

SB3538



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3538

Introduced 2/8/2012, by Sen. John J. Millner

SYNOPSIS AS INTRODUCED:

225 ILCS 80/6
225 ILCS 80/24

from Ch. 111, par. 3906
from Ch. 111, par. 3924

Amends the Illinois Optometric Practice Act of 1987. Provides that every licensed optometrist shall keep a record of examinations made and prescriptions issued and shall be retained in the office in which such professional service was rendered or in a secure offsite storage facility. Provides that all fines collected as a result of discipline by the Department of Professional and Financial Regulation shall be deposited in the Optometric Licensing and Disciplinary Board Fund. Provides that a ground for disciplinary action shall include the discounting of professional services in conjunction with the sale of goods or other services.

LRB097 17736 CEL 62951 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Optometric Practice Act of 1987 is
5 amended by changing Sections 6 and 24 as follows:

6 (225 ILCS 80/6) (from Ch. 111, par. 3906)

7 (Section scheduled to be repealed on January 1, 2017)

8 Sec. 6. Display of license; change of address; record of
9 examinations and prescriptions. Every holder of a license under
10 this Act shall display such license on a conspicuous place in
11 the office or offices wherein such holder practices optometry
12 and every holder shall, whenever requested, exhibit such
13 license to any representative of the Department, and shall
14 notify the Department of the address or addresses and of every
15 change thereof, where such holder shall practice optometry.

16 Every licensed optometrist shall keep a record of
17 examinations made and prescriptions issued, which record shall
18 include the names of persons examined and for whom
19 prescriptions were prepared, and shall be signed by the
20 licensed optometrist and shall be retained by him in the office
21 in which such professional service was rendered or in a secure
22 offsite storage facility. Such records shall be preserved by
23 the optometrist for a period designated by the Department. A

1 copy of such records shall be provided, upon written request,
2 to the person examined, or his or her designee.

3 (Source: P.A. 94-787, eff. 5-19-06.)

4 (225 ILCS 80/24) (from Ch. 111, par. 3924)

5 (Section scheduled to be repealed on January 1, 2017)

6 Sec. 24. Grounds for disciplinary action.

7 (a) The Department may refuse to issue or to renew, or may
8 revoke, suspend, place on probation, reprimand or take other
9 disciplinary or non-disciplinary action as the Department may
10 deem appropriate ~~proper~~, including fines not to exceed \$10,000
11 for each violation, with regard to any license for any one or
12 combination of the ~~following~~ causes set forth in subsection
13 (a-3) of this Section. All fines collected under this Section
14 shall be deposited in the Optometric Licensing and Disciplinary
15 Board Fund.†

16 (a-3) Grounds for disciplinary action include the
17 following:

18 (1) Violations of this Act, or of the rules promulgated
19 hereunder.

20 (2) Conviction of or entry of a plea of guilty to any
21 crime under the laws of any U.S. jurisdiction thereof that
22 is a felony or that is a misdemeanor of which an essential
23 element is dishonesty, or any crime that is directly
24 related to the practice of the profession.

25 (3) Making any misrepresentation for the purpose of

1 obtaining a license.

2 (4) Professional incompetence or gross negligence in
3 the practice of optometry.

4 (5) Gross malpractice, prima facie evidence of which
5 may be a conviction or judgment of malpractice in any court
6 of competent jurisdiction.

7 (6) Aiding or assisting another person in violating any
8 provision of this Act or rules.

9 (7) Failing, within 60 days, to provide information in
10 response to a written request made by the Department that
11 has been sent by certified or registered mail to the
12 licensee's last known address.

13 (8) Engaging in dishonorable, unethical, or
14 unprofessional conduct of a character likely to deceive,
15 defraud, or harm the public.

16 (9) Habitual or excessive use or addiction to alcohol,
17 narcotics, stimulants or any other chemical agent or drug
18 that results in the inability to practice with reasonable
19 judgment, skill, or safety.

20 (10) Discipline by another U.S. jurisdiction or
21 foreign nation, if at least one of the grounds for the
22 discipline is the same or substantially equivalent to those
23 set forth herein.

24 (11) Violation of the prohibition against fee
25 splitting in Section 24.2 of this Act.

26 (12) A finding by the Department that the licensee,

1 after having his or her license placed on probationary
2 status has violated the terms of probation.

3 (13) Abandonment of a patient.

4 (14) Willfully making or filing false records or
5 reports in his or her practice, including but not limited
6 to false records filed with State agencies or departments.

7 (15) Willfully failing to report an instance of
8 suspected abuse or neglect as required by law.

9 (16) Physical illness, including but not limited to,
10 deterioration through the aging process, or loss of motor
11 skill, mental illness, or disability that results in the
12 inability to practice the profession with reasonable
13 judgment, skill, or safety.

14 (17) Solicitation of professional services other than
15 permitted advertising.

16 (18) Failure to provide a patient with a copy of his or
17 her record or prescription in accordance with federal law.

18 (19) Conviction by any court of competent
19 jurisdiction, either within or without this State, of any
20 violation of any law governing the practice of optometry,
21 conviction in this or another State of any crime that is a
22 felony under the laws of this State or conviction of a
23 felony in a federal court, if the Department determines,
24 after investigation, that such person has not been
25 sufficiently rehabilitated to warrant the public trust.

26 (20) A finding that licensure has been applied for or

1 obtained by fraudulent means.

2 (21) Continued practice by a person knowingly having an
3 infectious or contagious disease.

4 (22) Being named as a perpetrator in an indicated
5 report by the Department of Children and Family Services
6 under the Abused and Neglected Child Reporting Act, and
7 upon proof by clear and convincing evidence that the
8 licensee has caused a child to be an abused child or a
9 neglected child as defined in the Abused and Neglected
10 Child Reporting Act.

11 (23) Practicing or attempting to practice under a name
12 other than the full name as shown on his or her license.

13 (24) Immoral conduct in the commission of any act, such
14 as sexual abuse, sexual misconduct or sexual exploitation,
15 related to the licensee's practice.

16 (25) Maintaining a professional relationship with any
17 person, firm, or corporation when the optometrist knows, or
18 should know, that such person, firm, or corporation is
19 violating this Act.

20 (26) Promotion of the sale of drugs, devices,
21 appliances or goods provided for a client or patient in
22 such manner as to exploit the patient or client for
23 financial gain of the licensee.

24 (27) Using the title "Doctor" or its abbreviation
25 without further qualifying that title or abbreviation with
26 the word "optometry" or "optometrist".

1 (28) Use by a licensed optometrist of the word
2 "infirmary", "hospital", "school", "university", in
3 English or any other language, in connection with the place
4 where optometry may be practiced or demonstrated.

5 (29) Continuance of an optometrist in the employ of any
6 person, firm or corporation, or as an assistant to any
7 optometrist or optometrists, directly or indirectly, after
8 his or her employer or superior has been found guilty of
9 violating or has been enjoined from violating the laws of
10 the State of Illinois relating to the practice of
11 optometry, when the employer or superior persists in that
12 violation.

13 (30) The performance of optometric service in
14 conjunction with a scheme or plan with another person, firm
15 or corporation known to be advertising in a manner contrary
16 to this Act or otherwise violating the laws of the State of
17 Illinois concerning the practice of optometry.

18 (31) Failure to provide satisfactory proof of having
19 participated in approved continuing education programs as
20 determined by the Board and approved by the Secretary.
21 Exceptions for extreme hardships are to be defined by the
22 rules of the Department.

23 (32) Willfully making or filing false records or
24 reports in the practice of optometry, including, but not
25 limited to false records to support claims against the
26 medical assistance program of the Department of Healthcare

1 and Family Services (formerly Department of Public Aid)
2 under the Illinois Public Aid Code.

3 (33) Gross and willful overcharging for professional
4 services including filing false statements for collection
5 of fees for which services are not rendered, including, but
6 not limited to filing false statements for collection of
7 monies for services not rendered from the medical
8 assistance program of the Department of Healthcare and
9 Family Services (formerly Department of Public Aid) under
10 the Illinois Public Aid Code.

11 (34) In the absence of good reasons to the contrary,
12 failure to perform a minimum eye examination as required by
13 the rules of the Department.

14 (35) Violation of the Health Care Worker Self-Referral
15 Act.

16 (36) The discounting of professional services in
17 conjunction with the sale of goods or other services.

18 The Department may refuse to issue or may suspend the
19 license of any person who fails to file a return, or to pay the
20 tax, penalty or interest shown in a filed return, or to pay any
21 final assessment of the tax, penalty or interest, as required
22 by any tax Act administered by the Illinois Department of
23 Revenue, until such time as the requirements of any such tax
24 Act are satisfied.

25 (a-5) In enforcing this Section, the Board upon a showing
26 of a possible violation, may compel any individual licensed to

1 practice under this Act, or who has applied for licensure or
2 certification pursuant to this Act, to submit to a mental or
3 physical examination, or both, as required by and at the
4 expense of the Department. The examining physicians or clinical
5 psychologists shall be those specifically designated by the
6 Board. The Board or the Department may order the examining
7 physician or clinical psychologist to present testimony
8 concerning this mental or physical examination of the licensee
9 or applicant. No information shall be excluded by reason of any
10 common law or statutory privilege relating to communications
11 between the licensee or applicant and the examining physician
12 or clinical psychologist. Eye examinations may be provided by a
13 licensed optometrist. The individual to be examined may have,
14 at his or her own expense, another physician of his or her
15 choice present during all aspects of the examination. Failure
16 of any individual to submit to a mental or physical
17 examination, when directed, shall be grounds for suspension of
18 a license until such time as the individual submits to the
19 examination if the Board finds, after notice and hearing, that
20 the refusal to submit to the examination was without reasonable
21 cause.

22 If the Board finds an individual unable to practice because
23 of the reasons set forth in this Section, the Board shall
24 require such individual to submit to care, counseling, or
25 treatment by physicians or clinical psychologists approved or
26 designated by the Board, as a condition, term, or restriction

1 for continued, reinstated, or renewed licensure to practice, or
2 in lieu of care, counseling, or treatment, the Board may
3 recommend to the Department to file a complaint to immediately
4 suspend, revoke, or otherwise discipline the license of the
5 individual, or the Board may recommend to the Department to
6 file a complaint to suspend, revoke, or otherwise discipline
7 the license of the individual. Any individual whose license was
8 granted pursuant to this Act, or continued, reinstated,
9 renewed, disciplined, or supervised, subject to such
10 conditions, terms, or restrictions, who shall fail to comply
11 with such conditions, terms, or restrictions, shall be referred
12 to the Secretary for a determination as to whether the
13 individual shall have his or her license suspended immediately,
14 pending a hearing by the Board.

15 (b) The determination by a circuit court that a licensee is
16 subject to involuntary admission or judicial admission as
17 provided in the Mental Health and Developmental Disabilities
18 Code operates as an automatic suspension. The suspension will
19 end only upon a finding by a court that the patient is no
20 longer subject to involuntary admission or judicial admission
21 and issues an order so finding and discharging the patient; and
22 upon the recommendation of the Board to the Secretary that the
23 licensee be allowed to resume his or her practice.

24 (Source: P.A. 96-378, eff. 1-1-10; 96-608, eff. 8-24-09;
25 96-1000, eff. 7-2-10.)