

§2421. Licensure required

1. Licensure required. An individual may not practice optometry in this State without first obtaining a license from the board, but this chapter does not apply to individuals already licensed to practice medicine within this State.

[PL 1993, c. 600, Pt. A, §152 (NEW).]

2. Penalty. An individual who practices optometry in violation of subsection 1 commits a Class E crime. The State may bring action in Superior Court to enjoin an individual from violating subsection 1 regardless of whether proceedings have been or may be instituted in District Court and regardless of the status of criminal proceedings.

[PL 1993, c. 600, Pt. A, §152 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

3. Operation of kiosks. The following provisions govern the operation of kiosks.

A. The ownership and operation of a kiosk, including use of a kiosk by a provider, must comply with section 2435. [PL 2015, c. 173, §3 (NEW).]

B. In addition to the enforcement actions available to the board under section 2431-A, the board has the following powers of enforcement for violations of this chapter that relate in any way to kiosks, their use or the issuance of prescriptions arising out of their use. Nothing in this paragraph may be construed to apply to enforcement for violations by physicians who are governed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure.

(1) A person or governmental entity that believes a violation of this chapter in relation to a kiosk has occurred or has been attempted may make an allegation of that fact to the board in writing.

(2) If, upon reviewing an allegation under subparagraph (1), the board determines there is a reasonable basis to believe a violation of this chapter or attempted violation of this chapter has occurred in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use, the board shall investigate.

(3) The board may hold adjudicatory hearings and administer oaths and order testimony to be taken at a hearing or by deposition conducted pursuant to Title 5, sections 9051 to 10005.

(4) The board may proceed with an action if the board determines that a violation in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use has occurred.

(5) The board is not required to wait until human harm has occurred to initiate an investigation under this subsection.

(6) The board, upon finding, after notice and an opportunity for a hearing, that a person has violated or has attempted to violate any requirement related to a kiosk, its use or the issuance of a prescription arising out of kiosk use, may impose an administrative fine of not more than \$10,000 for each violation or attempted violation and may issue an order requiring reimbursement of the reasonable costs to the board of investigation and hearing.

(7) The board shall advise the Attorney General of the failure of a person to pay an administrative fine or reimburse costs of investigation and hearing imposed under this paragraph. The Attorney General may bring an action in a court of competent jurisdiction for the failure to pay any amount imposed under this paragraph.

(8) The board may request that the Attorney General file a civil action seeking an injunction or other appropriate relief to enforce this subsection. The court may impose on a person for violations of this subsection that relate in any way to a kiosk, its use or the issuance of a prescription arising out of kiosk use a fine of not more than \$20,000 for each violation or

attempted violation. In addition, the Attorney General may bring an action to recover the reasonable costs of the investigation and hearing.

(9) The board may adopt rules to implement, administer and enforce this subsection. Rules adopted pursuant to this subparagraph are routine technical rules under Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 173, §3 (NEW).]

C. Nothing in this subsection prohibits the Attorney General from initiating an action without referral or request from the board if the Attorney General determines there is a reasonable basis to believe a violation or attempted violation of this subsection occurred. [PL 2015, c. 173, §3 (NEW).]

D. It is neither a violation of this subsection nor grounds for professional discipline or liability for an optometrist to fill a prescription for a patient based in part on measurements obtained through a kiosk. [PL 2015, c. 173, §3 (NEW).]

[PL 2015, c. 173, §3 (NEW).]

SECTION HISTORY

PL 1973, c. 788, §156 (NEW). PL 1993, c. 600, §A152 (RPR). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2015, c. 173, §3 (AMD).

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