House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 186

SENATE BILL 1433

AN ACT

AMENDING SECTIONS 32-1701, 32-1702, 32-1704, 32-1725, 32-1743 AND 32-1744, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 16, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1747.01; AMENDING SECTION 32-1748, ARIZONA REVISED STATUTES; REPEALING TITLE 32, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 16, ARIZONA REVISED STATUTES, BY ADDING A NEW ARTICLE 5; RELATING TO THE STATE BOARD OF OPTOMETRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

32-1701. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

(c) The use of any instrument or device to train the visual system or correct any abnormal condition of the eye or eyes.

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

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

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

8. "Unprofessional conduct" means:

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

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

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

(d) Impersonating another licensee.

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

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

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

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

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

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

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

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

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

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

(o) Conduct that discredits the profession.

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

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

(r) SOLICITING PATIENTS BY FRAUDULENT OR MISLEADING ADVERTISING OF ANY KIND.

(s) AIDING THE PRACTICE OF OPTOMETRY BY AN UNLICENSED, INCOMPETENT OR IMPAIRED PERSON.

(t) SHARING FEES WITH A PERSON OR ORGANIZATION IN RETURN FOR SOLICITING CUSTOMERS BY THAT PERSON OR ORGANIZATION.

(u) ISSUING A PRESCRIPTION ORDER CONTINGENT ON THE PURCHASE OF OPHTHALMIC SERVICES OR MATERIALS.

Sec. 2. Section 32-1702, Arizona Revised Statutes, is amended to read:

32-1702. Board of optometry; appointment; qualifications; term; removal

A. The state board of optometry is established consisting of the following members who are appointed by the governor to staggered four-year terms that end on July 1:

1. Five members who have been licensed and engaged in the active practice of optometry in this state for at least three years immediately before the appointment.

2. ~~One~~ TWO public ~~member~~ MEMBERS who ~~does~~ DO not have a direct or indirect interest in the practice of optometry, opticianry or medicine.

~~3. One member who is a physician licensed pursuant to chapter 13 or 17 of this title.~~

B. The governor may remove any professional member for incompetency or unprofessional conduct or if the member's license has been revoked or suspended or if the member has been censured or placed on probation. The governor may remove any member for neglect of duty or improper conduct. The unexcused absence of a member for more than two consecutive meetings is justification for removal. Appointment by the governor to fill a vacancy caused other than by expiration of a term is for the unexpired portion of the term.

C. A member of the board is ineligible to serve more than two consecutive full terms. The completion of the unexpired portion of a full term does not constitute a full term for purposes of this subsection.

D. The board shall conduct regular meetings at least six times each year at times and places designated by the board or the governor. Special meetings may be called that the president determines are necessary to carry out the functions of the board, including meetings using communications equipment that allows all members participating in the meetings to hear each other.

E. A majority of the members of the board constitutes a quorum and a majority vote of a quorum present at any meeting governs all actions taken by the board.

Sec. 3. Section 32-1704, Arizona Revised Statutes, is amended to read:

32-1704. Powers and duties of the board

A. The board shall adopt, and may amend, rules consistent with this chapter governing the practice of the profession of optometry, for the performance of its duties under this chapter and for the examination of applicants for licenses. The board shall adopt and use a seal, administer oaths and take testimony concerning any matter within its jurisdiction.

B. The board may not adopt a rule that:

1. Regulates a licensee's fees or charges to a patient.

2. Regulates the place in which a licensee may practice.

3. Prescribes the manner or method of accounting, billing or collection of fees.

4. Prohibits advertising by a licensee unless the advertising is inconsistent with section 44-1481.

C. The board shall maintain its records in accordance with a retention schedule approved by the Arizona state library, archives and public records.

D. The board shall adopt rules for criteria it must use to approve continuing education programs for licensees. Programs shall be designed to assist licensees to maintain competency, to become aware of new developments in the practice of the profession of optometry and to increase management skills and administrative efficiency. The board shall approve programs that meet these criteria.

E. Subject to title 41, chapter 4, article 4, the board may hire an executive director as an employee of the board. The executive director is responsible for the performance of the regular administrative functions of the board and such other administrative duties as the board may direct. The executive director is eligible to receive compensation in an amount as determined pursuant to section 38-611.

F. The board may hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter, hire other employees subject to title 41, chapter 4, article 4 required to carry out this chapter and contract with other state agencies when required to carry out this chapter.

G. The board may:

1. Appoint advisory committees.

2. Issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.

3. Charge reasonable fees for materials it has printed at its own expense.

4. Delegate to the executive director, board staff and persons with whom the board contracts the board's licensing and regulatory duties. The board shall adopt rules for each specific licensing and regulatory duty the board delegates pursuant to this paragraph.

H. Subject to title 41, chapter 4, article 4, the board may hire consultants and professional and clerical personnel as required to perform its duties.

I. The board may contract with other state or federal agencies as required to carry out this chapter.

J. Subject to the limitations of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

K. A person who is aggrieved by an action taken by the executive director, board staff or person with whom the board contracts may request the

board to review that action by filing with the board a written request within thirty days after that person is notified of the action by personal delivery or certified mail to that person's last known residence or place of business. At the next regular board meeting, the board shall review the action and approve, modify or reject the action.

L. THE BOARD SHALL REPORT ALLEGATIONS OF EVIDENCE OF CRIMINAL WRONGDOING TO THE APPROPRIATE CRIMINAL JUSTICE AGENCY.

Sec. 4. Section 32-1725, Arizona Revised Statutes, is amended to read:

32-1725. Issuance and display of license and certificate

A. The board shall issue to each applicant who satisfactorily passes the examination and who pays the license issuance fee pursuant to section 32-1727 a license under the seal and signatures of the members of the board. An applicant who does not pay the issuance fee within sixty days must submit a new application and all applicable fees pursuant to section 32-1727.

B. A PERSON WHO HOLDS A LICENSE OR CERTIFICATE PURSUANT TO THIS CHAPTER MUST DISPLAY THE CURRENT, ORIGINAL DOCUMENT IN A CONSPICUOUS PLACE THAT IS ACCESSIBLE TO THE PUBLIC.

C. A PERSON WHO PRACTICES, CONDUCTS BUSINESS OR IS EMPLOYED AT MORE THAN ONE LOCATION AND WHO MAINTAINS A CONTINUING ACTIVITY AS AUTHORIZED BY THE LICENSE OR CERTIFICATE MUST DISPLAY A BOARD-ISSUED DUPLICATE OF THAT DOCUMENT AT EACH LOCATION.

Sec. 5. Section 32-1743, Arizona Revised Statutes, is amended to read:

32-1743. Grounds for censure, civil penalty, probation, suspension, revocation, denial or renewal of license

A. After notice and a hearing the board in its discretion may censure, impose a civil penalty, prescribe probation, suspend or revoke the license of a doctor of optometry or refuse to issue or renew a license, certificate or registration for any of the following reasons:

1. Conviction of a felony or any offense involving moral turpitude.

2. Procuring or attempting to procure a license to practice optometry or a certificate to use pharmaceutical agents by fraud, deceit, misrepresentation or knowingly taking advantage of the mistake of another person or agency.

3. Conduct likely to deceive or defraud the public.

4. Unprofessional conduct.

5. Employment of a solicitor to solicit business or soliciting from house to house or person to person.

6. Obtaining a fee or compensation by fraud or misrepresentation.

7. Employment of a person to engage in the practice of the profession of optometry who does not hold a license to practice the profession of optometry in this state.

8. Using any device to evade or defeat the provisions of this chapter, such as a profit sharing plan or partnership with a person not licensed to practice the profession of optometry in this state.

9. The practice of the profession of optometry under a false or assumed name.

10. Violation of any provision of this chapter OR ANY BOARD ORDER.

11. Violation of any of the rules adopted by the board pursuant to this chapter.

12. Any violation of any statutes, laws or rules regulating the practice of optometry in this state or any other jurisdiction in the United States.

13. Providing any controlled substance or pharmaceutical agent not authorized by this chapter or providing any controlled substance or prescription-only drug for other than accepted therapeutic purposes for diagnosis and treatment of conditions of the human eye and its adnexa.

14. Gross malpractice or repeated acts constituting malpractice.

15. Failing to maintain or submit records as required by this chapter.

B. TO DETERMINE THE APPROPRIATE DISCIPLINARY ACTION PURSUANT TO THIS SECTION, THE BOARD MAY CONSIDER ANY PREVIOUS NONDISCIPLINARY AND DISCIPLINARY ACTIONS AGAINST A LICENSEE.

Sec. 6. Section 32-1744, Arizona Revised Statutes, is amended to read:

32-1744. Board investigations; duty to report violations; hearing; decision of board; informal settlement conference

A. The board on its own motion shall investigate any evidence that appears to show that a licensee may be guilty of a violation of section 32-1743. Any person may report to the board information the person may have that appears to show that a licensee may be guilty of unprofessional conduct or of practice without regard for the safety and welfare of the public. A person who reports or provides information to the board in good faith is not subject to civil damages as a result~~, and~~. The name of the person reporting ~~shall not be disclosed unless the information is necessary to conduct an investigation or is essential to disciplinary proceedings conducted pursuant to this section~~ INFORMATION PURSUANT TO THIS SUBSECTION IS SUBJECT TO THE DISCLOSURE REQUIREMENTS PRESCRIBED IN SECTION 41-1010.

B. THE BOARD OR ITS DESIGNEE SHALL REGISTER AND INVESTIGATE ALL COMPLAINTS. ON RECEIPT OF A COMPLAINT, THE BOARD OR ITS DESIGNEE SHALL SEND THE LICENSEE A COPY OF THE COMPLAINT FOR A RESPONSE. THE BOARD SHALL REVIEW THE COMPLAINT AND RESPONSE AND MAY DISMISS THE COMPLAINT, INVESTIGATE IT FURTHER OR BRING ITS OWN COMPLAINT AGAINST THE LICENSEE. THE BOARD MAY RESOLVE A DISCIPLINARY MATTER INFORMALLY OR AFTER A FORMAL HEARING. THE BOARD OR ITS DESIGNEE SHALL INFORM THE COMPLAINANT OF THE FINDINGS OF THE INVESTIGATION AND THE RESOLUTION OF THE COMPLAINT.

~~B.~~ C. The board, its designee or the executive director shall require a licensee to provide a written response to a complaint within twenty days after the licensee receives the notification of complaint.

~~C.~~ D. Except as provided in subsection ~~E~~ F of this section, if in the opinion of the board it appears that information provided under

subsection A of this section may be accurate and a violation of this chapter, the board shall request an informal interview with the licensee before proceeding to a formal hearing. If the licensee refuses an invitation for an informal interview, or if the licensee accepts the invitation and if the results of the interview indicate suspension or revocation of license may be in order, a complaint shall be issued and a formal hearing held pursuant to title 41, chapter 6, article 10. If at the informal interview the board finds the information provided under subsection A of this section is accurate but not of sufficient seriousness to merit suspension exceeding thirty days or revocation of the license, it may take any or all of the following actions:

1. Issue a decree of censure or written reprimand.

2. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate the licensee. Probation may include a requirement for a refund of fees and charges to professional services clients resulting from services performed in violation of this chapter or rules adopted pursuant to this chapter, restriction of a license to practice or temporary suspension not to exceed thirty days. Failure to comply with probation is cause for filing a complaint and holding a formal hearing pursuant to title 41, chapter 6, article 10.

3. Impose a civil penalty of not more than ~~one~~ FIVE thousand dollars for each violation of this chapter.

4. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

~~D.~~ E. If the board determines that a reasonable basis exists to believe that a violation of this chapter or rules adopted pursuant to this chapter has occurred and the violation is not sufficiently serious to warrant disciplinary action, it may send a letter of concern to the licensee. The letter of concern shall advise the licensee of the possible violation and the board's decision not to initiate proceedings. If violations occur after the board sends a letter of concern, the board may initiate proceedings on all violations, including the violation that was the subject of the letter of concern.

~~E.~~ F. If in the opinion of the board it appears that information provided under subsection A of this section may be accurate, the board may issue a complaint and hold a formal hearing pursuant to title 41, chapter 6, article 10 without first holding an informal interview if the probable violation involves one or more of the following:

1. Gross negligence.

2. Fraud, forgery, unsworn falsification, false swearing or perjury.

3. Three or more repeated offenses.

4. Conviction of a felony.

5. Conviction of an offense involving moral turpitude.

6. Incompetence.

7. Failing to comply with a board order or consent agreement.

8. Wilfully and without legal justification failing to furnish in a timely manner information necessary for the board to conduct an investigation under this chapter that has been requested or subpoenaed by the board.

~~F.~~ G. The board shall serve on the licensee a notice fully setting forth the conduct or inability concerned and returnable at a hearing to be held before the board or an administrative law judge in not less than thirty days, stating the time and place of the hearing. A LICENSEE WHO HAS BEEN NOTIFIED OF A COMPLAINT PURSUANT TO THIS SUBSECTION MUST FILE WITH THE BOARD A WRITTEN RESPONSE NOT MORE THAN TWENTY DAYS AFTER SERVICE OF THE COMPLAINT AND NOTICE OF HEARING. IF THE LICENSEE FAILS TO ANSWER IN WRITING, IT IS DEEMED AN ADMISSION OF THE ACT OR ACTS CHARGED IN THE COMPLAINT AND NOTICE OF HEARING. THE BOARD MAY THEN TAKE DISCIPLINARY ACTION PURSUANT TO THIS CHAPTER WITHOUT A HEARING.

~~G.~~ H. AT THE EXPENSE OF THE LICENSEE, the board may require a MEDICAL, mental ~~and~~ OR physical examination and make an investigation, including, if necessary, the issuance of subpoenas, the appointment of advisory committees, the employment of expert witnesses~~, the taking of depositions~~ or otherwise, as may be required fully to inform itself with respect to the complaint.

~~H.~~ I. A person may file a motion with the board for an expedited hearing pursuant to section 41-1092.05.

~~I.~~ J. If the licensee wishes to be present at the hearing in person or by representation, or both, the licensee shall file with the board an answer to the charges in the complaint. The answer shall be in writing, verified under oath and filed within twenty days after service of the summons and complaint.

~~J.~~ K. At the hearing held in compliance with subsection ~~F~~ G of this section, a licensee may be present in person together with any counsel and witnesses the licensee chooses.

~~K.~~ L. The board shall issue subpoenas for witnesses it may need and, at the respondent's expense, for witnesses the respondent may request. All provisions of law compelling a person under subpoena to testify are applicable to a hearing held pursuant to this section.

~~L.~~ M. The board shall serve every notice or decision under this article by any method reasonably calculated to effect actual notice on the board and every other party to the action to the party's last address of record with the board. Each party shall inform the board of any change of address within five days after the change.

~~M.~~ N. A licensee who, after a hearing, is found to be guilty by the board of a violation of this chapter is subject to censure, probation or civil penalty as provided in subsection ~~C~~ D of this section, suspension of license or revocation of license, or any combination of these, and for the period of time or permanently and under the conditions the board deems

appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of formal hearings to the licensee who is in violation of this chapter.

~~N.~~ O. The board shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The board shall serve a copy of the decision on the licensee. On the licensee's request, the board shall also transmit to the licensee the record of the hearing.

~~O.~~ P. Except as provided in this subsection, all materials, documents and evidence associated with a pending or resolved complaint or investigation are confidential and are not public records. The following materials, documents and evidence are not confidential and are public records if they are related to resolved complaints and comply with subsection A of this section:

1. The complaint.
2. The response and any rebuttal statements submitted by the licensee.
3. Written or recorded board discussions of the complaint.
4. Written reports of an investigation of a complaint.
5. Disposition of the complaint, including any written comments of the board.

~~P.~~ Q. This section or any other law making communications between a licensee and the licensee's patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

~~Q.~~ R. Any action of the board shall be included in the minutes of the meeting at which the action is taken, including any determination by the board not to proceed under this section. The person reporting information to the board shall receive a copy of any final decision.

~~R.~~ S. Pursuant to sections 35-146 and 35-147, the board shall deposit civil penalties collected pursuant to this chapter in the state general fund.

~~S.~~ T. A licensee who is the subject of a disciplinary action may request an informal settlement conference. The licensee must submit a request for an informal settlement conference to the board in writing. The board shall hold an informal settlement conference within fifteen days after it receives a request to do so from the licensee. Only a person with the authority to act on behalf of the board may represent the board at the informal settlement conference. The board representative shall notify the licensee in writing that any written or oral statement made by the licensee at the informal settlement conference, including statements for the purpose of settlement negotiations, is inadmissible in any subsequent hearing. A licensee who participates in an informal settlement conference waives the right to object to the participation of the board representative in the final administrative decision.

Sec. 7. Title 32, chapter 16, article 3, Arizona Revised Statutes, is amended by adding section 32-1747.01, to read:

32-1747.01. Medical, physical or mental examinations; duty to report; immunity

A. IF THE BOARD BELIEVES, BASED ON ITS OWN INFORMATION OR A COMPLAINT OR INQUIRY DIRECTED TO THE BOARD, THAT A LICENSEE IS SUFFERING FROM A MEDICAL, PHYSICAL OR MENTAL CONDITION THAT MIGHT IMPEDE THE LICENSEE'S ABILITY TO PRACTICE COMPETENTLY, THE BOARD MAY ORDER THE LICENSEE TO UNDERGO A MEDICAL, PHYSICAL OR MENTAL EXAMINATION BY PERSONS DESIGNATED BY THE BOARD, AT THE LICENSEE'S EXPENSE.

B. A LICENSEE'S FAILURE TO SUBMIT TO AN EXAMINATION DIRECTED BY THE BOARD IS AN ADMISSION OF THE ALLEGATIONS, AND THE BOARD MAY TAKE APPROPRIATE ACTION TO PROTECT THE PUBLIC HEALTH AND SAFETY.

C. THE BOARD, AT REASONABLE INTERVALS, SHALL ALLOW A LICENSEE WHOSE LICENSE HAS BEEN SUSPENDED, LIMITED OR REVOKED PURSUANT TO THIS SECTION TO DEMONSTRATE THAT THE LICENSEE IS ABLE TO RESUME THE COMPETENT PRACTICE OF OPTOMETRY WITH REASONABLE SKILL AND SAFETY TO PATIENTS.

D. IF A LICENSEE HAS REASON TO BELIEVE THAT ANOTHER LICENSEE HAS ENGAGED IN UNPROFESSIONAL CONDUCT, THE LICENSEE MUST REPORT THE LICENSEE TO THE BOARD. THE BOARD SHALL NOT DISCLOSE THE IDENTITY OF THE REPORTING LICENSEE UNTIL THE BOARD COMPLETES ITS INVESTIGATION. THE BOARD SHALL NOT DISCLOSE THE NAME OF THE LICENSEE UNDER INVESTIGATION UNTIL IT COMPLETES ITS INVESTIGATION.

E. THE BOARD SHALL RECORD AND ASSIGN A CASE NUMBER TO EACH COMPLAINT OR ALLEGATION IT RECEIVES.

F. A LICENSEE WHO REPORTS INFORMATION TO THE BOARD PURSUANT TO THIS SECTION OR TESTIFIES IN ANY RELATED INVESTIGATION IN GOOD FAITH IS NOT SUBJECT TO CIVIL LIABILITY.

Sec. 8. Section 32-1748, Arizona Revised Statutes, is amended to read:

32-1748. Reinstatement; definition

A. On written application and for good cause shown, the board may issue a new license to a doctor of optometry whose license has been revoked, reissue a license or modify the suspension of any license to practice optometry ~~which~~ THAT has been suspended.

B. A person applying for reinstatement of a revoked license ~~shall~~, in addition to the requirements of this section, SHALL comply with all initial licensing requirements in existence at the time of ~~his~~ THE application for reinstatement, except those requirements ~~which~~ THAT are inconsistent with this section.

C. The board shall not issue a new license or reissue a license to a doctor of optometry whose license has been revoked until two years after the effective date of the revocation, except that if the revocation is based only on section 32-1743, SUBSECTION A, paragraph 1 and the conviction is ultimately reversed on appeal, the board shall enter an order vacating the revocation.

D. For the purposes of this section, "good cause shown" means that the person making application for reinstatement or reissuance shall demonstrate through substantial evidence presented to the board that ~~he~~ THE PERSON is completely rehabilitated with respect to the conduct ~~which~~ THAT was the basis of the revocation or suspension of ~~his~~ THE license. Demonstration of rehabilitation shall include:

1. Evidence that the person has not engaged in any conduct during the revocation or suspension period ~~which~~ THAT, if ~~he~~ THE PERSON had been licensed during that period, would have constituted a basis for revocation or suspension pursuant to section 32-1743.

2. Evidence that, with respect to any criminal conviction ~~which~~ THAT constituted any part of the basis for the previous revocation or suspension, ~~his~~ THE PERSON'S civil rights have been fully restored pursuant to statute or other applicable recognized judicial or gubernatorial order.

3. Evidence that restitution has been made to any aggrieved party as ordered by a court of competent jurisdiction.

4. Other evidence of rehabilitation the board deems appropriate.

Sec. 9. Repeal

Title 32, chapter 16, article 5, Arizona Revised Statutes, is repealed.

Sec. 10. Title 32, chapter 16, Arizona Revised Statutes, is amended by adding a new article 5, to read:

ARTICLE 5. DISPENSERS OF CONTACT LENSES

32-1771. Dispensing contact lenses; conformity with federal law; requirements

A. ALL SALES OF AND PRESCRIPTIONS FOR CONTACT LENSES IN THIS STATE MUST CONFORM TO THE FEDERAL FAIRNESS TO CONTACT LENS CONSUMERS ACT (15 UNITED STATES CODE SECTIONS 7601 THROUGH 7610).

B. CONTACT LENSES USED TO DETERMINE A PRESCRIPTION FOR CONTACT LENSES ARE CONSIDERED TO BE DIAGNOSTIC LENSES. AFTER THE DIAGNOSTIC AND TRIAL PERIOD AND AFTER THE CONTACT LENSES HAVE BEEN ADEQUATELY FITTED AND THE PATIENT HAS BEEN RELEASED FROM IMMEDIATE FOLLOW-UP CARE BY A PERSON WHO IS LICENSED PURSUANT TO THIS CHAPTER OR CHAPTER 13 OR 17 OF THIS TITLE, THE PRESCRIBING OPTOMETRIST SHALL PROVIDE A PRESCRIPTION FOR CONTACT LENSES AT NO COST TO THE PATIENT.

C. CONTACT LENSES MAY NOT BE SOLD OR DISPENSED EXCEPT PURSUANT TO A PRESCRIPTION ORDER THAT CONFORMS TO STATE AND FEDERAL REGULATIONS GOVERNING PRESCRIPTIONS.

Sec. 11. Retention of board members

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

APPROVED BY THE GOVERNOR MAY 2, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2013.

Passed the House April 22, 2013,

by the following vote: 51 Ayes,

5 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 4, 2013,

by the following vote: 23 Ayes,

5 Nays, 2 Not Voting

President of the Senate

Charmion Bellington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1433

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 30, 2013

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

30 day of April, 2013

at 3:45 o'clock P M.

Mikhaila Howard
Secretary to the Governor

Approved this 2nd day of

May

at 2:07 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 2nd day of May, 2013

at 4:55 o'clock P M.

acting Secretary of State

S.B. 1433