 (C.26:2H-12.2) shall be included in the profile; and

(10) All medical malpractice court judgments and all medical malpractice arbitration awards reported to the applicable board, in which a payment has been awarded to the complaining party during the most recent five years, and all settlements of medical malpractice claims reported to the board, in which a payment is made to the complaining party within the most recent five years, as follows:

(a) Pending medical malpractice claims shall not be included in the profile and information on pending medical malpractice claims shall not be disclosed to the public;

(b) A medical malpractice judgment that is being appealed shall be so identified;

(c) The context in which the payment of a medical malpractice claim occurs shall be identified by categorizing the number of judgments, arbitration awards and settlements against the physician, podiatrist or optometrist into three graduated categories: average, above average and below average number of judgments, arbitration awards and settlements. These groupings shall be arrived at by comparing the number of an individual physician's, podiatrist's or optometrist's medical malpractice judgments, arbitration awards and settlements to the experience of other physicians, podiatrists or optometrists within the same speciality. In addition to any information provided by a physician, podiatrist or optometrist, an insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall, at the request of the division, provide data and information necessary to effectuate this subparagraph; and

(d) The following statement shall be included with the information concerning medical malpractice judgments, arbitration awards and settlements: "Settlement of a claim and, in particular, the dollar amount of the settlement may occur for a variety of reasons, which do not necessarily reflect negatively on the professional competence or conduct of the physician (or podiatrist or optometrist). A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred."

b. If requested by a physician, podiatrist or optometrist, the following information shall be

included in a physician's, podiatrist's or optometrist's profile:

- (1) Names of the hospitals where the physician, podiatrist or optometrist has privileges;
- (2) Appointments of the physician or podiatrist to medical school faculties, or the optometrist to optometry school faculties, within the most recent 10 years;
- (3) Information regarding any board certification granted by a specialty board or other certifying entity recognized by the American Board of Medical Specialties, the American Osteopathic Association or the American Board of Podiatric Medicine or by any other national professional organization that has been demonstrated to have comparable standards;
- (4) Information regarding any translating services that may be available at the physician's, podiatrist's or optometrist's office practice site or sites, as applicable, or languages other than English that are spoken by the physician, podiatrist or optometrist;
- (5) Information regarding whether the physician, podiatrist or optometrist participates in the Medicaid program or accepts assignment under the Medicare program;
- (6) Information regarding the medical insurance plans in which the physician, podiatrist or optometrist is a participating provider;
- (7) Information concerning the hours during which the physician, podiatrist or optometrist conducts his practice; and
- (8) Information concerning accessibility of the practice site or sites, as applicable, to persons with disabilities.

The following disclaimer shall be included with the information supplied by the physician, podiatrist or optometrist pursuant to this subsection: "This information has been provided by the physician (or podiatrist or optometrist) but has not been independently verified by the State Board of Medical Examiners (or the New Jersey State Board of Optometrists) or the Division of Consumer Affairs."

If the physician, podiatrist or optometrist includes information regarding medical insurance plans in which the practitioner is a participating provider, the following disclaimer shall be included with that information: "This information may be subject to change. Contact your health benefits plan to verify if the physician (or podiatrist or optometrist) currently participates in the plan."

c. Before a profile is made available to the public, each physician, podiatrist or optometrist shall be provided with a copy of his profile. The physician, podiatrist or optometrist shall be given 30 calendar days to correct a factual inaccuracy that may appear in the profile and so advise the Division of Consumer Affairs or its designated agent; however, upon receipt of a written request that the division or its designated agent deems reasonable, the physician, podiatrist or optometrist may be granted an extension of up to 15 calendar days to correct a factual inaccuracy and so advise the division or its designated agent.

d. If new information or a change in existing information is received by the division concerning a physician, podiatrist or optometrist, the physician, podiatrist or optometrist shall be provided with a copy of the proposed revision and shall be given 30 calendar days to correct a factual inaccuracy and to return the corrected information to the division or its designated agent.

e. The profile and any revisions thereto shall not be made available to the public until after the review period provided for in this section has lapsed.

7. Section 4 of P.L.2003, c.96 (C.45:9-22.24) is amended to read as follows:

C.45:9-22.24 Contracts with public, private entity for profiles.

4. The Division of Consumer Affairs may contract with a public or private entity for the purpose of developing, administering and maintaining the physician, podiatrist and optometrist profiles required pursuant to this act.

a. The contract shall specify the duties and responsibilities of the entity with respect to the development, administration and maintenance of the profile. The contract shall specify the duties and responsibilities of the division with respect to providing the information required pursuant to section 3 of this act to the entity on a regular and timely basis.

b. The contract shall specify that any identifying information concerning a physician,

podiatrist or optometrist provided to the entity by the division, the State Board of Medical Examiners, or the New Jersey State Board of Optometrists or the optometrist, respectively, or the physician or podiatrist shall be used only for the purpose of the profile.

c. The division shall monitor the work of the entity to ensure that physician, podiatrist and optometrist profiles are properly developed and maintained pursuant to the requirements of this act.

8. Section 5 of P.L.2003, c.96 is amended to read as follows:

5. The Director of the Division of Consumer Affairs shall report to the Legislature no later than 18 months after the effective date of this act on the status of the physician and podiatrist profiles, and no later than 180 days after the effective date of P.L.2004, c.115 (C.45:12-9.13 et al.) on the status of the optometrist profiles.

The director shall also make recommendations in the report on the issue of developing profiles for other licensed health care professionals, including, but not limited to, dentists, advanced practice nurses, physician assistants, physical therapists and chiropractors, and the type of information that would be appropriate to include in the respective profiles for each type of licensed health care professional.

9. Section 8 of P.L.2003, c.96 (C.45:9-22.25) is amended to read as follows:

C.45:9-22.25 Regulations.

8. Within 180 days of the effective date of this act, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the State Board of Medical Examiners and the New Jersey State Board of Optometrists, shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act.

C.45:12-9.13 Credentialing requirements for optometrist to use, prescribe pharmaceutical agents.

10. No licensee shall be certified by the New Jersey State Board of Optometrists to use or prescribe pharmaceutical agents in the practice of optometry before having completed credentialing requirements in ocular pharmacology approved and administered by the New Jersey State Board of Optometrists. Until such time as a majority of the optometrist members of the New Jersey State Board of Optometrists are certified to use and prescribe pharmaceutical agents for treatment purposes in the practice of optometry, an interim four-member panel of experts in ocular pharmacology shall be established to prepare or endorse credentialing requirements for board approval. The interim advisory panel of experts in ocular pharmacology shall be comprised of a physician selected by the State Board of Medical Examiners, a member selected by the Board of Pharmacy, a representative of a school of optometry duly accredited by the United States Department of Education and the Council on Postsecondary Accreditation, to be selected by the New Jersey State Board of Optometrists, and the Commissioner of the Department of Health and Senior Services or his designee. The interim panel shall be selected by the respective boards within 90 days of the effective date of this amendatory and supplementary act. Panel members shall be directly responsible to the Director of the Division of Consumer Affairs, who may order the replacement of any panel member for failure to promptly and equitably fulfill their duties. The panel shall have 120 days following appointment of a majority of the panel to submit to the New Jersey State Board of Optometrists credentialing requirements in ocular pharmacology. Should the panel fail within the 120 day period to submit credentialing requirements to the New Jersey State Board of Optometrists, the Director of the Division of Consumer Affairs shall designate, within 90 days thereafter, the credentialing requirements for the interim period. Should the Director of the Division of Consumer Affairs fail to designate credentialing requirements within the 90-day period, the credentialing requirements shall be designated by the New Jersey State Board of Optometrists.

11. The New Jersey State Board of Optometrists shall report to the Governor and the

Legislature on the progress made in implementing the provisions of this act no later than three years after its enactment.

Repealer.

12. Section 8 of P.L.1991, c.385 (C.45:12-9.10) is repealed.

13. This act shall take effect immediately, except that sections 1, 3, and 12 shall take effect one year after the date of enactment.

Approved August 7, 2004.