

HOUSE BILL No. 2525

AN ACT concerning the optometry law; amending K.S.A. 65-1509a, 65-1514, 65-1517 and 65-7003 and K.S.A. 2011 Supp. 65-1501, 65-1501a, 65-1505, 65-1509, 65-1518, 65-4101, 74-1503 and 74-1505 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2011 Supp. 65-1501 is hereby amended to read as follows: 65-1501. (a) The practice of optometry means:

(1) The examination of the human eye and its adnexae and the employment of objective or subjective means or methods (including the administering, prescribing or dispensing, of topical pharmaceutical drugs) for the purpose of diagnosing the refractive, muscular, or pathological condition thereof;

(2) the prescribing, dispensing or adapting of lenses (including any ophthalmic lenses which are classified as drugs by any law of the United States or of this state), prisms, low vision rehabilitation services, orthoptic exercises and visual training therapy for the relief of any insufficiencies or abnormal conditions of the human eye and its adnexae; and

(3) ~~except as otherwise limited by this section,~~ the prescribing, administering or dispensing of topical pharmaceutical drugs and oral drugs for the examination, diagnosis and treatment of *ocular conditions and* any insufficiencies or abnormal conditions of the human eye and its adnexae *including adult open angle glaucoma.*

(b) The practice of optometry shall not include: (1) The management and treatment of glaucoma, except as provided in subsection ~~(d)~~(a); (2) the performance of surgery, including the use of lasers for surgical purposes, except that ~~therapeutic~~ licensees may remove ~~superficial non-perforating~~ foreign bodies from the cornea and the conjunctiva; ~~(3) the use of topical pharmaceutical drugs by a person licensed to practice optometry unless such person successfully meets the requirements of a diagnostic licensee or a therapeutic licensee; and (4) the prescribing, administering and dispensing of oral drugs for ocular conditions by a person licensed to practice optometry unless such person successfully meets the requirements of a therapeutic licensee, except that such therapeutic licensee may prescribe or administer oral steroids or oral antiglaucoma drugs for ocular conditions following consultation with an ophthalmologist, which consultation shall be noted in writing in the patient's file. No optometrist may prescribe or administer oral drugs to persons less than six years of age or eyelids; remove eyelashes; scrape the cornea for diagnostic tests, smears or cultures; dilate, probe, irrigate or close by punctal plug the tear drainage structures of the eye; express conjunctival follicles or cysts; debridement of the corneal epithelium and co-management of post-operative care; or (3) the performance of procedures requiring anesthesia administered by injection or general anesthesia.~~

(c) A ~~therapeutic~~ licensee ~~certified to treat adult open-angle glaucoma as provided herein~~ shall be held to a standard of care in the use of such agents in diagnosis and treatment of *adult open - angle glaucoma* commensurate to that of a person licensed to practice medicine and surgery, who exercises that degree of skill and proficiency commonly exercised by an ordinary, skillful, careful and prudent person licensed to practice medicine and surgery.

(d) ~~An optometrist may prescribe, administer and dispense topical pharmaceutical drugs and oral drugs for the treatment of adult open-angle glaucoma only following glaucoma licensure as provided in subsection (1) of K.S.A. 65-1501a and amendments thereto. After the initial diagnosis of adult open-angle glaucoma, by an optometrist during the co-management period described in subsection (s) of K.S.A. 65-1501a and amendments thereto, the patient shall be notified that the diagnosis must be confirmed by an ophthalmologist and that any subsequent treatment requires a written co-management plan with an ophthalmologist of the patient's choice.~~

~~(e)~~ Under the direction and supervision of a ~~therapeutic~~ licensee, a licensed professional nurse, licensed practical nurse, licensed physical therapist and licensed occupational therapist may assist in the provision of low vision rehabilitation services in addition to such other services which such licensed professional nurse, licensed practical nurse, licensed physical therapist and licensed occupational therapist is authorized by law to provide under subsection (d) of K.S.A. 65-1113, subsection (h) of K.S.A. 65-1124, subsection (b) of K.S.A. 65-2901 and subsection (b) of K.S.A. 65-5402, and amendments thereto.

Sec. 2. K.S.A. 2011 Supp. 65-1501a is hereby amended to read as follows: 65-1501a. For the purposes of this act the following terms shall have the meanings respectively ascribed to them unless the context requires otherwise:

(a) “Board” means the board of examiners in optometry established under K.S.A. 74-1501 and amendments thereto.

(b) “License” means a license to practice optometry granted under the optometry law.

(c) “Licensee” means a person licensed under the optometry law to practice optometry.

(d) “Adapt” means the determination, selection, fitting or use of lenses, prisms, orthoptic exercises or visual training therapy for the aid of any insufficiencies or abnormal conditions of the eyes after or by examination or testing.

(e) “Lenses” means any type of ophthalmic lenses, which are lenses prescribed or used for the aid of any insufficiencies or abnormal conditions of the eyes.

(f) “Prescription” means a verbal ~~or~~, written *or electronic* order *transmitted directly or by electronic means* from a licensee giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the specifications and directions for lenses, prisms, orthoptic exercises, low vision rehabilitation services or visual training therapy to be used for the aid of any insufficiencies or abnormal conditions of the eyes, including instructions necessary for the fabrication or use thereof and the date of issue.

(g) “Prescription for topical pharmaceutical drugs or oral drugs” means a verbal ~~or~~, written *or electronic* order *transmitted directly or by electronic means* from a licensee ~~expressly certified to prescribe drugs under the optometry law and~~ giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, the number of refills permitted, the date of issue and expiration date.

(h) “Topical pharmaceutical drugs” means drugs administered topically and not by other means ~~for the examination, diagnosis and treatment of the human eye and its adnexae.~~

(i) “Dispense” means to deliver prescription-only medication or ophthalmic lenses to the ultimate user pursuant to the lawful prescription of a licensee and dispensing of prescription-only medication by a licensee shall be limited to a twenty-four hour supply or minimal quantity necessary until a prescription can be filled by a licensed pharmacist, except that the twenty-four hour supply or minimal quantity shall not apply to lenses described in subsection (a)(2) of K.S.A. 65-1501, and amendments thereto.

(j) ~~“Diagnostic licensee” means a person licensed under the optometry law and certified by the board to administer or dispense topical pharmaceutical drugs for diagnostic purposes.~~

~~—(k)—“Therapeutic licensee” means a person licensed under the optometry law and certified by the board to prescribe, administer or dispense topical pharmaceutical drugs for therapeutic purposes and oral drugs, following completion of a fifteen-hour course approved by the board pertaining to the use of oral drugs in ocular therapeutics, except that a person applying for therapeutic licensure who has graduated after January 1, 1999, from a school or college of optometry approved by the board shall not be required to take such course.~~

~~—(l)—“Glaucoma licensee” means a person described in subsections (j) and (k) of this section who is also licensed under the optometry law to manage and treat adult open-angle glaucoma by nonsurgical means, including the prescribing, administering and dispensing of topical pharmaceutical drugs and oral drugs.~~

~~—(m)—“False advertisement” means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.~~

~~(n)~~(k) “Advertisement” means all representations disseminated in any

manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services or ophthalmic goods.

~~(o)~~(l) “Health care provider” shall have the meaning ascribed to that term in subsection (f) of K.S.A. 40-3401, and amendments thereto.

~~(p)~~(m) “Medical facility” shall have the meaning ascribed to that term in subsection (c) of K.S.A. 65-411, and amendments thereto.

~~(q)~~(n) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.

~~(r)~~—“Co-management” means confirmation by an ophthalmologist of a licensee’s diagnosis of adult open-angle glaucoma together with a written treatment plan which includes (1) all tests and examinations supporting the diagnosis, (2) a schedule of tests and examinations necessary to treat the patient’s condition, (3) a medication plan, (4) a target intraocular pressure, (5) periodic review of the patient’s progress and (6) criteria for referral of the patient to an ophthalmologist for additional treatment or surgical intervention, except that any co-management plan may be modified only with the consent of both the ophthalmologist and the optometrist and the modification noted in writing on the patient’s record.

~~(s)~~—“Co-management period” means that period of time during which an optometrist co-manages patients either suspected of having or diagnosed as having adult open-angle glaucoma with an ophthalmologist.

~~(t)~~(o) “Ophthalmologist” means a person licensed to practice medicine and surgery by the state board of healing arts who specializes in the diagnosis and medical and surgical treatment of diseases and defects of the human eye and related structures.

~~(u)~~(p) “Low vision rehabilitation services” means the evaluation, diagnosis, management and care of the low vision patient including low vision rehabilitation therapy, education and interdisciplinary consultation under the direction and supervision of an ophthalmologist or optometrist.

~~(v)~~(q) “Oral drugs” means oral antibacterial drugs, oral antiviral drugs, oral antihistamines, oral analgesic drugs, oral steroids, oral antiglaucoma drugs and other oral drugs with clinically accepted ocular uses.

Sec. 3. K.S.A. 2011 Supp. 65-1505 is hereby amended to read as follows: 65-1505. (a) Persons entitled to practice optometry in Kansas shall be those persons licensed in accordance with the provisions of the optometry law. A person shall be qualified to be licensed and to receive a license as an optometrist: (1) Who is of good moral character; and in determining the moral character of any such person, the board may take into consideration any felony conviction of such person, but such conviction shall not automatically operate as a bar to licensure; (2) who has graduated from a school or college of optometry approved by the board; and (3) who successfully meets and completes the requirements set by the board and passes an examination given by the board. ~~All licenses issued on and after the effective date of this act, to persons not licensed in this state or in another state prior to July 1, 1996, shall be diagnostic, therapeutic and glaucoma licenses.~~

~~(b) All applicants for licensure or reciprocal licensure, except as provided in subsection (a) and (f), in addition to successfully completing all other requirements for licensure, shall take and successfully pass an examination required by the board before being certified by the board as a diagnostic and therapeutic licensee.~~

~~(c) All persons before taking the examination required by the board to be certified as a diagnostic and therapeutic licensee shall submit evidence satisfactory to the board of having successfully completed a course approved by the board in didactic education and clinical training in the examination, diagnosis and treatment of conditions of the human eye and its adnexae, totaling at least 100 hours.~~

~~(d) All applicants for glaucoma licensure, in addition to successfully completing all other requirements for licensure, shall submit evidence satisfactory to the board of: (1) professional liability insurance in an amount acceptable to the board; (2) completion of a course of instruction approved by the board after consultation with the interprofessional advisory committee which includes at least 24 hours of training in the treatment and co-management of adult open-angle glaucoma and (3) co-management for a period of at least 24 months and not less than 20 diagnoses of suspected or confirmed glaucoma, except that the board may eliminate~~

~~or shorten the co-management period, and eliminate or reduce the number of diagnoses of suspected or confirmed glaucoma for applicants for glaucoma licensure who graduate from approved optometric schools or colleges after July 1, 1998.~~

~~(e)(c)~~ Any person applying for examination by the board shall fill out and swear to an application furnished by the board, accompanied by a fee fixed by the board by rules and regulations in an amount of not to exceed \$450, and file the same with the secretary of the board at least 30 days prior to the holding of the examination. At such examinations the board shall examine each applicant in subjects taught in schools or colleges of optometry approved by the board, as may be required by the board. If such person complies with the other qualifications for licensing and passes such examination, such person shall receive from the board, upon the payment of a fee fixed by the board by rules and regulations in an amount of not to exceed \$150, a license entitling such person to practice optometry. In the event of the failure on the part of the applicant to pass the first examination, such person may, with the consent of the board, within 18 months, by filing an application accompanied by a fee fixed by the board by rules and regulations in an amount of not to exceed \$150, take a second examination; for the third and each subsequent examination a fee fixed by the board by rules and regulations in an amount of not to exceed \$150. Any examination fee and license fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

~~(f)(d)~~ ~~Subject to the requirements of subsection (h),~~ Any applicant for reciprocal licensure may in the board's discretion be licensed and issued a license without examination ~~in the category of licensure under the optometry law for which application is made~~ if the applicant has been in the active practice of optometry in another state for at least the three-year period immediately preceding the application for reciprocal licensure and the applicant:

(1) Presents a certified copy of a certificate of registration or license which has been issued to the applicant by another state where the requirements for licensure are deemed by the board to be equivalent to the requirements for licensure ~~in the category of licensure under this act for which application is made~~, if such state accords a like privilege to holders of a license issued by the board;

(2) submits a sworn statement of the licensing authority of such other state that the applicant's license has never been limited, suspended or revoked and that the applicant has never been censured or had other disciplinary action taken; ~~and~~

(3) successfully passes an examination of Kansas law administered by the board and such clinical practice examination as the board deems necessary; *and*

~~Subject to the requirements of subsection (h), if such applicant was first licensed in another state prior to July 1, 1987, the applicant shall be required to satisfy only the requirements of the category of licensure under the optometry law for which application is made and which existed in this state at the time of the applicant's licensure in such other state; or, if such requirements did not exist in this state at the time of the applicant's licensure in such other state, the applicant shall be required to satisfy only the requirements of the category of licensure under the optometry law for which application is made which originally were required for that category of licensure. If such applicant was first licensed in another state on or after July 1, 1987, the applicant shall apply to initially be issued a diagnostic and therapeutic license and shall be required to satisfy all the requirements of that category of licensure under this act. The fee for licensing such applicants shall be fixed by the board by rules and regulations in an amount of not to exceed \$450. The reciprocal license fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.~~

~~(4) pays the reciprocal license fixed by the board by rules and regulations in an amount of not to exceed \$450. The reciprocal license fee fixed by the board under this subsection which is in effect on the day preceding~~

the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

~~(g)~~(e) The board shall adopt rules and regulations establishing the criteria which a school or college of optometry shall satisfy in meeting the requirement of approval by the board established under subsection (a). The board may send a questionnaire developed by the board to any school or college of optometry for which the board does not have sufficient information to determine whether the school or college meets the requirements for approval and rules and regulations adopted under this act. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school or college to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools or colleges. In entering such contracts the authority to approve schools or colleges shall remain solely with the board.

~~(h) To be entitled to practice optometry in Kansas after May 31, 2009, an optometrist must have met the requirements of and become a therapeutic licensee. To be entitled to practice optometry in Kansas after May 31, 2010, an optometrist must have met: (1) The requirements of and become a therapeutic licensee and (2) the requirements of and become a glaucoma licensee.~~

(f) (1) *The board may require an applicant for licensure or a licensee in connection with an investigation of the licensee to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the licensee or applicant for licensure and to determine whether the licensee or applicant for licensure has a record of criminal arrests and convictions in this state or other jurisdictions. The board is authorized to submit the fingerprints to the Kansas bureau of investigation, the federal bureau of investigation or any other law enforcement or criminal justice agency for a state and national criminal history record check. The board may use the information obtained through the criminal history record check for the purposes of verifying the identification of the licensee or applicant for licensure and in the official character and fitness determination of the licensee or applicant for licensure to practice optometry in this state.*

(2) *Local and state law enforcement officers and agencies shall assist the board in taking and processing fingerprints of licensees and applicants for licensure and shall release to the board all records of adult convictions, arrests and nonconvictions in this state and all records of adult convictions, arrests and nonconvictions of any other state or country. The board may enter into agreements with the Kansas bureau of investigation, the federal bureau of investigation or any other law enforcement or criminal justice agency as necessary to carry out the duties of the board under this act.*

(3) *The fingerprints and all information obtained from the criminal history record check shall be confidential and shall not be disclosed except to members of the board and agents and employees of the board as necessary to verify the identification of any licensee or applicant for licensure and in the official character and fitness determination of the licensee or applicant for licensure to practice optometry in this state. Any other disclosure of such confidential information shall constitute a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act.*

(4) (A) *The board shall fix a fee for fingerprinting applicants or licensees in an amount necessary to reimburse the board for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the criminal history and fingerprinting fund.*

(B) *There is hereby created in the state treasury the criminal history and fingerprinting fund. All moneys credited to the fund shall be used to pay all costs and fees associated with processing of fingerprints and criminal history checks for the board of examiners in optometry. The fund shall be administered by the board. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.*

Sec. 4. K.S.A. 2011 Supp. 65-1509 is hereby amended to read as

follows: 65-1509. (a) Before engaging in the practice of optometry in this state, it shall be the duty of each licensed optometrist to notify the board in writing of the address of the office or offices where such licensee is to engage or intends to engage in the practice of optometry and of any changes in the licensee's location of practice. Any notice required to be given by the board to any licensed optometrist may be given by mailing to such address through the United States mail, postpaid, *or by electronic means to such electronic mail or facsimile address provided by the licensed optometrist to the board for such purpose.*

(b) Any license to practice optometry issued by the board shall expire on May 31 of the year specified by the board for the expiration of the license and shall be renewed on a biennial basis in accordance with this section. The request for renewal shall be on a form provided by the board and shall be accompanied by the prescribed fee, which shall be paid no later than the expiration date of the license.

~~(c) Commencing with the renewal of licenses that expire on May 31, 2004,~~ Each license shall be renewed on a biennial basis. To provide for a system of biennial renewal of licenses, the board may provide by rules and regulations that licenses issued or renewed may expire less than two years from the date of issuance or renewal and for the proration of fees accordingly. On or before May 1 each year, the board shall determine the amount that may be necessary for the next ensuing fiscal year to carry out and enforce the provisions of the optometry law, and shall fix by rules and regulations the renewal fee and the fees provided for in K.S.A. 65-1505, and amendments thereto, in such amounts as may be necessary for that purpose. The biennial renewal fee shall not exceed \$800. Upon fixing such fees, the board shall immediately notify all licensees of the amount of such fees for the ensuing biennial renewal period. In every renewal year hereafter, every licensed optometrist shall pay to the board of examiners a fee for a renewal of such license for each biennial renewal period. The license renewal fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

(d) The payment of the renewal fee by the person who is a holder of a license as an optometrist but who has not complied with the continuing education requirements fixed by the board, if no grounds exist for denying the renewal of the license other than that the person has not complied with the continuing education requirements fixed by the board, shall entitle the person to inactive status licensure by the board. No person holding an inactive status license from the board shall engage in the practice of optometry in this state. A person holding an inactive status license from the board shall be entitled to cancellation of the inactive status license and to renewal of licensure as an optometrist upon furnishing satisfactory evidence to the board that such person has obtained the equivalent of all missed continuing education requirements to date, and payment of an additional fee fixed by the board through rule and regulation in an amount not to exceed \$450.

(e) At least 30 days before the expiration of the licensee's license, the board shall notify each licensee of the expiration ~~by mail addressed to the licensee's last known address~~ *provided in subsection (a) of this section.* If the licensee fails to pay the ~~annual~~ *biennial* fee or show proof of compliance with the continuing education requirements by the date of the expiration of the license, the *board shall provide such licensee* ~~shall be mailed as provided in subsection (a) of this section~~ a second notice that the licensee's license has expired, that the board shall suspend action for 30 days following the date of expiration, that upon receipt of the ~~annual~~ *biennial* fee together with an additional fee not to exceed \$500, within the thirty-day period, no order of cancellation will be entered and that, if both fees are not received within the thirty-day period, the license shall be canceled.

~~(f) To have a license to practice optometry in Kansas renewed after May 31, 2008, an optometrist must have met the requirements of and become a therapeutic licensee. To have a license to practice optometry in Kansas renewed after May 31, 2010, an optometrist must have met:~~ (1) The requirements of and become a therapeutic licensee and (2) the requirements of and become a glaucoma licensee.

~~(g) Any licensee who allows the licensee's license to lapse or be can-~~

celed by failing to renew as herein provided, may be reinstated by the board upon payment of the renewal fees then due and upon proof of compliance with the continuing education requirements established by the board. As an additional requirement of reinstatement, in cases in which the board deems it appropriate, the licensee may be required to successfully pass the examination given by the board to applicants for licensure or such other competency examination as the board may choose.

Sec. 5. K.S.A. 65-1509a is hereby amended to read as follows: 65-1509a. In addition to the payment of the license renewal fee, each licensee, ~~other than one who has graduated from an optometry school within 12 months of the date of the application for renewal,~~ applying for license renewal shall furnish to the secretary of the board satisfactory evidence of successfully completing a minimum of 24 hours of continuing education ~~programs~~ *annually*, five hours of which shall relate to ocular pharmacology, therapeutics or related topics of study, approved by the board in the year just preceding such application for the renewal of the license. The board, in its discretion, may increase the required hours of continuing education by rules and regulations adopted by the board. On or before April 1 of each year, the secretary of the board shall send a written notice of continuing education requirements to this effect to every person holding a valid license to practice optometry within the state *as provided in subsection (a) of K.S.A. 65-1509, and amendments thereto.* ~~Such notice shall be directed to the last known address of such licensee.~~

Sec. 6. K.S.A. 65-1514 is hereby amended to read as follows: 65-1514. The provisions of K.S.A. 65-1501a, ~~65-1504a~~, 65-1504b, 65-1509a and 65-1516 to ~~65-1525~~ 65-1526, inclusive, and amendments thereto, are a part of and supplemental to the optometry law.

Sec. 7. K.S.A. 65-1517 is hereby amended to read as follows: 65-1517. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, upon a finding of the existence of any of the following grounds:

- (a) The licensee has committed fraud or misrepresentation in applying for or securing an original or renewal license.
- (b) The licensee has committed an act of unprofessional conduct or professional incompetence.
- (c) The licensee has been convicted of a felony, whether or not related to the practice of optometry.
- (d) The licensee has used fraudulent or false advertisements.
- (e) The licensee has willfully or repeatedly violated the optometry law, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto.
- (f) The licensee has ~~unlawfully performed practice acts of optometry for which the licensee is not licensed to practice~~ *violated an order of the board.*
- (g) The licensee has failed to pay ~~annual~~ renewal fees specified in this act.
- (h) The licensee has failed to comply with the annual continuing education requirements as required by this act and the board.
- (i) The licensee has engaged in the practice of optometry under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.
- (j) The licensee has the inability to perform optometry practice acts ~~for which the licensee is licensed~~ with reasonable skill and safety to patients by reason of illness, alcoholism, excessive use of drugs, controlled substances, chemical or any other type of material or as a result of any mental or physical condition. In determining whether or not such inability exists, the board, upon probable cause, shall have authority to compel a licensee to submit to mental or physical examination by such persons as the board may designate. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination. A person affected by this subsection shall be offered, at reasonable intervals an opportunity to demonstrate that such person can resume the competent practice of optometry with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to prac-

tice optometry and who shall accept the privilege to practice optometry in this state by so practicing or by the making and filing of an annual renewal to practice optometry in this state shall be deemed to have consented to submit to a mental and physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the testimony or examination report of the person conducting such examination at any proceeding or hearing before the board on the grounds that such testimony or examination report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination shall not be used in any other administrative or judicial proceeding.

(k) The licensee has had a license to practice optometry revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(l) The licensee has violated any lawful rules and regulations promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(m) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(n) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(o) The licensee has violated a federal law or regulation relating to controlled substances.

(p) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(q) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(r) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(s) The licensee has surrendered a license or authorization to practice optometry in another state or jurisdiction or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice optometry in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments thereto, or pay the annual premium as required by K.S.A. 40-3404, and amendments thereto.

(x) The licensee has knowingly submitted any misleading, deceptive, false or fraudulent representation on a claim form bill or statement.

(y) The licensee has failed to provide to a patient the patient's written

prescription for lenses for eyeglasses subsequent to the completion of the eye examination in accordance with applicable state or federal law.

Sec. 8. K.S.A. 2011 Supp. 65-1518 is hereby amended to read as follows: 65-1518. (a) All administrative proceedings provided for by article 15 of chapter 65 of the Kansas Statutes Annotated and affecting any licensee licensed under that article shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Judicial review and civil enforcement of any agency action under article 15 of chapter 65 of the Kansas Statutes Annotated shall be in accordance with the Kansas judicial review act.

(c) If any order of the board in any administrative proceedings provided for by article 15 of chapter 65 of the Kansas Statutes Annotated is adverse to the licensee the costs ~~shall be charged to the licensee as in ordinary civil actions in the district court. Witness fees and costs may be taxed in accordance with the statutes governing taxation of witness fees and costs in the district court~~ incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances, including the nature of the proceeding and the level of participation by the parties. If the board is the unsuccessful party, the costs shall be paid from the optometry fee fund. For purposes of this subsection, costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, witness fees and expenses, mileage, travel allowances and subsistence expenses of board employees and fees and expenses of agents of the board who provide services pursuant to K.S.A. 74-1504, and amendments thereto. Costs incurred shall not include presiding officer fees and expenses or costs of making and preparing the record unless the board has designated or retained the services of independent contractors to perform such functions. The board shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

Sec. 9. K.S.A. 2011 Supp. 74-1505 is hereby amended to read as follows: 74-1505. (a) ~~No later than 30 days following the effective date of this act, The board shall appoint a seven-member committee to be known as the interprofessional advisory committee which, subject to approval of the board, shall have general responsibility for the establishment, review and monitoring of the procedures for co-management by optometrists and ophthalmologists of adult open-angle glaucoma as requested by the board, shall make recommendations on clinical or practice related issues, including procedure coding matters and appropriate treatments for ocular diseases and conditions.~~

(b) The interprofessional advisory committee shall consist of one member of the board appointed by the board who shall serve as a non-voting chair, together with three optometrists licensed to practice optometry in this state chosen by the board from those nominated by the Kansas optometric association and three ophthalmologists licensed to practice in this state chosen by the board from those nominated by the Kansas medical society and the Kansas association of osteopathic medicine. The Kansas optometric association and Kansas medical society shall submit six nominees to the board. The Kansas association of osteopathic medicine shall submit two nominees to the board. Persons appointed to the committee shall serve terms of three years and without compensation. All expenses of the committee shall be paid by the board.

(c) ~~The committee shall submit recommendations to the board on the following:~~

- ~~—(1) An ongoing quality assessment program including the monitoring and review of co-management of patients pursuant to subsection (d) of K.S.A. 65-1505 and amendments thereto;~~
- ~~—(2) requirements for the education and clinical training necessary for glaucoma licensure, which shall be submitted to the board within 90 days following appointment;~~
- ~~—(3) criteria for evaluating the training or experience acquired in other states by applicants for glaucoma licensure;~~
- ~~—(4) requirements for annual reporting during a glaucoma licensee's~~

~~co-management period to the committee and the board which shall be submitted to the board within 90 days following appointment;~~

~~—(5) the classes and mix of patients either suspected of having or diagnosed as having adult open angle glaucoma who may be included in the number of co-management cases required by subsection (d) of K.S.A. 65-1505 and amendments thereto, which shall be submitted to the board within 90 days following appointment, and~~

~~—(6) requirements for annual continuing education by glaucoma licensees;~~

~~—(d) After considering the recommendations of the committee pursuant to subparagraph (c), the board shall proceed to adopt procedures to confirm that each applicant has completed the requirements for glaucoma licensure.~~

~~—(e) The interprofessional advisory committee shall also review the educational and clinical prerequisites of optometrists to use oral pharmaceutical drugs and identify those classes of oral pharmaceutical drugs which are effective treatments for ocular diseases and conditions.~~

~~—(f) The interprofessional advisory committee shall review the advisability of expanding the scope of practice of optometrists to prescribe certain oral drugs for ocular conditions for children under six years of age.~~

~~—(g) The interprofessional advisory committee shall review new classes of drugs with ocular uses and advise the Kansas state board of examiners in optometry about such drugs.~~

~~—(h) This section shall be part of and supplemental to the optometry law.~~

Sec. 10. K.S.A. 2011 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) “Board” means the state board of pharmacy.

(d) “Bureau” means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) “Controlled substance” means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(f) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.

(i) “Dispenser” means a practitioner or pharmacist who dispenses.

(j) “Distribute” means to deliver other than by administering or dispensing a controlled substance.

(k) “Distributor” means a person who distributes.

(l) “Drug” means: (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances

(other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

(m) “Immediate precursor” means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual’s own lawful use or the preparation, compounding, packaging or labeling of a controlled substance: (1) By a practitioner or the practitioner’s agent pursuant to a lawful order of a practitioner as an incident to the practitioner’s administering or dispensing of a controlled substance in the course of the practitioner’s professional practice; or

(2) by a practitioner or by the practitioner’s authorized agent under such practitioner’s supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) “Marijuana” means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(p) “Narcotic drug” means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis: (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) “Opium poppy” means the plant of the species *Papaver somniferum l.* except its seeds.

(s) “Person” means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(t) “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

(u) “Pharmacist” means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) “Practitioner” means a person licensed to practice medicine and

surgery, dentist, podiatrist, veterinarian, optometrist ~~licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee~~, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) “Ultimate user” means a person who lawfully possesses a controlled substance for such person’s own use or for the use of a member of such person’s household or for administering to an animal owned by such person or by a member of such person’s household.

(y) “Isomer” means all enantiomers and diastereomers.

(z) “Medical care facility” shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.

(aa) “Cultivate” means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(bb) (1) “Controlled substance analog” means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) “Controlled substance analog” does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with respect to the substance is permitted by the exemption.

(cc) “Mid-level practitioner” means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

Sec. 11. K.S.A. 65-7003 is hereby amended to read as follows: 65-7003. As used in K.S.A. 65-7001 through 65-7015, and amendments thereto:

(a) “Act” means the Kansas chemical control act;

(b) “administer” means the application of a regulated chemical whether by injection, inhalation, ingestion or any other means, directly into the body of a patient or research subject, such administration to be conducted by: (1) A practitioner, or in the practitioner’s presence, by such practitioner’s authorized agent; or

(2) the patient or research subject at the direction and in the presence of the practitioner;

(c) “agent or representative” means a person who is authorized to receive, possess, manufacture or distribute or in any other manner control or has access to a regulated chemical on behalf of another person;

(d) “bureau” means the Kansas bureau of investigation;

(e) “department” means the Kansas department of health and environment;

(f) “director” means the director of the Kansas bureau of investigation;

(g) “dispense” means to deliver a regulated chemical to an ultimate user, patient or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the regulated chemical for that delivery;

(h) “distribute” means to deliver other than by administering or dispensing a regulated chemical;

(i) “manufacture” means to produce, prepare, propagate, compound, convert or process a regulated chemical directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, and includes packaging or repackaging of the substance or labeling or relabeling of its container. The term excludes the preparation, compounding, packaging, repackaging, labeling or relabeling of a regulated chemical:

(1) By a practitioner as an incident to the practitioner’s administering or dispensing of a regulated chemical in the course of the practitioner’s professional practice; or

(2) by a practitioner, or by the practitioner’s authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to research, teaching or chemical analysis and not for sale;

(j) “person” means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity;

(k) “practitioner” means a person licensed to practice medicine and surgery, pharmacist, dentist, podiatrist, veterinarian, optometrist ~~licensed under the optometry laws as a therapeutic licensee or diagnostic and therapeutic licensee~~, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance;

(l) “regulated chemical” means a chemical that is used directly or indirectly to manufacture a controlled substance or other regulated chemical, or is used as a controlled substance analog, in violation of the state controlled substances act or this act. The fact that a chemical may be used for a purpose other than the manufacturing of a controlled substance or regulated chemical does not exempt it from the provisions of this act. Regulated chemical includes:

- (1) Acetic anhydride (CAS No. 108-24-7);
- (2) benzaldehyde (CAS No. 100-52-7);
- (3) benzyl chloride (CAS No. 100-44-7);
- (4) benzyl cyanide (CAS No. 140-29-4);
- (5) diethylamine and its salts (CAS No. 109-89-7);
- (6) ephedrine, its salts, optical isomers and salts of optical isomers (CAS No. 299-42-3), except products containing ephedra or ma huang, which do not contain any chemically synthesized ephedrine alkaloids, and are lawfully marketed as dietary supplements under federal law;
- (7) hydriodic acid (CAS No. 10034-85-2);
- (8) iodine (CAS No. 7553-56-2);
- (9) lithium (CAS No. 7439-93-2);
- (10) methylamine and its salts (CAS No. 74-89-5);
- (11) nitroethane (CAS No. 79-24-3);
- (12) chloroephedrine, its salts, optical isomers, and salts of optical isomers (CAS No. 30572-91-9);
- (13) phenylacetic acid, its esters and salts (CAS No. 103-82-2);
- (14) phenylpropanolamine, its salts, optical isomers, and salts of optical isomers (CAS No. 14838-15-4);
- (15) piperidine and its salts (CAS No. 110-89-4);
- (16) pseudoephedrine, its salts, optical isomers, and salts of optical isomers (CAS No. 90-82-4);
- (17) red phosphorous (CAS No. 7723-14-0);
- (18) sodium (CAS No. 7440-23-5); and
- (19) thionylchloride (CAS No. 7719-09-7);
- (20) gamma butyrolactone (GBL), including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone; CAS No. 96-48-0; and

(21) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol; CAS No. 110-63-4;

(m) “regulated chemical distributor” means any person subject to the provisions of the Kansas chemical control act who manufactures or distributes a regulated chemical;

(n) “regulated chemical retailer” means any person who sells regulated chemicals directly to the public;

(o) “regulated chemical transaction” means the manufacture of a regulated chemical or the distribution, sale, exchange or other transfer of a regulated chemical within or into the state or from this state into another state; and

(p) “secretary” means the secretary of health and environment.

Sec. 12. K.S.A. 2011 Supp. 74-1503 is hereby amended to read as follows: 74-1503. (a) At the regular meeting of the board in April of every year it shall elect from its own membership a president, a vice-president and a secretary-treasurer. Members of the board of examiners in optometry attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The board may appoint a secretary-treasurer who shall be in the unclassified service of the Kansas civil service act. The secretary-treasurer shall receive an annual salary which shall be fixed by the board and approved by the state finance council.

(b) The board shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the optometry fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president.

(c) *There is hereby created in the state treasury the optometry litigation fund. All moneys credited to the fund shall be used to pay all costs and fees associated with litigation expenses of the board of examiners in optometry. The unencumbered balance in such fund shall not exceed \$400,000. The fund shall be administered by the board. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.*

Sec. 13. K.S.A. 65-1509a, 65-1514, 65-1517 and 65-7003 and K.S.A. 2011 Supp. 65-1501, 65-1501a, 65-1505, 65-1509, 65-1518, 65-4101, 74-1503 and 74-1505 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.