

MODEL OPHTHALMIC DISPENSING ACT

The Model Ophthalmic Dispensing Act has been assembled for use as a guide by state associations concerned with developing legislation providing for the mandatory licensure of ophthalmic dispensers.

The Model Act must be reviewed and carefully adapted to comply with state legislative requirements and practices. It must also be adapted to conform to the organizational structure of the government of each individual state and its particular administrative arrangements. The Model Act leaves blanks, _____, or indicates alternatives in brackets, (), in instances where additional language should be considered or where adaptations are especially necessary.

Throughout the text, explanatory notes, in italics, appear before the section to which they apply. These notes would not appear in a version of the bill prepared for introduction.

Originally approved in 1975, amended in 1980, 1984, and 1988, 1994 and 1995 by the OAA Delegate Assembly.

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Model Ophthalmic Dispensing Act

In the _____ of the State of _____
introduced the following bill, which was referred to the Committee on _____.

Title

An Act providing for the legal definition of ophthalmic dispensing, for the licensure of ophthalmic dispensers, and for related purposes.

Section 1. Short Title.

This Act Shall be known and may be cited as the Ophthalmic Dispensing Act.

Purpose: The purpose of the Act is to define the scope of ophthalmic dispensing and establish uniform standards of competence for ophthalmic dispensers.

Section 2. Declaration of Purpose.

In order to safeguard public health, safety, and welfare, to protect the public by assuring that providers of ophthalmic dispensing services and products meet minimum standards of competence, and to insure that competent providers of such services and products are available in adequate numbers, it is the purpose of this Act to provide for the regulation of persons offering ophthalmic dispensing services to the public.

Definitions: Section 3 of the Bill defines "ophthalmic dispensing," "Prescription" and "supervision."

Section 3. Definitions.

As used in this Act:

a) "Ophthalmic dispensing" means the design, verification, and delivery to the intended wearer of lenses, frames, and other specially fabricated optical devices upon prescription. It includes, but is not limited to, prescription analysis and interpretation; the taking of measurements to determine the size, shape, and specifications of the lenses, frames, contact lenses, or lens forms best suited to the wearer's needs; the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating eyewear; the verification of the quality of finished ophthalmic products; the adjustment of lenses or frames to the intended wearer's face or eyes; and the adjustment, replacement, repair, and reproduction of previously prepared ophthalmic lenses, frames, contact lenses, or other specially fabricated ophthalmic devices.

b) "Prescription" means a written or verbal direction from a licensed physician or optometrist for therapeutic or corrective lenses and consists of the refractive power and, when necessary, the vertex distance, cylinder axis, and prism.

c) "Supervision" means the provision of direction and control through personal inspection and evaluation of work and the provision of such consultation and instruction as may be needed provided that at least one licensed dispenser works at each optical establishment on a full-time basis.

Licensing Required: Section 4 prevents persons not licensed by the state, or otherwise exempted from the provisions of the act, from engaging in ophthalmic dispensing.

Section 4. License Required.

No person shall engage in ophthalmic dispensing or hold himself or herself out as an ophthalmic dispenser, or as being able to engage in ophthalmic dispensing or render ophthalmic dispensing services in this state, unless he or she is licensed or registered in accordance with the provisions of this Act.

Nonapplicability: Section 5 defines that this act shall not prevent persons licensed by the state from engaging in the professional for which they hold a license and hiring persons licensed under this act

Section 5. Persons and Practices Not Affected.

Nothing in the Act shall prevent or restrict:

- a) the practices, services, or activities of any person duly licensed in this state by any other law from engaging in the profession or occupation for which he or she is licensed; or
- b) any individual, firm, or corporation from employing persons licensed or registered under this Act or from engaging in ophthalmic dispensing through persons licensed or registered under this Act.

Eligibility Requirements: Section 6 establishes a formal education requirement and makes successful completion of written competency examinations the basic eligibility requirement for obtaining a license to dispense spectacles and/or fit contact lenses.

Section 6. Requirements for Licensure.

a) Education

To be eligible for licensure a person shall have completed a two-year formal education program approved by the Commission on Opticianry Accreditation.

b) Spectacle Dispensing

To be eligible to engage in spectacle dispensing, a person shall successfully complete a written qualifying spectacle dispensing examination.

c) Contact Lens

To be eligible to fit contact lenses, a person shall successfully complete a written qualifying contact lens examination. Upon successful completion of this examination, an applicant shall be authorized to fit contact lenses without the requirement that he/she pass any other examination except that, to engage in spectacle dispensing, he/she must also meet the spectacle dispensing eligibility requirement established herein.

Characteristics of Licensing Examination: Section 7 describes the essential characteristics of the written examinations to be used for the purpose of determining the competence of applicants for licenses. The American Board of Opticianry's National Examiner's Contact Lens Registry Examination meet these criteria and are recommended for use as the qualifying examinations.

Section 7. Examinations for Licensure of Spectacle Dispensers and Contact Lens Fitters.

The written qualifying spectacle dispensing examination and the contact lens examination shall be a) designed to measure specific job performance requirements, b) professionally constructed and validated, c) independently and objectively administered and scored. The examinations shall be given at least once each year at sites which are accessible to applicants on dates that are publicly announced 90 days in advance of the administration dates. Each applicant shall receive his or her examination score and a performance profile by subject matter area within a reasonable time after taking an examination.

Waiver of Written Examination Requirements: Section 8 authorizes a waiver of the written qualifying examination requirement for applicants who are currently licensed to dispense or fit in other states or who meet the certification requirements of the American Board of Opticianry or National Contact Lens Examiners (i.e., have already passed the ABO and/or the NCLE examinations and have accumulated the continuing education credits needed to maintain their certificates). As presently written, the model act also included a waiver of the written exam requirements for spectacle dispensers who have over one year of experience dispensing spectacles and contact lens fitters who have over two years experience in fitting contact lens.

Section 8. Waiver of Written Examination Requirements.

a) Spectacle Dispensing Examination

The Department (or Board) shall waive the written spectacle dispensing examination requirement and grant a license to any applicant who:

- 1) holds a currently valid ophthalmic dispensing license in another state; or
- 2) meets the certification requirements of the American Board of Opticianry.

b) Contact Lens Examination

The Department (or Board) shall waive the written qualifying contact lens examination requirement and grant a license to any applicant who:

- 1) is currently licensed to fit contact lenses in another state; or
- 2) meets the certification requirements of the National Contact Lens Examiners

c) Temporary Waiver of Written Examination

Other persons with experience in ophthalmic dispensing may be issued a license to engage in ophthalmic dispensing without examination provided they shall file an application with the Department (or Board) for temporary waiver of the examination requirement within one year from the effective date of this Act except that such persons shall be required to pass the written qualifying before the first renewal of their licenses. In the case of a spectacle dispenser, such application shall be accompanied by evidence that the applicant has been engaged in ophthalmic dispensing for more than one year. In the case of contact lens fitters, such application shall be accompanied by two affidavits from licensed physicians or optometrists stating that the applicant has demonstrated by experience over a period of not less than two years his/her ability to fit contact lenses.

Renewal of Licenses: Section 9 provides for renewal of licenses every three years contingent upon completion of approved continuing education courses in spectacle and/or contact lens fitting.

Section 9. Renewal of License.

Licenses under this Act shall be subject to renewal every three years and shall expire unless the licensee submits an application for renewal in the manner prescribed by the Department (or Board). Such application shall be accompanied by a renewal fee of _____ dollars; and evidence that the applicant has during the three-year period completed continuing education as follows:

- a) Dispensers of spectacles--met the continuing education requirements of the American Board of Opticianry or nine hours of continuing education in spectacle dispensing.
- b) Fitters of contact lenses -- met the continuing education requirements of the National Contact Lens Examiners; or 15 hours of contact lens continuing education.
- c) Dispensers of spectacles and fitters of contact lenses -- both of the requirements contained herein.

Administration: Section 10(a) assigns responsibility for administration of the law to either a) an existing state agency such as the Department of Health, or b) an ophthalmic dispensing board representing spectacle dispensers, contact lens fitters, and the public.

The specific responsibilities of the Department or Board include processing application for licenses' collecting fees; overseeing the scheduling and administration of qualifying examinations; issuing licenses; investigating complaints, and related record keeping functions.

Section 10(b) specifies that the Department or Board shall have no authority to make rules governing the employment of ophthalmic dispensers, the location of optical stores, the advertising of optical products and services, or the manner in which optical products or services can be displayed.

Section 10. Administrative Requirements

- a) Administrative Agency: Composition and Duties.

Alternative A (Advisory Committee)

This Act Shall be administered by the Department of _____ whose rummaging authority with respect to this Act shall be limited to the following procedural matters: processing applications for licenses, collecting fees, scheduling and

supervising the administration of qualifying examinations, issuing licenses, investigating complaints, conducting disciplinary proceedings, and maintaining such records as may be needed to carry out these responsibilities.

There is created under this Act an advisory committee to the Department of _____ which shall be composed of three spectacle dispensers certified by the American Board of Opticianry, three contact lens fitters certified by the National Contact Lens Examiners, and one public member all of whom shall be appointed by the Governor (or Department Director).

The Governor (or department Director) shall, within 60 days from the effective date of this Act, appoint three committee members for a term of one year; and three for a term of two years; and one for a term of three years. Appointments made thereafter shall be for three year terms, but no person shall be appointed to serve more than two consecutive terms.

Members of the advisory committee shall (shall not) not receive compensation for their services but shall be entitled to reimbursement for reasonable travel and other expenses incurred in the execution of their duties.

Alternative B (Ophthalmic Dispensing Board)

There is established in the Department of _____ an ophthalmic dispensing board consisting of at least seven members, three of whom shall be spectacle dispensers certified by the American Board of Opticianry, three contact lens fitters certified by the National Contact Lens Examiners, and one public member.

The responsibilities of this board shall be limited to the following administrative and procedural matters: processing applications for licenses, collecting fees, scheduling and supervision the administration of qualifying examinations, issuing licenses, renewing revoking or suspending licenses, investigating complaints, conducting disciplinary proceeding, and maintaining such records as may be needed to carry out these responsibilities.

The Governor (or Department Director) shall within 60 days from the effective date of this Act, appoint three board members to a term of one year; three for terms of two years, and one for a term of three years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two consecutive terms.

Members of the Board shall (shall not) receive compensation for their services, but shall be entitled to reimbursement for reasonable travel and other expenses incurred in the execution of their duties.

b) Limitation of Authority

In the administration of this Act, the Department (or Board) shall have no authority to make rules governing the employment of ophthalmic dispensers, the location of optical stores, advertising of optical products or services, or the manner in which such products can be displayed.

All meetings of the advisory committee (or Board) shall be open, and the minutes of such meetings shall be available to the public.

c) Consumer Complaint Handling Mechanism

In the absence of another established consumer complaint handling body, responsibility for the resolution of complaints about products and ophthalmic services provided by persons licensed under this Act shall be assigned to the Department (or Board).

Disciplinary Proceedings: Section 11 establishes procedures for the investigation of consumer complaints, disciplinary actions which may be undertaken by the board, and rights of appeal for licensees.

Section 11. Conduct of Disciplinary Proceedings.

a) Investigations

The Department (or Board) may investigate complaints about licensees' performance of functions that constitute ophthalmic dispensing. To this end, the Department (or Board) may hold hearings, administer oaths, and order relevant testimony to be taken in accordance with provisions of the State Administrative Procedures Act.

b) Suspension or Revocation of Licenses

The Department (or Board) may suspend, revoke, or refuse to renew the license of any licensee who, after an open public hearing, is found by clear and convincing evidence to have:

- 1) practiced fraud, deceit, or misrepresentation in obtaining a license or in the performance of functions that constitute ophthalmic dispensing;
- 2) been convicted of a misdemeanor or felony reasonably related to and adversely affecting the licensee's ability to dispense eyeglasses or fit contact lenses; or
- 3) been adjudged by a court of law to be mentally incompetent.

c) Notification and Right of Appeal

The Department (or Board) shall notify licensees in writing of the reasons for any disciplinary actions taken.

Any disciplinary actions taken by the Department (or Board) shall be subject to review as provided by the State Administrative Procedures Act.

Fees: Section 12 authorizes the Department or Board to establish fees in amounts needed to cover the cost of administering the law.

Section 12. Fees.

The Department (or Board) shall establish and publish fees, in amounts determined by the Department (or Board) for the following purposes:

- a) application for examination;
- b) initial license fee;
- c) renewal of license fee;

Such fees shall be set in such an amount as to reimburse the Department (or Board) to the extent feasible for the cost of administrative services rendered.

Severability and Effective Date: Sections 13 and 14 provide for the severability of any provisions that are held to be unconstitutional and for a date upon which the law is to become effective.

Section 13. Severability.

If a part of this Act is held unconstitutional or invalid, all valid parts that are severable from the invalid or unconstitutional part shall remain in effect. If a part of this Act is held unconstitutional or invalid in one or more of its applications, the part shall remain in effect in all constitutional and valid applications that are severable from the invalid applications.

Section 14. Effective Date.

The Act shall take effect 60 days after enactment (unless state practice or convention require another effective date).