

REFERENCE TITLE: **optometry board; omnibus.**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1570

Introduced by
Senator Murphy

AN ACT

AMENDING SECTIONS 32-1701, 32-1702, 32-1706, 32-1722, 32-1723, 32-1725, 32-1771, 32-1773 AND 32-1774, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 32, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES, TO "NONRESIDENT DISPENSERS OF REPLACEMENT SOFT CONTACT LENSES AND PRESCRIPTION EYEGLASSES"; RELATING TO THE STATE BOARD OF OPTOMETRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1701, Arizona Revised Statutes, is amended to
3 read:

4 32-1701. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Board" means the state board of optometry.

7 2. "Conviction" means a judgment of conviction by any state or federal
8 court of competent jurisdiction in a criminal cause, regardless of whether an
9 appeal is pending or could be taken, and includes any judgment or order based
10 on a plea of no contest.

11 3. "Licensee" means a person licensed to practice the profession of
12 optometry pursuant to this chapter.

13 4. "Optometrist" or "doctor of optometry" means a person who has
14 graduated from an accredited college of optometry.

15 5. "Pharmaceutical" or "pharmaceutical agent" means a prescription or
16 nonprescription substance or a schedule III controlled substance used for
17 examination, diagnosis or treatment of conditions of the human eye and its
18 adnexa.

19 6. "Practice of the profession of optometry" means:

20 (a) The examination or refraction of the human eye and its appendages
21 and the employment of any objective or subjective means or methods other than
22 surgery for the purpose of diagnosing or treating any visual, muscular,
23 neurological or anatomical anomalies of the eye.

24 (b) The use of pharmaceutical agents authorized pursuant to this
25 chapter.

26 (c) The use of any instrument, **COMPUTER PROGRAM, LENS, PRISM** or device
27 to train the visual system or correct any abnormal condition of the eye or
28 eyes, **INCLUDING ORTHOPTICS, PLEOPTICS, VISION THERAPY OR NEUROREHABILITATION**
29 **OF THE VISUAL SYSTEM OR ANY SIMILAR TECHNIQUE.**

30 (d) The prescribing, fitting or employment of any lens, prism, frame
31 or mountings for the correction or relief of or aid to the visual function,
32 provided that superficial foreign bodies may be removed from the eye and its
33 appendages.

34 (e) The taking of smears of the human eye and its adnexa for culture
35 analysis and the ordering or performing of clinical tests that are
36 appropriate to diagnose, treat or manage conditions of the human eye and its
37 adnexa and that are limited to those CLIA-waived clinical tests approved
38 pursuant to 42 Code of Federal Regulations section 493.15.

39 7. "Surgery" means, in reference to the human eye and its appendages,
40 an invasive procedure in which in vivo human tissue is cut, burned,
41 vaporized, removed, coagulated or photodisrupted by use of an electrical
42 cautery, a scalpel, a cryoprobe, a laser or ionizing radiation. Surgery does
43 not include nonsurgical procedures, including the removal of superficial
44 foreign bodies or eyelashes or the use of lasers for diagnostic purposes.

45 8. "Unprofessional conduct" means:

1 (a) Wilful betrayal of a professional secret or wilful violation of a
2 privileged communication except as otherwise required by law.

3 (b) Charging a fee for services not rendered or dividing a
4 professional fee for patient referrals among health care providers or health
5 care institutions or between these providers and institutions or a
6 contractual arrangement that has the same effect. This subdivision does not
7 prohibit a bona fide lease based on the revenues earned by a licensee.

8 (c) Addiction to, or illegal use of, narcotic drugs or use of
9 intoxicating beverages to excess or practicing or attempting to practice the
10 profession of optometry while under the influence of intoxicating beverages
11 or narcotic drugs.

12 (d) Impersonating another licensee.

13 (e) Knowingly having professional connection with or lending one's
14 name to a person who is not a licensee.

15 (f) Gross negligence, repeated or continuing acts of negligence or
16 incompetence in the practice of optometry.

17 (g) Any conduct or practice, including incompetency, that constitutes
18 a danger to the health, welfare or safety of patients or the public.

19 (h) Prescribing, dispensing or pretending to use any secret means,
20 methods, device or instrumentality.

21 (i) Refusing to divulge to the board on demand the means, methods,
22 device or instrumentality used for optometric examination or therapy.

23 (j) Representing that a manifestly not correctable condition can be
24 permanently corrected or that a correctable condition can be corrected within
25 a stated time if this is not accurate.

26 (k) Knowingly making any false or fraudulent statement, written or
27 oral, in connection with the practice of the profession of optometry.

28 (l) Failing to comply with a board order or consent agreement.

29 (m) Fraud, forgery, unsworn falsification, false swearing or perjury
30 involving a matter before the board or a written instrument submitted to the
31 board.

32 (n) Wilfully and without legal justification failing to furnish in a
33 timely manner information that is necessary for the board to conduct an
34 investigation under this chapter and that has been requested or subpoenaed by
35 the board.

36 (o) Conduct that discredits the profession.

37 (p) Sexual intimacies with a patient in the course of care or
38 treatment.

39 (q) Falsely claiming attendance at a required continuing education
40 course.

41 (r) TRANSFERRING THE AUTHORITY OR CARE OF A PATIENT TO A PERSON WHO IS
42 NOT LICENSED PURSUANT TO THIS CHAPTER OR WHO IS NOT AN EMPLOYEE OF A PERSON
43 WHO IS LICENSED PURSUANT TO THIS CHAPTER OR CHAPTER 13 OR 17 OF THIS TITLE.

1 B. A licensee may prescribe, dispense and administer the following
2 oral prescription pharmaceuticals subject to the pharmaceutical agent
3 classifications specified in section 32-1728:

4 1. Antibiotics classified as tetracycline and its derivatives,
5 cephalosporins, penicillin and its derivatives and macrolides and antivirals
6 for the treatment of diseases of the eye and its adnexa. A licensee may
7 prescribe these antibiotics and antivirals for any one patient for each
8 occurrence for a period not more than the day limit recommended by the
9 manufacturer or by the physicians' desk reference. If the patient's
10 condition is other than blepharitis and does not improve during the first
11 seventy-two hours of treatment by means of an oral antibiotic or an oral
12 antiviral, the licensee shall consult with the patient's primary care
13 physician or other family physician for the purpose of referral of the
14 patient to a physician who specializes in ophthalmology, infectious diseases,
15 internal medicine or neurology. After the referral has been made, the
16 licensee shall consult with the specialist. The licensee shall note the
17 consultation in the patient's file. If the treatment is by oral antibiotics
18 for blepharitis and if the patient's condition does not improve during the
19 first ten days of treatment, the licensee shall request the patient's primary
20 care physician or other family physician to refer the patient to a physician
21 who specializes in ophthalmology, infectious diseases, internal medicine or
22 neurology. On notification of the referral the licensee shall consult with
23 the specialist. The licensee shall note the consultation in the patient's
24 file. If the condition is not resolved at the end of the normal treatment
25 period, the licensee shall request the patient's primary care physician or
26 other family physician to refer the patient to a physician who specializes in
27 ophthalmology, infectious diseases, internal medicine or neurology. On
28 notification of the referral the licensee shall consult with the specialist.
29 The licensee shall note the consultation in the patient's file. A licensee
30 shall not prescribe, dispense or administer an oral antibiotic or an oral
31 antiviral to a person who is under six years of age. For the purposes of
32 this paragraph, "physician" means a person who is licensed pursuant to
33 chapter 13 or 17 of this title.

34 2. Antihistamines. A licensee may prescribe an antihistamine for not
35 more than seven days for any one patient for each occurrence. If the
36 patient's condition does not improve during the first seven days of
37 treatment, the licensee shall refer the patient to the patient's primary care
38 physician or other physician licensed pursuant to chapter 13 or 17 of this
39 title.

40 3. ~~Nonprescription~~ Nonsteroidal anti-inflammatory agents. ~~A licensee~~
41 ~~may prescribe, dispense and administer these agents in dosages that exceed~~
42 ~~over-the-counter dosages but that do not exceed maximum dosages of~~
43 ~~counterpart prescription nonsteroidal anti-inflammatory agents.~~

44 C. A licensee may prescribe, dispense and administer a schedule III
45 controlled substance only if it is an analgesic.

1 D. A licensee shall not prescribe, dispense or administer the
2 following prescription substances:

- 3 1. An oral steroid.
- 4 2. An oral antifungal.
- 5 3. An oral carbonic anhydrase inhibitor.
- 6 4. An oral antimetabolite.
- 7 5. An oral immunosuppressive.
- 8 6. A substance administered intravenously.
- 9 7. Except as provided in subsection E OF THIS SECTION, substances
10 administered by injection.
- 11 8. A schedule I, II, IV or V controlled substance.
- 12 9. An oral agent for the treatment of closed angle glaucoma attack.

13 ~~10. Except as provided in subsection B, paragraph 3, an oral~~
14 ~~nonsteroidal anti-inflammatory agent.~~

15 E. A licensee may use epinephrine auto-injectors to counteract an
16 anaphylactic reaction. A licensee who uses auto-injectors may order and
17 maintain anaphylactic-related supplies. The board shall require a licensee
18 to maintain in the licensee's office medically necessary supportive equipment
19 and supplies that are used in connection with the treatment of an
20 anaphylactic reaction, including oxygen equipment, airway maintenance
21 equipment or other necessary equipment consistent with the prevailing
22 standard of care as specified by the board.

23 Sec. 4. Section 32-1722, Arizona Revised Statutes, is amended to read:

24 32-1722. Qualifications of applicant; applications

25 A. A person of good moral character who ~~desires~~ WISHES to engage in
26 the practice of the profession of optometry shall file with the board ~~not~~
27 ~~less than thirty days before the date on which an examination is to be held~~ a
28 verified application with the required application fee that includes:

- 29 1. The applicant's name, age and address.
- 30 2. Documentation of graduation from a university or college that
31 teaches the profession of optometry and that is accredited by a nationally
32 accepted accrediting body on optometric education.
- 33 3. Documentation of satisfactory completion of an equivalent course of
34 study that is approved by the board in didactic education, pharmacology and
35 clinical training in the examination, diagnosis and treatment of conditions
36 of the human eye and its adnexa AND that either:

37 (a) Meets the contemporary educational requirements at colleges of
38 optometry in the United States.

39 (b) Totals at least ~~one hundred twenty~~ EIGHTY hours.

40 4. Documentation of the successful passage of a written examination as
41 prescribed by the board.

42 5. Background information on a form prescribed by the attorney general
43 for the purpose of conducting an investigation into the existence of prior
44 arrests and convictions.

1 6. Disclosure of any investigation conducted or pending by an
2 optometric regulatory board in another jurisdiction in the United States.

3 B. On receipt of an application in proper form and containing the
4 information prescribed in subsection A of this section, the board may
5 investigate the applicant's character, ability and experience.

6 C. For the purposes of an investigation that is conducted pursuant to
7 subsection B of this section, the board may subpoena witnesses, administer
8 oaths and take testimony with respect to the character of the applicant or to
9 any matter affecting the application at a hearing held after sufficient
10 notice has been given.

11 D. If the board finds that the applicant has passed the examination
12 provided for under section 32-1724 and that the applicant's character,
13 ability and experience are satisfactory, the board shall issue a license.

14 Sec. 5. Section 32-1723, Arizona Revised Statutes, is amended to read:
15 32-1723. Licensure by endorsement

16 The board shall waive the written examination requirements of this
17 chapter if all of the following are true:

18 1. The applicant submits a license or a certified copy of a license to
19 practice optometry issued by the regulatory board of another jurisdiction of
20 the United States that has licensure requirements that the board determines
21 meet or exceed the requirements of this chapter.

22 2. The license of the applicant has not been suspended or revoked by
23 any other licensing jurisdiction of the United States for any cause that is a
24 ground for suspension or revocation of a license under this chapter.

25 3. The applicant has been engaged in the practice of the profession of
26 optometry continuously in the other licensing jurisdiction ~~OR IN A UNITED~~
27 ~~STATES MILITARY BRANCH OF SERVICE~~ for ~~not less than four~~ AT LEAST TWO of the
28 five years immediately preceding the application ~~or in the military~~.

29 4. The information provided by national data banks designated by the
30 board has successfully verified the applicant.

31 5. The applicant meets the requirements of section 32-1722 concerning
32 good moral character.

33 Sec. 6. Section 32-1725, Arizona Revised Statutes, is amended to read:
34 32-1725. Issuance of license

35 ~~THE BOARD SHALL ISSUE TO~~ each applicant who satisfactorily passes the
36 examination ~~shall upon payment of the issuance fee be issued~~ AND WHO PAYS THE
37 LICENSE ISSUANCE FEE PURSUANT TO SECTION 32-1727 a license under the seal and
38 signatures of the members of the board. ~~Failure to~~ AN APPLICANT WHO DOES NOT
39 pay the issuance fee within sixty days ~~necessitates the retaking of the~~
40 ~~examination-~~ MUST SUBMIT A NEW APPLICATION AND ALL APPLICABLE FEES PURSUANT
41 TO SECTION 32-1727.

42 Sec. 7. Heading change

43 The article heading of title 32, chapter 16, article 5, Arizona Revised
44 Statutes, is changed from "REPLACEMENT SOFT CONTACT LENSES" to "NONRESIDENT
45 DISPENSERS OF REPLACEMENT SOFT CONTACT LENSES AND PRESCRIPTION EYEGLASSES".

1 Sec. 8. Section 32-1771, Arizona Revised Statutes, is amended to read:
2 32-1771. Definitions
3 ~~For purposes of~~ IN this article, ~~except as~~ UNLESS the context otherwise
4 requires:

5 1. "Nonresident dispenser" means a person WHO IS not domiciled in this
6 state, who is licensed in the person's state of domicile to dispense
7 replacement soft contact lenses OR PRESCRIPTION EYEGLASSES and who dispenses
8 replacement SOFT contact lenses OR PRESCRIPTION EYEGLASSES to patients in
9 this state.

10 2. "PRESCRIPTION EYEGLASS" MEANS A LENS OR PRISM THAT HAS A FRAME OR
11 MOUNTINGS, THAT IS USED TO CORRECT, RELIEVE OR AID VISUAL FUNCTION AND THAT
12 IS ISSUED PURSUANT TO A PRESCRIPTION WRITTEN BY A LICENSED PERSON WHO IS
13 AUTHORIZED TO WRITE THE PRESCRIPTION.

14 ~~2-~~ 3. "Qualified dispenser" means a nonresident dispenser holding a
15 current registration with the board.

16 ~~3-~~ 4. "Replacement soft contact lenses" means hydrophilic lenses
17 ~~requiring no~~ THAT DO NOT REQUIRE fitting or adjustment AND that are dispensed
18 as packaged and sealed by the manufacturer.

19 Sec. 9. Section 32-1773, Arizona Revised Statutes, is amended to read:
20 32-1773. Registration of nonresident dispensers; fees;
21 qualifications; civil penalty

22 A. A nonresident dispenser may register with the board to dispense
23 replacement soft contact lenses OR PRESCRIPTION EYEGLASSES. Registration
24 ~~shall be~~ IS effective for two years and subject to renewal.

25 B. The board shall set a fee for registration and for renewal of
26 registration.

27 C. ~~Applicants~~ AN APPLICANT for registration or renewal shall provide
28 to the board at the time ~~for~~ OF registration or renewal on a form prescribed
29 by the board ~~their~~ THE APPLICANT'S name, ~~AND~~ address, THE name of principal
30 corporate officers, if any, and THE name of all general partners, if any.
31 The registration shall be accompanied by the required fee and a certified
32 copy of the applicant's license from the licensing authority in ~~their~~ THE
33 APPLICANT'S state of domicile and other information the board requires.

34 D. ~~Registered dispensers~~ A QUALIFIED DISPENSER shall submit a report
35 to the board within thirty days ~~of~~ AFTER the change of its address, OF any
36 officer, partner or pharmacist or of the status of its license in the state
37 of domicile.

38 E. ~~Registered dispensers~~ A QUALIFIED DISPENSER shall maintain at all
39 times a valid unexpired license, permit or registration to conduct the
40 business of a pharmacist or pharmacy in ~~their~~ THE QUALIFIED DISPENSER'S state
41 of domicile.

42 F. The board may suspend, revoke or refuse to renew the registration
43 of a ~~registered~~ QUALIFIED dispenser or impose a civil ~~sanction~~ PENALTY
44 against a ~~registered~~ QUALIFIED dispenser or any other person who:

45 1. Violates this article.

1 2. ~~Obtained~~ OBTAINS a registration by fraudulent or other material
2 misrepresentation.

3 3. Has been convicted of a felony.

4 4. Has had ~~their~~ A license suspended or revoked in any other
5 jurisdiction.

6 5. Violates any other Arizona or federal law regulating the dispensing
7 of replacement SOFT contact lenses OR PRESCRIPTION EYEGLASSES.

8 6. Commits an offense in another jurisdiction ~~which~~ THAT would be
9 grounds for revocation or suspension in this ~~jurisdiction~~ STATE.

10 G. The board shall issue a complaint to the registrant and set a
11 hearing, which shall conform to the requirements of title 41, chapter 6.

12 Sec. 10. Section 32-1774, Arizona Revised Statutes, is amended to
13 read:

14 32-1774. Dispensing of replacement soft contact lenses or
15 prescription eyeglasses by qualified dispensers;
16 prescriptions; warning; disclosures; records

17 A. A nonresident dispenser may not fill a prescription for replacement
18 soft contact lenses OR PRESCRIPTION EYEGLASSES without first having
19 registered with the board. A qualified dispenser may fill a prescription for
20 replacement soft contact lenses OR PRESCRIPTION EYEGLASSES only as provided
21 in this section.

22 B. A qualified dispenser may fill a prescription for replacement soft
23 contact lenses OR PRESCRIPTION EYEGLASSES that meets all of the following
24 requirements:

25 1. Conforms to state and federal statutes and regulations governing
26 those prescriptions and includes the name, office address, signature and
27 state license number of the prescribing physician or optometrist.

28 2. Explicitly states the date of issuance.

29 3. Explicitly states that the prescription is for REPLACEMENT SOFT
30 contact lenses OR PRESCRIPTION EYEGLASSES and includes the lens brand name,
31 type, ~~AND~~ tint and all other specifications necessary to accurately dispense
32 the prescription.

33 C. The qualified dispenser shall fill the prescription with the exact
34 lenses prescribed, and ~~no~~ substitutions shall NOT be made. The expiration
35 date of the prescription ~~shall be~~ IS the earlier of the expiration date
36 provided by the prescribing physician or optometrist or one year after the
37 date of issuance. The qualified dispenser shall fill a refill of a SOFT
38 CONTACT LENS prescription that is within sixty days ~~of~~ AFTER its expiration
39 date with no more than the sufficient quantity of replacement soft contact
40 lenses needed through the expiration date. The qualified dispenser shall
41 ensure that prescriptions are filled accurately.

42 D. The qualified dispenser shall provide the following or A
43 substantially equivalent written notification to the patient whenever
44 REPLACEMENT SOFT contact lenses are supplied:

1 Warning: If you are having any unexplained eye discomfort,
2 watering, vision change or redness, remove your lenses
3 immediately and consult your eye care practitioner before
4 wearing your lenses again.

5 E. Any advertisement by a qualified dispenser for replacement soft
6 contact lenses OR PRESCRIPTION EYEGLASSES shall include INFORMATION REGARDING
7 all fees, charges and costs associated with the purchase of replacement soft
8 contact lenses OR PRESCRIPTION EYEGLASSES from the qualified dispenser.

9 F. During its regular hours of operation, but at least six days per
10 week and for at least forty hours per week, a qualified ~~nonresident~~ dispenser
11 shall maintain a toll-free telephone service to facilitate communication
12 between patients in this state and a ~~registered~~ QUALIFIED dispenser who has
13 access to the patient's records. This toll-free number shall be disclosed on
14 a label affixed to each container of replacement soft contact lenses OR TO
15 THE PRESCRIPTION EYEGLASS CASE dispensed to patients in this state.

16 G. Qualified dispensers shall maintain records of replacement soft
17 contact lenses OR PRESCRIPTION EYEGLASSES dispensed to patients in this state
18 separate from records for patients in other states ~~such~~ SO that the records
19 for patients in this state are readily retrievable. Records shall be
20 maintained for a period of at least three years. A QUALIFIED DISPENSER MUST
21 MAKE records ~~shall be~~ available for BOARD inspection at the board's request.

22 Sec. 11. Retention of members

23 Notwithstanding section 32-1702, Arizona Revised Statutes, as amended
24 by this act, all persons serving as members of the state board of optometry
25 on the effective date of this act may continue to serve until the expiration
26 of their normal terms. The governor shall make all subsequent appointments
27 as prescribed by statute.