

**ASSEMBLY BILL**

**No. 488**

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**Introduced by Assembly Member Bermudez**

February 16, 2005

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An act to amend Sections 3145, 3146, 3147, 3147.6, 3148, 3150, 3152, and 3152.5 of, to amend and renumber Sections 3090.1, 3096, 3096.5, 3096.6, 3096.7, 3097, 3099, 3100, 3103, 3124, 3128, 3129, 3130, 3131, and 3135 of, to add Sections 3091, 3092, and 3110 to, to repeal Sections 3094, 3095, 3101, 3102, 3104, 3105, 3105.1, 3106, 3107, 3107.1, 3108, 3109, 3120, 3123, 3125, 3126, and 3127 of, and to repeal and add Section 3090 of, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 488, as introduced, Bermudez. Optometry.

Existing law, the Optometry Practice Act, licenses and regulates the practice of optometry by the State Board of Optometry, and makes a violation of the act a crime.

This bill would authorize the board to issue a probationary license to an applicant, subject to specified terms and conditions.

Existing law sets forth acts that constitute unprofessional conduct and acts that are unlawful, and authorizes the board to take specified action against licensees.

This bill would delete the provision making a violation of the act a crime, and would revise and recast provisions relating to unprofessional conduct. The bill would authorize the Attorney General to prosecute a licensee for unprofessional conduct under the Administrative Procedure Act.

Existing law prohibits the board from maintaining a reserve balance in the Optometry Fund that is greater than 6 months of the appropriated operating expenses of the board in any fiscal year.

This bill would delete this prohibition.

Existing law authorizes the board to establish various fees and penalties related to the practice of optometry. Existing law requires the board to submit a report to certain committees of the Legislature whenever the board increases a fee.

This bill would delete the reporting requirement. The bill would also require a holder of a license that has been reinstated after its expiration to pay a reinstatement fee, thereby making an appropriation and would make various changes to other fees.

The bill would make related changes.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3090 of the Business and Professions  
2 Code is repealed.

3 ~~3090. The certificate of registration of any person registered~~  
4 ~~under this chapter, or any former act relating to the practice of~~  
5 ~~optometry, may be revoked or suspended for a fixed period by~~  
6 ~~the board for any of the following:~~

7 ~~(a) Violating or attempting to violate, directly or indirectly, or~~  
8 ~~assisting in or abetting the violation of, or conspiring to violate,~~  
9 ~~any provision of this chapter or of the rules and regulations~~  
10 ~~adopted by the board pursuant to this chapter and in accordance~~  
11 ~~with Chapter 3.5 (commencing with Section 11340) of Part 1 of~~  
12 ~~Division 3 of Title 2 of the Government Code. The proceedings~~  
13 ~~under this article shall be conducted in accordance with Chapter~~  
14 ~~5 (commencing with Section 11500) of Part 1 of Division 3 of~~  
15 ~~Title 2 of the Government Code, and the board shall have all the~~  
16 ~~powers granted therein.~~

17 ~~(b) Unprofessional conduct.~~

18 ~~(c) Gross ignorance.~~

19 ~~(d) Inefficiency in his or her profession.~~

20 SEC. 2. Section 3090 is added to the Business and Professions  
21 Code, to read:

1 3090. Except as otherwise provided by law, the board may  
2 take action against all persons guilty of violating this chapter.  
3 The board shall enforce and administer this article as to license  
4 holders, and the board shall have all the powers granted in this  
5 chapter for these purposes including, but not limited to,  
6 investigating complaints from the public, other licensees, health  
7 care facilities, other licensing agencies, or any other source  
8 suggesting that an optometrist may be guilty of unprofessional  
9 conduct.

10 SEC. 3. Section 3090.1 of the Business and Professions Code  
11 is amended and renumbered to read:

12 ~~3090.1.~~

13 3096. (a) A licensee may be ordered to undergo a  
14 professional competency examination if, after investigation and  
15 review by the Board of Optometry, there is reasonable cause to  
16 believe that the licensee is unable to practice optometry with  
17 reasonable skill and safety to patients. Reasonable cause shall be  
18 demonstrated by one or more of the following: ~~(1) a~~

19 ~~(1) A single incident of gross negligence; (2) a.~~

20 ~~(2) A pattern of inappropriate prescribing; (3) an.~~

21 ~~(3) An act of incompetence or negligence causing death or~~  
22 ~~serious bodily injury; or (4) a.~~

23 ~~(4) A pattern of substandard care.~~

24 (b) The results of a competency examination shall be  
25 admissible as direct evidence and may be considered relevant in  
26 any subsequent disciplinary or interim proceeding against the  
27 licensee taking the examination, and, assuming those results are  
28 determined to be relevant, shall be considered together with other  
29 relevant evidence in making a final determination.

30 SEC. 4. Section 3091 is added to the Business and Professions  
31 Code, to read:

32 3091. (a) The board may deny an optometrist's license to any  
33 applicant guilty of unprofessional conduct or of any cause that  
34 would subject a licensee to revocation or suspension of his or her  
35 license; or, the board in its sole discretion, may issue a  
36 probationary license to an applicant subject to terms and  
37 conditions, including, but not limited to, any of the following  
38 conditions of probation:

- 1 (1) Practice limited to a supervised, structured environment in
- 2 which the licensee’s activities shall be supervised by another
- 3 optometrist licensed by the board.
- 4 (2) Total or partial restrictions on drug prescribing privileges
- 5 for controlled substances.
- 6 (3) Continuing medical or psychiatric treatment.
- 7 (4) Ongoing participation in a specified rehabilitation
- 8 program.
- 9 (5) Enrollment and successful completion of a clinical training
- 10 program.
- 11 (6) Abstention from the use of alcohol or drugs.
- 12 (7) Restrictions against engaging in certain types of optometry
- 13 practice.
- 14 (8) Compliance with all provisions of this chapter.
- 15 (9) Any other terms and conditions deemed appropriate by the
- 16 board.

17 (b) The board may modify or terminate the terms and  
 18 conditions imposed on the probationary license if the licensee  
 19 petitions for modification or termination of terms and conditions  
 20 of probation. A licensee shall not petition for modification or  
 21 termination of terms and conditions until one year has passed  
 22 from the effective date of the decision granting the probationary  
 23 license.

24 SEC. 5. Section 3092 is added to the Business and Professions  
 25 Code, to read:

26 3092. All proceedings against a licensee for unprofessional  
 27 conduct, or against an applicant for licensure for unprofessional  
 28 conduct or cause, shall be conducted in accordance with the  
 29 Administrative Procedure Act (Chapter 5 (commencing with  
 30 Section 11500) of Part 1 of Division 3 of Title 2 of the  
 31 Government Code) except as provided in this chapter, and shall  
 32 be prosecuted by the Attorney General’s Office.

33 SEC. 6. Section 3094 of the Business and Professions Code is  
 34 repealed.

35 ~~3094. The conviction of a crime substantially related to the~~  
 36 ~~qualifications, functions and duties of an optometrist constitutes~~  
 37 ~~a cause to revoke or suspend a certificate of registration. The~~  
 38 ~~record of conviction or a certified copy thereof certified by the~~  
 39 ~~clerk of the court or by the judge in whose court the conviction is~~  
 40 ~~had, is conclusive evidence of the conviction.~~

1 SEC. 7. Section 3095 of the Business and Professions Code is  
2 repealed.

3 ~~3095. The securing of a certificate of registration as an  
4 optometrist or of any other license or permit issued by the board  
5 by willfully given false information or a willfully made false  
6 statement, in a material regard on any application to the board, or  
7 by fraud or deceit practiced upon the board constitutes a cause to  
8 revoke or suspend the certificate of registration or the other  
9 license or permit.~~

10 SEC. 8. Section 3096 of the Business and Professions Code is  
11 amended and renumbered to read:

12 ~~3096.~~

13 ~~3097. The sending of a solicitor from house to house or the  
14 soliciting from house to house by the holder of a certificate of  
15 registration constitutes a cause to revoke or suspend his  
16 certificate of registration.~~

17 SEC. 9. Section 3096.5 of the Business and Professions Code  
18 is amended and renumbered to read:

19 ~~3096.5.~~

20 ~~3099. No optometrist shall advertise or otherwise hold  
21 himself or herself out to be a specialist in eye disease and the  
22 treatment thereof.~~

23 SEC. 10. Section 3096.6 of the Business and Professions  
24 Code is amended and renumbered to read:

25 ~~3096.6.~~

26 ~~3106. Knowingly making or signing any certificate or other  
27 document directly or indirectly related to the practice of  
28 optometry that falsely represents the existence or nonexistence of  
29 a state of facts constitutes unprofessional conduct. Section 3120  
30 shall not apply to this section.~~

31 SEC. 11. Section 3096.7 of the Business and Professions  
32 Code is amended and renumbered to read:

33 ~~3096.7.~~

34 ~~3105. Altering or modifying the medical record of any person,  
35 with fraudulent intent, or creating any false medical record, with  
36 fraudulent intent, constitutes unprofessional conduct. In addition  
37 to any other disciplinary action, the State Board of Optometry  
38 may impose a civil penalty of five hundred dollars (\$500) for a  
39 violation of this section. Section 3120 shall not apply to this  
40 section.~~

1 SEC. 12. Section 3097 of the Business and Professions Code  
2 is amended and renumbered to read:

3 ~~3097.~~

4 3108. When the holder is suffering from a contagious or  
5 infectious disease, it constitutes a cause to suspend his *or her*  
6 certificate of registration during the period of continuance of  
7 ~~such~~ that disease.

8 SEC. 13. Section 3099 of the Business and Professions Code  
9 is amended and renumbered to read:

10 ~~3099.~~

11 3100. The holding out as having a special knowledge of  
12 optometry, as defined in this chapter, by the holder of a  
13 certificate of registration, constitutes a cause to revoke or  
14 suspend his *or her* certificate of registration.

15 SEC. 14. Section 3100 of the Business and Professions Code  
16 is amended and renumbered to read:

17 ~~3100.~~

18 3104. The employing of what are known as “cappers” or  
19 “steerers” to obtain business constitutes unprofessional conduct.

20 SEC. 15. Section 3101 of the Business and Professions Code  
21 is repealed.

22 ~~3101. The obtaining of any fee by fraud or misrepresentation  
23 constitutes unprofessional conduct.~~

24 SEC. 16. Section 3102 of the Business and Professions Code  
25 is repealed.

26 ~~3102. The employing, directly or indirectly, of any suspended  
27 or unlicensed optometrist to perform any work for which a  
28 certificate of registration is required constitutes unprofessional  
29 conduct.~~

30 SEC. 17. Section 3103 of the Business and Professions Code  
31 is amended and renumbered to read:

32 ~~3103.~~

33 3109. Directly or indirectly accepting employment to practice  
34 optometry from any person not having a valid, unrevoked  
35 certificate of registration as an optometrist or from any company  
36 or corporation constitutes unprofessional conduct. Except as  
37 provided in this chapter, no optometrist may, singly or jointly  
38 with others, be incorporated or become incorporated when the  
39 purpose or a purpose of the corporation is to practice optometry  
40 or to conduct the practice of optometry.

1 The terms “accepting employment to practice optometry” as  
2 used in this section shall not be construed so as to prevent a  
3 licensed optometrist from practicing optometry upon an  
4 individual patient.

5 Notwithstanding the provisions of this section or the provisions  
6 of any other law, a licensed optometrist may be employed to  
7 practice optometry by a physician and surgeon who holds a  
8 certificate under this division and who practices in the specialty  
9 of ophthalmology or by a health care service plan pursuant to the  
10 provisions of Chapter 2.2 (commencing with Section 1340) of  
11 Division 2 of the Health and Safety Code.

12 SEC. 18. Section 3104 of the Business and Professions Code  
13 is repealed.

14 ~~3104. The advertising of the practice of optometry, treatment  
15 or advice in which untruthful, improbable or impossible  
16 statements are made constitutes unprofessional conduct.~~

17 SEC. 19. Section 3105 of the Business and Professions Code  
18 is repealed.

19 ~~3105. Habitual intemperance constitutes unprofessional  
20 conduct.~~

21 SEC. 20. Section 3105.1 of the Business and Professions  
22 Code is repealed.

23 ~~3105.1. The use or consumption of alcoholic beverages or a  
24 narcotic drug by a person holding a certificate under this chapter  
25 to the extent or in a manner that is dangerous or injurious to the  
26 person or to any other person or to the public or to an extent that  
27 the use or consumption impairs the ability of the person holding  
28 the certificate to conduct with safety to the public the practice  
29 authorized by the certificate constitutes unprofessional conduct.  
30 Section 3120 shall apply to a violation of this section.~~

31 SEC. 21. Section 3106 of the Business and Professions Code  
32 is repealed.

33 ~~3106. The permitting of another to use his certificate of  
34 registration for any purpose constitutes unprofessional conduct.~~

35 SEC. 22. Section 3107 of the Business and Professions Code  
36 is repealed.

37 ~~3107. A plea or verdict of guilty or a conviction following a  
38 plea of nolo contendere made to a charge substantially related to  
39 the qualifications, functions and duties of an optometrist is  
40 deemed to be a conviction within the meaning of this article. The~~

~~1 board may order the license suspended or revoked, or may  
2 decline to issue a license, when the time for appeal has elapsed,  
3 or the judgment of conviction has been affirmed on appeal or  
4 when an order granting probation is made suspending the  
5 imposition of sentence, irrespective of a subsequent order under  
6 the provisions of Section 1203.4 of the Penal Code allowing such  
7 person to withdraw his plea of guilty and to enter a plea of not  
8 guilty, or setting aside the verdict of guilty, or dismissing the  
9 accusation, information or indictment.~~

10 SEC. 23. Section 3107.1 of the Business and Professions  
11 Code is repealed.

~~12 3107.1. The conviction of a charge of violating any federal  
13 statutes or regulations or any statute or regulation of this state,  
14 regulating dangerous drugs or controlled substances, constitutes  
15 unprofessional conduct. The record of the conviction is  
16 conclusive evidence of this unprofessional conduct. A plea or  
17 verdict of guilty or a conviction following a plea of nolo  
18 contendere is deemed to be a conviction within the meaning of  
19 this section.~~

20 SEC. 24. Section 3108 of the Business and Professions Code  
21 is repealed.

~~22 3108. The failure of any therapeutic pharmaceutical agent  
23 certified optometrist to maintain adequate and accurate records  
24 relating to the provision of services to their patients constitutes  
25 unprofessional conduct.~~

26 SEC. 25. Section 3109 of the Business and Professions Code  
27 is repealed.

~~28 3109. It shall be unprofessional conduct for an optometrist to  
29 fail to refer a patient to an appropriate physician where an  
30 examination of the eyes indicates a substantial likelihood of any  
31 pathology which requires the attention of the appropriate  
32 physician. It shall be unprofessional conduct for an optometrist to  
33 fail to refer a patient to an appropriate physician and surgeon  
34 when response to treatment does not occur within a reasonable  
35 amount of time.~~

36 SEC. 26. Section 3110 is added to the Business and  
37 Professions Code, to read:

38 3110. The board may take action against any licensee who is  
39 charged with unprofessional conduct, and may deny an  
40 application for a license if the applicant has committed

1 unprofessional conduct. In addition to other provisions of this  
2 article, unprofessional conduct includes, but is not limited to, the  
3 following:

4 (a) Violating or attempting to violate, directly or indirectly  
5 assisting in or abetting the violation of, or conspiring to violate  
6 any provision of this chapter.

7 (b) Gross negligence.

8 (c) Repeated negligent acts. To be repeated, there must be two  
9 or more negligent acts or omissions.

10 (d) Incompetence.

11 (e) The commission of fraud, misrepresentation, or any act  
12 involving dishonesty or corruption, that is substantially related to  
13 the qualifications, functions, or duties of an optometrist.

14 (f) Any action or conduct that would have warranted the denial  
15 of a license.

16 (g) The use of advertising relating to optometry that violates  
17 Section 17500.

18 (h) Denial of licensure, revocation, suspension, restriction, or  
19 any other disciplinary action against a health care professional  
20 license by another state or territory of the United States, by any  
21 other government agency, or by another California health care  
22 professional licensing board. A certified copy of the decision or  
23 judgment shall be conclusive evidence of that action.

24 (i) Procuring his or her license by fraud, misrepresentation, or  
25 mistake.

26 (j) Making or giving any false statement or information in  
27 connection with the application for issuance of a license.

28 (k) Conviction of a felony or of any offense substantially  
29 related to the qualifications, functions, and duties of an  
30 optometrist, in which event the record of the conviction shall be  
31 conclusive evidence thereof.

32 (l) Administering to himself or herself any controlled  
33 substance or using any of the dangerous drugs specified in  
34 Section 4022, or using alcoholic beverages to the extent, or in a  
35 manner, as to be dangerous or injurious to the person applying  
36 for a license or holding a license under this chapter, or to any  
37 other person, or to the public, or, to the extent that the use  
38 impairs the ability of the person applying for or holding a license  
39 to conduct with safety to the public the practice authorized by the  
40 license, or the conviction of a misdemeanor or felony involving

1 the use, consumption, or self administration of any of the  
2 substances referred to in this subdivision, or any combination  
3 thereof.

4 (m) Committing an act punishable as a sexually related crime,  
5 if that act or solicitation is substantially related to the  
6 qualifications, functions, or duties of an optometrist.

7 (n) Repeated acts of excessive prescribing, furnishing or  
8 administering of controlled substances or dangerous drugs  
9 specified in Section 4022, or repeated acts of excessive  
10 treatment.

11 (o) Repeated acts of excessive use of diagnostic or therapeutic  
12 procedures, or repeated acts of excessive use of diagnostic or  
13 treatment facilities.

14 (p) The prescribing, furnishing, or administering of controlled  
15 substances or drugs specified in Section 4022, or treatment  
16 without a good faith prior examination of the patient and  
17 optometric reason.

18 (q) The failure to maintain adequate and accurate records  
19 relating to the provision of services to his or her patients.

20 (r) Performing, or holding oneself out as being able to  
21 perform, or offering to perform, any professional services beyond  
22 the scope of the license authorized by this chapter.

23 (s) The practice of optometry without a valid, unrevoked,  
24 unexpired license.

25 (t) The employing, directly or indirectly, of any suspended or  
26 unlicensed optometrist to perform any work for which an  
27 optometry license is required.

28 (u) The permitting of another to use the licensee's optometry  
29 license for any purpose.

30 (v) Altering with fraudulent intent in any material regard a  
31 license issued by the board, or using a fraudulently altered  
32 license, permit certification or any registration issued by the  
33 board.

34 (w) Except for good cause, the knowing failure to protect  
35 patients by failing to follow infection control guidelines of the  
36 board, thereby risking transmission of blood borne infectious  
37 diseases from optometrist to patient, from patient to patient, or  
38 from patient to optometrist. In administering this subdivision, the  
39 board shall consider the standards, regulations, and guidelines of  
40 the State Department of Health Services developed pursuant to

1 Section 1250.11 of the Health and Safety Code and the standards,  
2 guidelines, and regulations pursuant to the California  
3 Occupational Safety and Health Act of 1973 (Part 1  
4 (commencing with Section 6300) of Division 5 of the Labor  
5 Code) for preventing the transmission of HIV, hepatitis B, and  
6 other blood borne pathogens in health care settings. As  
7 necessary, the board may consult with the Medical Board of  
8 California, the Board of Podiatric Medicine, the Board of  
9 Registered Nursing, and the Board of Vocational Nursing and  
10 Psychiatric Technicians, to encourage appropriate consistency in  
11 the implementation of this subdivision.

12 (x) Failure or refusal to comply with a request for the clinical  
13 records of a patient, that is accompanied by that patient's written  
14 authorization for release of records to the board, within 15 days  
15 of receiving the request and authorization, unless the licensee is  
16 unable to provide the documents within this time period for good  
17 cause.

18 SEC. 27. Section 3120 of the Business and Professions Code  
19 is repealed.

20 ~~3120. Any person who violates any of the provisions of this~~  
21 ~~chapter is guilty of a misdemeanor and, upon conviction thereof,~~  
22 ~~shall be punished by imprisonment in the county jail not less than~~  
23 ~~ten days nor more than one year, or by a fine of not less than one~~  
24 ~~hundred dollars nor more than one thousand five hundred dollars,~~  
25 ~~or by both such fine and imprisonment.~~

26 SEC. 28. Section 3123 of the Business and Professions Code  
27 is repealed.

28 ~~3123. It is unlawful to alter with fraudulent intent in any~~  
29 ~~material regard a certificate of registration issued by the board.~~

30 SEC. 29. Section 3124 of the Business and Professions Code  
31 is amended and renumbered to read:

32 ~~3124.~~

33 *3107.* It is unlawful to use or attempt to use any certificate of  
34 registration issued by the board ~~which~~ *that* has been purchased,  
35 fraudulently issued, counterfeited ~~or materially altered,~~ *or issued*  
36 *by mistake,* as a valid certificate of registration.

37 SEC. 30. Section 3125 of the Business and Professions Code  
38 is repealed.

39 ~~3125. It is unlawful to practice optometry under a false or~~  
40 ~~assumed name, or to use a false or assumed name in connection~~

1 with the practice of optometry, or to make use of any false or  
2 assumed name in connection with the name of a person licensed  
3 pursuant to this chapter. However, the board may issue written  
4 permits authorizing an individual optometrist or an optometric  
5 group or optometric corporation to use a name specified in the  
6 permit in connection with its practice if, and only if, the board  
7 finds to its satisfaction that:

8 (a) The place or establishment, or the portion thereof, in which  
9 the applicant or applicants practice, is owned or leased by the  
10 applicant or applicants, and the practice conducted at that place  
11 or establishment, or portion thereof, is wholly owned and entirely  
12 controlled by the applicant or applicants; provided, however, that  
13 where the applicant or applicants are practicing optometry in a  
14 community clinic, as defined in subdivision (a) of Section 1204  
15 of the Health and Safety Code, this subdivision shall not apply.

16 (b) The name under which the applicant or applicants propose  
17 to operate is in the judgment of the board not deceptive or  
18 inimical to enabling a rational choice for the consumer public  
19 and contains at least one of the following designations:  
20 “optometry” or “optometric”; provided, however, that where the  
21 applicant or applicants are practicing optometry in a community  
22 clinic, as defined in subdivision (a) of Section 1204 of the Health  
23 and Safety Code, this subdivision shall not apply. In no case shall  
24 the name under which the applicant or applicants propose to  
25 operate contain the name or names of any of the optometrists  
26 practicing in the community clinic.

27 (c) The names of all optometrists practicing at the location  
28 designated in the application are displayed in a conspicuous place  
29 for the public to see, not only at the location, but also in any  
30 advertising permitted by law.

31 (d) No charges which could result in revocation or suspension  
32 of an optometrist’s certificate to practice optometry are pending  
33 against any optometrist practicing at the location.

34 Permits issued under this section by the board shall expire and  
35 become invalid unless renewed at the times and in the manner  
36 provided in Article 7 (commencing with Section 3145) for the  
37 renewal of certificates issued under this chapter. The board may  
38 charge an annual fee, not to exceed ten dollars (\$10) for the  
39 issuance or renewal of each such permit.

1 Any permit issued under this section may be revoked or  
2 suspended at any time that the board finds that any one of the  
3 requirements for original issuance of a permit, other than under  
4 subdivision (d), is no longer being fulfilled by the individual  
5 optometrist, optometric corporation, or optometric group to  
6 whom the permit was issued. Proceedings for revocation or  
7 suspension shall be governed by the Administrative Procedure  
8 Act.

9 In the event the board revokes or suspends the certificate to  
10 practice optometry of an individual optometrist or any member of  
11 a corporation or group to whom a permit has been issued under  
12 this section, the revocation or suspension shall also constitute  
13 revocation or suspension, as the case may be, of the permit.

14 SEC. 31. Section 3126 of the Business and Professions Code  
15 is repealed.

16 ~~3126. It is unlawful to willfully make any false statement in a  
17 material regard in an application for an examination before the  
18 board or for a certificate of registration as an optometrist or any  
19 other license or permit issued by the board.~~

20 SEC. 32. Section 3127 of the Business and Professions Code  
21 is repealed.

22 ~~3127. It is unlawful to practice optometry in this State without  
23 having at the time of so doing a valid, unrevoked, and unexpired  
24 certificate of registration as an optometrist.~~

25 SEC. 33. Section 3128 of the Business and Professions Code  
26 is amended and renumbered to read:

27 ~~3128:~~

28 *3101.* It is unlawful to advertise by displaying a sign or  
29 otherwise or hold himself *or herself* out to be an optometrist  
30 without having at the time of so doing a valid unrevoked  
31 certificate of registration from the board.

32 SEC. 34. Section 3129 of the Business and Professions Code  
33 is amended and renumbered to read:

34 ~~3129:~~

35 *3102.* It is unlawful to advertise as being free or without cost  
36 the examination or treatment of the eyes or the furnishing of  
37 optometrical services.

38 SEC. 35. Section 3130 of the Business and Professions Code  
39 is amended and renumbered to read:

40 ~~3130:~~

1 3103. It is unlawful to include in any advertisement relating to  
2 the sale or disposition of goggles, sun-glasses, colored glasses or  
3 occupational eye-protective devices, any words or figures ~~which~~  
4 *that* advertise or have a tendency to advertise the practice of  
5 optometry.

6 This section does not prohibit the advertising of the practice of  
7 optometry by a registered optometrist in the manner permitted by  
8 law.

9 SEC. 36. Section 3131 of the Business and Professions Code  
10 is amended and renumbered to read:

11 ~~3131.~~

12 3094. In addition to other proceedings provided for in this  
13 chapter, whenever any person has engaged, or is about to engage,  
14 in any acts or practices ~~which~~ *that* constitute, or will constitute,  
15 an offense against this chapter, the superior court in and for the  
16 county wherein the acts or practices take place, or are about to  
17 take place, may issue an injunction, or other appropriate order,  
18 restraining ~~such~~ *that* conduct on application of the board, the  
19 Attorney General, the district attorney of the county, or on  
20 application of 10 or more persons holding certificates issued  
21 under this chapter.

22 The proceedings under this section shall be governed by  
23 Chapter 3 (commencing with Section ~~525~~ 525) of Title 7 of Part  
24 2 of the Code of Civil Procedure.

25 SEC. 37. Section 3135 of the Business and Professions Code  
26 is amended and renumbered to read:

27 ~~3135.~~

28 3095. In accordance with Section 125.9, the board may  
29 establish a system for the issuance of citations, and the  
30 assessment of administrative fines, as deemed appropriate by the  
31 board.

32 SEC. 38. Section 3145 of the Business and Professions Code  
33 is amended to read:

34 3145. There is the Optometry Fund in the State Treasury.  
35 Unless otherwise provided, all money collected under the  
36 authority of this chapter shall be paid into this fund. ~~The board~~  
37 ~~shall not maintain a reserve balance in the fund that is greater~~  
38 ~~than six months of the appropriated operating expenses of the~~  
39 ~~board in any fiscal year.~~

1 SEC. 39. Section 3146 of the Business and Professions Code  
2 is amended to read:

3 3146. A ~~certificate~~ *license* issued under this chapter expires at  
4 12 p.m. on the last day of the ~~certificate~~ *license* holder's birth  
5 month following its original issuance and thereafter at 12 p.m. on  
6 the last day of the ~~certificate~~ *license* holder's birth month every  
7 two years if not renewed. To renew an unexpired ~~certificate~~  
8 *license*, the ~~certificate~~ *license* holder shall, ~~before the time that~~  
9 ~~the certificate would otherwise expire~~, apply for renewal on a  
10 form prescribed by the board and pay the renewal fee prescribed  
11 by this chapter.

12 SEC. 40. Section 3147 of the Business and Professions Code  
13 is amended to read:

14 3147. (a) Except as otherwise provided by Section 114 of this  
15 ~~code~~, an expired ~~certificate~~ *license* may be renewed at any time  
16 within three years after its expiration on filing of an application  
17 for renewal on a form prescribed by the board, and payment of  
18 all accrued and unpaid renewal fees. If ~~the certificate~~ *an expired*  
19 *license* is renewed ~~more than 30 days after its expiration~~, the  
20 ~~certificate holder as a condition precedent to renewal~~, *the license*  
21 *holder* shall ~~also~~ pay the delinquency fee prescribed by ~~this~~  
22 ~~chapter~~ *the board*. Renewal under this section shall be effective  
23 on the date on which the application is filed, on the date on  
24 which the accrued renewal fees are paid, or on the date on which  
25 the delinquency fee, if any, is paid, whichever last occurs. If so  
26 renewed, the ~~certificate~~ shall continue in effect through the date  
27 provided in Section 3146 which next occurs after the effective  
28 date of the renewal, when it shall expire if it is not renewed.

29 A ~~certificate~~ which, under the law in effect before October 1,  
30 1961, became suspended because of the failure of its holder to  
31 renew it, shall, for the purposes of this article, be considered to  
32 have expired on the date that it became suspended *license shall*  
33 *continue as provided in Section 3146 and 3147.5.*

34 (b) *A license that has been suspended is subject to expiration*  
35 *and shall be renewed as provided in this article, but renewal*  
36 *does not entitle the holder of a suspended license to engage in*  
37 *the practice of optometry, or in other activity or conduct in*  
38 *violation of the order or judgment by which the license was*  
39 *suspended.*

1 (c) A license that has been revoked is subject to expiration, but  
2 it may not be renewed. If the license is reinstated after its  
3 expiration, the holder of the license, as a condition precedent to  
4 its reinstatement, shall pay a reinstatement fee in an amount  
5 equal to 150 percent of the renewal fee in excess of the renewal  
6 fee.

7 SEC. 41. Section 3147.6 of the Business and Professions  
8 Code is amended to read:

9 3147.6. Except as otherwise provided by Section 114 of this  
10 code, a ~~certificate~~ license that is not renewed within three years  
11 after its expiration may be restored thereafter, if no fact,  
12 circumstance, or condition exists that, if the ~~certificate~~ license  
13 were restored, would justify its revocation or suspension,  
14 provided all of the following conditions are met:

15 (a) The holder of the expired ~~certificate~~ license is not subject  
16 to denial of a ~~certificate~~ license under Section 480.

17 (b) The holder of the expired ~~certificate~~ license applies in  
18 writing for its restoration on a form prescribed by the board.

19 (c) He or she pays the fee or fees as would be required of him  
20 or her if he or she were then applying for a ~~certificate~~ of  
21 registration license for the first time and had not previously taken  
22 the examination for a ~~certificate~~ license.

23 (d) He or she takes and satisfactorily passes the clinical  
24 portion of the regular examination of applicants, or other clinical  
25 examination approved by the board, and takes and satisfactorily  
26 passes the California law and regulations examination  
27 administered by the board.

28 (e) After having taken and satisfactorily passed the clinical  
29 portion of the regular examination of applicants, or other clinical  
30 examination approved by the board, he or she pays a restoration  
31 fee equal to the renewal fee in effect on the last regular renewal  
32 date for ~~certificates of registration~~ licenses.

33 SEC. 42. Section 3148 of the Business and Professions Code  
34 is amended to read:

35 3148. From each fee for the renewal of a ~~certificate~~ of  
36 registration license for the biennial renewal of a ~~certificate~~ of  
37 registration license, there shall be paid the sum of sixteen dollars  
38 (\$16) by the Director of Consumer Affairs to the University of  
39 California.

1 This sum shall be used at and by the University of California  
2 solely for the advancement of optometrical research and the  
3 maintenance and support of the department at the university in  
4 which the science of optometry is taught.

5 The balance of each renewal fee shall be paid into the  
6 Optometry Fund.

7 SEC. 43. Section 3150 of the Business and Professions Code  
8 is amended to read:

9 3150. The department may make all necessary disbursements  
10 to carry out the provisions of this chapter. ~~Necessary~~  
11 ~~disbursements include payment for the bond of the executive~~  
12 ~~officer of the board, payment for stationery supplies, and~~  
13 ~~payment for necessary optical instruments to be used in the~~  
14 ~~conduct of examinations which instruments shall be the property~~  
15 ~~of the state.~~

16 SEC. 44. Section 3152 of the Business and Professions Code  
17 is amended to read:

18 3152. The amount of fees and penalties prescribed by this  
19 chapter shall be established by the board in amounts not greater  
20 than those specified in the following schedule:

21 (a) ~~The fee for applicants applying for a certificate of~~  
22 ~~registration who present credentials of graduation from an~~  
23 ~~accredited school of optometry license shall not exceed two~~  
24 ~~hundred seventy-five dollars (\$275) that shall not be refunded,~~  
25 ~~except that applicants who are found ineligible to take an~~  
26 ~~examination for a certificate of registration are entitled to a~~  
27 ~~refund of a maximum of one hundred seventy-five dollars~~  
28 ~~(\$175).~~

29 (b) ~~The fee for biennial renewal of a certificate of registration~~  
30 ~~license shall not exceed three hundred dollars (\$300).~~

31 (c) ~~The delinquency fee shall not exceed twenty-five dollars~~  
32 ~~(\$25).~~

33 (d) ~~The annual fee for the renewal of a branch office license~~  
34 ~~shall not exceed seventy-five dollars (\$75).~~

35 (e) ~~—~~

36 (d) The fee for a branch office license shall not exceed  
37 seventy-five dollars (\$75).

38 (f) ~~—~~

39 (e) The penalty for failure to pay the annual fee for renewal of  
40 a branch office license shall not exceed twenty-five dollars (\$25).

1 ~~(g) The fee for restoration of a certificate of registration after~~  
2 ~~suspension for failure to comply with the provisions of this~~  
3 ~~chapter relating to branch offices shall not exceed seventy-five~~  
4 ~~dollars (\$75).~~

5 ~~(h)~~  
6 ~~(f) The fee for issuance of a certification of registration license~~  
7 ~~or upon change of name authorized by law of a person holding a~~  
8 ~~certificate of registration license under this chapter shall not~~  
9 ~~exceed twenty-five dollars (\$25).~~

10 ~~(i) The board shall submit a report to the fiscal and appropriate~~  
11 ~~policy committees of the Legislature whenever the board~~  
12 ~~increases any fee. The report shall specify the rationale and~~  
13 ~~justification for that increase and include the percentage of the~~  
14 ~~fee increase to be used for enforcement purposes.~~

15 SEC. 45. Section 3152.5 of the Business and Professions  
16 Code is amended to read:

17 3152.5. The board may require each applicant for a certificate  
18 to use therapeutic pharmaceutical agents, pursuant to Section  
19 3041.3, to pay an application fee, and may require each  
20 certificate license holder to pay a renewal fee. The application  
21 fee and the renewal fee shall not exceed the actual costs to the  
22 board of the reviewing and processing of the application for a  
23 certificate license or renewal of a certificate license, monitoring  
24 the practice by certificate license holders, and enforcing the  
25 provisions of law governing the use of therapeutic  
26 pharmaceutical agents, the diagnosis and treatment of certain  
27 conditions, and the performance of certain procedures by persons  
28 certified to use therapeutic pharmaceutical agents.