

OPTOMETRY LICENSING ACT AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Alma Mansell

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; IMPOSING DISCLOSURE REQUIREMENTS ON HEALTH INSURERS WHO OFFER VISION BENEFITS; INCLUDING OPTOMETRISTS IN THE LIST OF HEALTH CARE PROVIDERS COVERED BY HEALTH INSURANCE AND THE GOOD SAMARITAN ACT; PERMITTING A CONTACT LENS PRESCRIPTION TO BE GIVEN VERBALLY AND SPECIFYING THE COMPONENTS OF SUCH A PRESCRIPTION; ESTABLISHING A GENERAL EXEMPTION FROM LICENSURE FOR CONTACT LENS SELLERS AND THE MANNER FOR FILLING PRESCRIPTIONS BASED ON NOTIFICATION; CLARIFYING THE EXEMPTION FOR PERSONS WHO FIT CONTACT LENSES; REQUIRING AN OPTOMETRIST TO PROVIDE CONTACT LENS PRESCRIPTION TO A PATIENT AND A SELLER OF CONTACT LENSES; LIMITING THE LIABILITY OF AN OPTOMETRIST FOR PROVIDING A PRESCRIPTION TO A PATIENT; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-22-613, as last amended by Chapter 38, Laws of Utah 1996

58-13-2, as last amended by Chapter 288, Laws of Utah 1998

58-13-3, as last amended by Chapter 288, Laws of Utah 1998

58-16a-102, as last amended by Chapter 13, Laws of Utah 1997

58-16a-305, as renumbered and amended by Chapter 13, Laws of Utah 1997

58-16a-306, as enacted by Chapter 13, Laws of Utah 1997

58-16a-501, as enacted by Chapter 13, Laws of Utah 1997

58-16a-502, as enacted by Chapter 13, Laws of Utah 1997

58-16a-503, as renumbered and amended by Chapter 13, Laws of Utah 1997

58-16a-601, as renumbered and amended by Chapter 13, Laws of Utah 1997

58-17a-305, as enacted by Chapter 247, Laws of Utah 1996

ENACTS:

58-16a-801, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **31A-22-613** is amended to read:

31A-22-613. Permitted provisions for disability insurance policies.

The following provisions may be contained in a disability insurance policy, but if they are in that policy, they shall conform to at least the following minimum requirements for the policyholder:

(1) Any provision respecting change of occupation may provide only for a lower maximum benefit payment and for reduction of loss payments proportionate to the change in appropriate premium rates, if the change is to a higher rated occupation, and this provision shall provide for retroactive reduction of premium rates from the date of change of occupation or the last policy anniversary date, whichever is the more recent, if the change is to a lower rated occupation.

(2) Section 31A-22-405 applies to misstatement of age in disability policies, with the appropriate modifications of terminology.

(3) Any policy which contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy is not effective, and if that date falls within a period for which a premium is accepted by the insurer or if the insurer accepts a premium after that date, the coverage provided by the policy continues in force, subject to any right of cancellation, until the end of the period for which the premium was accepted. This Subsection (3) does not apply if the acceptance of premium would not have occurred but for a misstatement of age by the insured.

(4) Any provision dealing with preexisting conditions shall be consistent with Subsections 31A-22-605(9)(a) and 31A-22-609(2), and any applicable rule adopted by the commissioner.

(5) (a) If an insured is otherwise eligible for maternity benefits, a policy may not contain language which requires an insured to obtain any additional preauthorization or preapproval for customary and reasonable maternity care expenses or for the delivery of the child after an initial preauthorization or preapproval has been obtained from the insurer for prenatal care. A requirement for notice of admission for delivery is not a requirement for preauthorization or preapproval, however, the maternity benefit may not be denied or diminished for failure to provide admission

notice. The policy may not require the provision of admission notice by only the insured patient.

(b) This Subsection (5) does not prohibit an insurer from:

(i) requiring a referral before maternity care can be obtained;

(ii) specifying a group of providers or a particular location from which an insured is required to obtain maternity care; or

(iii) limiting reimbursement for maternity expenses and benefits in accordance with the terms and conditions of the insurance contract so long as such terms do not conflict with Subsection (5)(a).

(6) An insurer may only represent that a policy:

(a) offers a vision benefit if the policy:

(i) charges a premium for the benefit; and

(ii) provides reimbursement for materials or services provided under the policy; and

(b) covers laser vision correction, whether photorefractive keratectomy, laser assisted in-situ keratomelusion, or related procedure, if the policy:

(i) charges a premium for the benefit; and

(ii) the procedure is at least a partially covered benefit.

Section 2. Section **58-13-2** is amended to read:

58-13-2. Emergency care rendered by licensee.

A person licensed under Title 58, Occupations and Professions, to practice as any of the following health care professionals, who is under no legal duty to respond, and who in good faith renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable for any civil damages as a result of any acts or omissions by the person in rendering the emergency care:

(1) osteopathic physician;

(2) physician and surgeon;

(3) naturopath;

(4) dentist or dental hygienist;

(5) chiropractic physician;

(6) physician assistant; [or]

(7) optometrist; or

[~~(7)~~] (8) nurse licensed under Section 58-31b-301.

Section 3. Section **58-13-3** is amended to read:

58-13-3. Qualified immunity -- Health professionals -- Charity care.

(1) (a) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost. The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.

(b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer health care in charity care settings in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.

(2) As used in this section:

(a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.

(b) "Health care professional" means individuals licensed under Title 58, Occupations and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, and other nurses licensed under Section 58-31b-301.

(c) "Remuneration or compensation":

(i) (A) means direct or indirect receipt of any payment by the physician and surgeon, health care facility, other health care professional, or organization, on behalf of the patient, including payment or reimbursement under medicare or medicaid, or under the state program for the medically indigent on behalf of the patient; and

(B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health

care; and

(ii) does not mean any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as medical supplies or drugs.

(3) A health care professional who provides health care treatment at a health care facility is not liable in a medical malpractice action if:

(a) the treatment was within the scope of the health care professional's license under this title;

(b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services, the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation and that in exchange for receiving uncompensated health care, the patient consents to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:

(a) the health care facility meets the requirements in Subsection (3)(b);

(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and

(c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

(5) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Section 4. Section **58-16a-102** is amended to read:

58-16a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Optometrist Licensing Board created in Section 58-16a-201.

(2) "Contact lens" means any lens that:

(a) has a spherical, cylindrical, or prismatic power or curvature;

(b) is made pursuant to a current prescription; and

(c) is intended to be worn on the surface of the eye.

(3) (a) "Contact lens prescription" means a written or verbal order for contact lenses that includes:

~~[(a)]~~ (i) the commencement date [written] of the prescription;

~~[(b)]~~ (ii) the base curve, power, diameter, material or brand name, and expiration date;

~~[(c) the quantity of lenses if other than one per eye; and]~~

~~[(d) the signature of the licensed optometrist or physician prescribing the contact lenses.]~~

(iii) for a written order, the signature of the prescribing optometrist or physician; and

(iv) for a verbal order, a record maintained by the recipient of:

(A) the name of the prescribing optometrist or physician; and

(B) the date when the prescription was issued or ordered.

(b) A prescription may include:

(i) a limit on the quantity of lenses that may be ordered under the prescription if:

(A) the prescription is for more than one contact per eye; or

(B) required for medical reasons documented in the patient's files; and

(ii) the expiration date of the prescription, which may not be less than one year from the commencement date, unless documented medical reasons require continuous monitoring, nor more than two years.

(c) A prescription shall be valid for two years if the prescription does not include an expiration date.

(4) "Contact lens prescription verification" means a written request from a person who sells contact lenses that:

(a) is sent to the prescribing optometrist or physician; and

(b) seeks the confirmation of the accuracy of a patient's prescription.

~~[(4)]~~ (5) "Eye and its adnexa" means the human eye and all structures situated within the orbit, including the conjunctiva, lids, lashes, and lacrimal system.

~~[(5)]~~ (6) "Fitting of a contact lens" means:

(a) the using of a keratometer to measure the human eye;
(b) utilizing refractive data provided by a licensed optometrist or ophthalmologist; and
(c) trial fitting of contact lenses, which includes a period of time for evaluation for fit and performance, to determine a tentative contact lens prescription for a patient if the patient:

(i) has not worn contact lenses before; or

(ii) has changed to a different type or base curve.

~~[(6)]~~ (7) "Laser surgery" means surgery in which human tissue is cut, burned, or vaporized by means of laser or ionizing radiation.

~~[(7)]~~ (8) "Ophthalmic lens" means any lens used to treat the eye and that:

(a) has a spherical, cylindrical, or prismatic power;
(b) is made pursuant to an unexpired prescription; and
(c) is intended to be used in eyeglasses or spectacles.

~~[(8)]~~ (9) "Optometric assistant" means an unlicensed individual:

(a) working under the direct and immediate supervision of a licensed optometrist; and
(b) engaged in specific tasks assigned by the licensed optometrist in accordance with the standards and ethics of the profession.

~~[(9)]~~ (10) "Optometrist" or "optometric physician" means an individual licensed under this chapter.

~~[(10)]~~ (11) "Optometry" and "practice of optometry" mean any one or any combination of the following practices:

(a) examination of the human eye and its adnexa to detect and diagnose defects or abnormal conditions;
(b) determination or modification of the accommodative or refractive state of the human eye or its range or power of vision by administration and prescription of pharmaceutical agents or the use

of diagnostic instruments;

(c) prescription, ordering, administration, or adaptation of ophthalmic lenses, contact lenses, ophthalmic devices, pharmaceutical agents, laboratory tests, or ocular exercises to diagnose and treat diseases, defects, or other abnormal conditions of the human eye and its adnexa; ~~[or]~~

(d) display of any advertisement, circular, sign, or device offering to:

(i) examine the eyes;

(ii) fit glasses or contact lenses; or

(iii) adjust frames; ~~[or]~~

~~[(iv) duplicate, replace, or accept for duplication or replacement any ophthalmic lens or contact lens;]~~

(e) removal of a foreign body from the eye or its adnexa, that is not deeper than the anterior ~~[one-half]~~ 1/2 of the cornea;

(f) consultation regarding the eye and its adnexa with other appropriate health care providers, including referral to other appropriate health care providers; and

(g) a person, not licensed as an optometrist, directing a licensee under this chapter to withhold or alter the eye care services the licensee has ordered.

~~[(H)]~~ (12) "Pharmaceutical agent" means any diagnostic or therapeutic drug or combination of drugs that has the property of assisting in the diagnosis, prevention, treatment, or mitigation of abnormal conditions or symptoms of the eye and its adnexa.

~~[(12)]~~ (13) "Prescription drug" has the same definition as in Section 58-17a-102.

~~[(13)]~~ (14) "Unexpired" means a prescription that was issued:

(a) not more than two years prior to presentation of the prescription for an ophthalmic lens ~~[or lenses]; or~~

(b) in accordance with Subsection (3) for a contact lens.

Section 5. Section **58-16a-305** is amended to read:

58-16a-305. License -- Exemptions.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included in the definition of the practice of optometry subject to the stated

circumstances and limitations without being licensed under this chapter:

(1) a person who sells [~~eyeglasses~~] contact lenses on prescription provided by a person authorized under state law to practice either optometry or medicine and surgery if the person complies with Section 58-16a-801;

(2) a person who sells eyeglasses or spectacles as articles of merchandise or who fabricates them from a prescription if the person:

(a) [~~he~~] does so in the ordinary course of trade from a permanently located and established place of business;

(b) [~~he~~] does not traffic or attempt to traffic upon assumed skill in testing the eye and adapting lenses according to the test;

(c) [~~he~~] does not duplicate, replace, or accept for replacement any ophthalmic lens [~~or lenses~~], except in the case of an emergency [~~, unless he is an exclusive wholesale optical establishment~~];

(d) [~~he~~] does not use in the testing of the eyes any lenses or instruments other than the lenses actually sold; and

(e) [~~he~~] does not give or offer eyeglasses or spectacles as premiums as defined in Section 13-26-2; and

(3) a person who [~~sells~~] fits contact lenses under the following conditions:

(a) he has a current certification from both the American Board of Opticianry and the National Contact Lens Examiners;

(b) he does not give or offer contact lenses as premiums;

(c) he does not perform a refraction, over-refraction, or attempt to traffic upon assumed skill in testing the eye;

(d) he operates in the ordinary course of trade from a permanently located and established place of business;

(e) he performs the work involved in fitting contact lenses himself and does not delegate the contact lens fitting to any other individual who is not qualified under this Subsection (3);

(f) he does not use in the testing of the eye any lenses or instruments other than the lenses

he actually will sell;

~~[(f)]~~ (g) he provides services only to a patient who:

(i) presents an unexpired contact lens prescription; or

(ii) has had an eye examination within the prior six months by an optometrist or ophthalmologist meeting the requirements under Section 58-16a-306; ~~[and]~~

~~[(g)]~~ (h) he maintains a copy of the patient's contact lens prescription for not less than seven years~~[-];~~

(i) he enters into a written agreement with an optometrist or an ophthalmologist before July 1, 2000, to fit contact lenses prescribed by that optometrist or ophthalmologist;

(j) he fits contact lenses for at least two years under the direct supervision of the optometrist or ophthalmologist identified in Subsection (3)(i) before July 1, 2000, as documented in the written agreement; and

(k) the optometrist or ophthalmologist described in Subsection (3)(i):

(i) ensures that the final contact lens is accurate;

(ii) presents a written copy of the prescription to the person fitting the contact lens; and

(iii) ensures that a copy of the prescription is provided to the patient, except as provided in Section 58-16a-306.

Section 6. Section **58-16a-306** is amended to read:

58-16a-306. Contact lens prescription -- Qualifications.

~~(1) An optometrist or ophthalmologist issuing a contact lens prescription [that may be filled by a person fitting contact lenses under Subsection 58-16a-305(3)] shall:~~

~~[(1)]~~ (a) be licensed under this title to practice in Utah;

~~[(2) have a current written agreement with the person fitting the contact lenses to fit the contact lenses to be prescribed by that particular optometrist or ophthalmologist;]~~

~~[(3) be an optometrist or ophthalmologist for whom the person fitting the contact lenses has performed not less than two years of contact lens apprenticeship which apprenticeship shall be noted in the written agreement; and]~~

~~[(4)]~~ (b) ensure the final contact lens prescription is accurate ~~[and shall];~~

(c) present a written copy of the prescription to the [person fitting the contact lens under Subsection 58-16a-305(3)] patient after fitting unless:

(i) there are unpaid fees associated with the examination or treatment; or

(ii) providing a copy is not in the best medical interests of the patient in the professional judgement of the prescribing optometrist or physician; and

(d) provide a copy of the patient's contact lens prescription to a person who sells contact lenses upon the request of the patient or the person selling the contact lenses.

(2) An optometrist or physician may not be held liable as a result of providing a prescription to a patient as required by Subsection (1).

Section 7. Section **58-16a-501** is amended to read:

58-16a-501. Unlawful conduct.

"Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

(1) buying, selling, or fraudulently obtaining, any optometry diploma, license, certificate, or registration;

(2) aiding or abetting the buying, selling, or fraudulently obtaining, of any optometry diploma, license, certificate, or registration;

(3) selling contact lenses [~~without having received a written unexpired prescription~~] in a manner inconsistent with Section 58-16a-801 or intentionally altering a prescription unless the person selling the lenses is a licensed optometrist or ophthalmologist[~~, or an individual exempt from licensure under Subsection 58-16a-305(3)~~]; or

(4) representing oneself as or using the title of "optometrist," "optometric physician," "doctor of optometry," or "O.D.," unless currently licensed [~~or exempted from licensure~~] under this chapter.

Section 8. Section **58-16a-502** is amended to read:

58-16a-502. Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(1) using or employing the services of an optometric assistant to assist a licensee in any manner not in accordance with:

(a) the generally recognized practices and standards of ethics of the profession; or

- (b) applicable state law or division rule;
- (2) failure to refer a patient to an appropriate licensed practitioner when:
 - (a) the patient's condition does not respond to treatment; or
 - (b) the treatment is not within the scope of competence or licensure of the licensee;
- (3) providing confidential information regarding a patient to any third party who does not have a legal and professional ground for obtaining the information;
- (4) knowingly prescribing, selling, giving away, or administering any prescription drug except for a legitimate medical purpose and upon a proper diagnosis indicating the use of the drug in the amount prescribed or provided;
- (5) giving or receiving directly or indirectly any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, except as part of a legal relationship within a lawful professional partnership, corporation, or association; ~~[or]~~
- (6) failure to transfer pertinent and necessary information from a patient's medical records to another optometrist or physician when so requested by the patient or his representative, as designated in writing~~[-]; or~~
- (7) failure to provide a contact lens prescription to a person who sells contact lenses in accordance with Section 58-16a-306.

Section 9. Section **58-16a-503** is amended to read:

58-16a-503. Penalty for unlawful conduct.

~~[Any]~~ (1) Except as provided in Subsection (2), any person who violates the unlawful conduct provision defined in Section 58-16a-501 or Subsection 58-1-501(1)(a) or (1)(c) is guilty of a third degree felony.

(2) A person who violates Subsection 58-16a-501(3) is guilty of a class C misdemeanor.

Section 10. Section **58-16a-601** is amended to read:

58-16a-601. Scope of practice.

- (1) An optometrist may:
 - (a) provide any optometric services not specifically prohibited under this chapter or division rules and that are within the optometrist's training, skills, and scope of competence; and

(b) prescribe or administer any pharmaceutical agent for the eye and its adnexa, including all oral pharmaceutical agents, except that:

(i) the oral antibiotics may only be prescribed for:

~~[(i)]~~ (A) eyelid-related ocular conditions or diseases; and

~~[(ii)]~~ (B) any other ocular disease or condition as specified by division rule[-]; and

(ii) Schedule III controlled substances may only be prescribed or administered to be taken orally or topically for pain of the eye or adnexa in a quantity not to exceed 72 hours in duration and which may not be refilled.

(2) An optometrist may not:

(a) perform surgery, including laser surgery; or

(b) prescribe or administer any Schedule II ~~[or Schedule III]~~ controlled substance as defined in Title 58, Chapter 37, Controlled Substances.

(3) An optometrist is a health care provider for purposes of Sections 31A-22-617 and 31A-22-618.

Section 11. Section **58-16a-801** is enacted to read:

Part 8. Contact Lens Seller

58-16a-801. Contact lens seller.

(1) A person may sell contact lenses if the person:

(a) does so in the ordinary course of trade from a permanently located and established place of business;

(b) does not perform refractions, over-refractions, or attempts to traffic upon assumed skill in testing the eye;

(c) does not offer or give contact lenses as premiums, as defined in Section 13-26-2;

(d) does not fit contact lenses;

(e) provides a contact lens to a patient after:

(i) receiving an unexpired verbal or written prescription; or

(ii) sending a contact lens prescription verification to the prescribing optometrist or physician, regardless of whether the prescribing optometrist or physician responds to or confirms the

verification, provided that:

(A) the person has all of the information necessary to fill the prescription;

(B) the prescribing optometrist or physician has not informed the person that the prescription has expired or is otherwise inaccurate prior to the person shipping or hand-delivering the contact lens to the patient;

(C) the person confirms a valid, unexpired contact lens prescription for the patient if the person is aware that the patient provided inaccurate prescription information in his last order; and

(D) the person informs the patient that the prescription has expired or that there is a medical problem associated with the prescription if the information is communicated by the prescribing optometrist or physician to the person within 72 hours of the contact lens prescription verification being sent; and

(f) maintains patient information, including the method and date of any prescription verification, for no less than seven years.

(2) Nothing in this section may be construed as requiring a person to be licensed or certified in any way under this or any another chapter of this title to sell contact lenses in accordance with Subsection (1).

Section 12. Section **58-17a-305** is amended to read:

58-17a-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307[-];

(1) an individual who has completed all qualifications for licensure as a pharmacy technician, except an experience requirement which may be established by rule under Subsection 58-17a-302(4), may practice under the direct personal supervision of a pharmacist while completing that requirement for a period not to exceed six consecutive months without being licensed under this chapter[-]; and

(2) a person may sell contact lenses in accordance with Section 58-16a-801 without being licensed under this chapter.