

235 CMR: BOARD OF REGISTRATION
OF DISPENSING OPTICIANS

235 CMR 5.00: STANDARDS OF PROFESSIONAL PRACTICE AND CONDUCT; DISCIPLINARY PROCEEDINGS

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5.01: Scope and Purpose

The purpose of 235 CMR 5.00 is to establish standards of professional practice and conduct for licensed dispensing opticians and apprentice opticians; procedures for the investigation and adjudication of complaints alleging violations of those standards; and grounds for disciplinary action against licenses issued by the Board.

5.02: Standards for Dispensing of Lenses or Eyeglasses

- (1) No dispensing optician who holds a license issued by the Board pursuant to 235 CMR 2.00, nor any apprentice optician registered with the Board pursuant to 235 CMR 4.00, shall prepare or dispense any ophthalmic lenses, spectacles, eyeglasses, contact lenses or appliances related thereto except in accordance with the terms of an eyeglass prescription or contact lens prescription written or issued by a duly licensed physician or by an duly registered or licensed optometrist.
- (2) Before delivering or furnishing any ophthalmic lenses, spectacles, eyeglasses, or contact lenses to the intended wearer or user thereof, a licensed dispensing optician shall:
 - (a) Verify that the ophthalmic lenses, spectacles, eyeglasses or contact lenses in question conform in all material respects to the terms and specifications contained in the prescription issued by the intended wearer's physician or optometrist;
 - (b) Verify that the ophthalmic lenses, spectacles, eyeglasses or contact lenses in question fit the intended wearer or user properly, and make any and all adjustments in the fit of such items as may be reasonably necessary to ensure that they fit the intended wearer or user properly;
 - (c) Verify that the materials used in such ophthalmic lenses, spectacles, eyeglasses or contact lenses meet all applicable requirements of Sections Z80.1 and Z80.2 of the Standards of the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036;
 - (d) Provide the intended wearer or user with appropriate instruction in the handling, insertion, removal and care of such ophthalmic lenses, spectacles, eyeglasses or contact lenses; and
 - (e) Document his or her performance of the procedures required by 235 CMR 5.02(2)(a) through (d), in writing, in the written records pertaining to that intended wearer or user which are maintained by him or her, or by the optical goods establishment from which those items are dispensed. Such documentation shall bear the signature or initials of the licensed dispensing optician who performed the procedures required by 235 CMR 5.02(2)(a) through (d).

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5.03: Record-keeping Requirements

(1) A licensed dispensing optician shall establish and maintain a separate, adequate, legible and accurate written service record for each person for whom he or she prepares or dispenses ophthalmic lenses, spectacles, eyeglasses, contact lenses, or appliances related thereto. The record shall be kept in chronological order in the office where the licensed dispensing optician rendered such services, or in the office of the optical goods establishment from which such items were dispensed, if different. Record entries shall be made contemporaneously with the performance of the function or service being documented. Each such entry shall be signed by, or shall otherwise adequately identify, the licensed dispensing optician who provided, or supervised the provision of, that function or service. Such records shall include, at a minimum, documentation of the following:

- (a) The name, address and telephone number of the person to whom the record pertains;
- (b) The date on which each function or service documented in the record was performed, and the name and license number of the individual who provided or performed that function or service;
- (c) All eyeglass prescriptions and contact lens prescriptions presented to the licensed dispensing optician at that location by or for the person to whom the record pertains; and
- (d) All documentation required by 235 CMR 5.02(2).

(2) Except as provided in 235 CMR 5.03(3) or (4), such service records and all information contained therein shall be kept confidential to the extent provided by state or federal law.

(3) Upon the written request of the person receiving the services, that person's authorized legal representative, or, in the case of an unemancipated minor, the service recipient's parent or legal guardian, a licensed dispensing optician shall furnish a complete copy of that person's service records, including all supporting documentation and reports, to the party authorized to receive it. A reasonable fee may be charged for this service.

(4) A licensed dispensing optician shall furnish to the Board or its duly authorized representative a complete copy of a service recipient's service record upon written request. No fee may be charged for this service.

(5) No person shall be required to sign any release from liability or waiver as a condition for the receipt of his or her service record pursuant to 235 CMR 5.03(3).

(6) Service records shall be maintained for a period of not less than five years from the date of the last client encounter or professional consultation with the client.

(7) Violation of any provision of 235 CMR 5.03 shall be considered sufficient grounds for disciplinary action by the Board pursuant to M.G.L. c. 112, § 73H.

5.04: Identification of Dispensing Opticians

(1) Every dispensing optician shall conspicuously display his license in his place of business or employment. Every dispensing optician employed by a corporation or other business organization shall ensure that his own license is displayed conspicuously in the offices of the corporation or organization where members of the public come to obtain opticianry services.

(2) Every dispensing optician shall, during any time in which he or she is engaged in the practice of opticianry, attach to his or her jacket, coat or other garment in a conspicuously visible manner an identification badge or tag which sets forth in large print his or her name and license number. If he or she is employed by another person, corporation or business entity, he or she shall also set forth on the badge the name of his or her employer, and the dispensing optician license number of his employer where applicable. The dispensing optician shall wear the identification badge or tag so that it is visible to any individual meeting or communicating with the optician in person.

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5.05: Notification of Changes in Name, Address, Employment or Office Location

Every licensee shall notify the Board in writing of any change in his or her name, residence or business address, or place of employment within 30 days of such change.

5.06: Restrictions on Practice of Opticianry by Business Organizations or Entities

(1) No business organization or entity, as defined in 235 CMR 2.04, shall perform, provide, or offer to perform or provide, any function or service which is included within the "practice of opticianry", as defined in 235 CMR 2.04, unless:

(a) At least one individual who is employed by that business organization or entity holds a license to practice as a dispensing optician issued by the Board pursuant to M.G.L. c. 112, § 73E and 235 CMR 2.07 or 235 CMR 2.08; and

(b) All functions or services which are included within the "practice of opticianry", as defined in 235 CMR 2.04, are actually provided or performed by:

1. a dispensing optician duly licensed by the Board pursuant to 235 CMR 2.07 or 235 CMR 2.08;
2. an apprentice optician who is duly registered with the Board pursuant to 235 CMR 4.03 and who performs all such functions or services under the supervision of a licensed dispensing optician, licensed physician or registered optometrist as required by 235 CMR 4.07;
3. a physician duly licensed by the Massachusetts Board of Registration in Medicine to practice medicine in the Commonwealth of Massachusetts; or
4. a registered optometrist duly registered by the Massachusetts Board of Registration in Optometry to practice optometry in the Commonwealth of Massachusetts.

(2) Notwithstanding the provisions of 235 CMR 5.06(1), a business organization or entity may provide or dispense replacement contact lenses to individuals located within the Commonwealth of Massachusetts, as long as that business organization or entity is in compliance with 15 U.S.C. §§ 7601 through 7610 (2004).

5.07: Complaint Procedures

(1) The Board shall investigate any and all complaints which allege that a licensed dispensing optician or registered apprentice optician has violated any provision of M.G.L. c. 112, §§ 73C through 73L, any chapter or section of 235 CMR 2.00 through 5.00; or has otherwise engaged in improper or unethical professional conduct.

(2) All complaints, reports, records, documents or other information received or kept by the Board in connection with any investigation conducted by the Board pursuant to 235 CMR 5.07(1) shall remain confidential until such time as the Board has disposed of the matter by dismissing the complaint, issuing an Order to Show Cause, or taking other final action on said complaint. Notwithstanding the foregoing:

(a) Certain records or information received or kept by the Board in connection with any investigation conducted pursuant to this section shall remain confidential even after final action on the complaint has been taken by the Board, to the extent that disclosure of such information is restricted by other applicable state or federal law; and

(b) The requirement that investigative records or information shall be kept confidential shall not apply to requests for such information received from the person under investigation or the complainant.

(3) The Board will review written requests for investigative records or other confidential information from, and may furnish such information in accordance with M.G.L. c. 66A: *Fair Information Practices* to, particular federal, state and local regulatory and law enforcement agencies, including but not limited to:

- (a) The Massachusetts Executive Office of Consumer Affairs;
- (b) The Massachusetts Department of the Attorney General;
- (c) The Office of the District Attorney for any county in Massachusetts;
- (d) The Massachusetts State Police;

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- (e) Any local or municipal police department in Massachusetts;
- (f) The Massachusetts Department of Public Health;
- (g) The Massachusetts Department of Public Welfare;
- (h) The Office of the United States Attorney;
- (i) The United States Department of Justice;
- (j) The Federal Bureau of Investigation;
- (k) The United States Drug Enforcement Administration;
- (l) The Office of the Inspector General of the United States Department of Health and Human Services; and
- (m) An agency in any other state which is responsible for the registration, certification or licensure of dispensing opticians.

All recipients of such confidential information designated pursuant to 235 CMR 5.00 shall preserve the confidentiality of such data and make it available to the data subject to the extent required by M.G.L. c. 66A.

5.08: Grounds for Disciplinary Action

The Board may, by majority vote after a hearing conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00 *et. seq.*, take disciplinary action against any licensed dispensing optician or registered apprentice optician. Grounds for such disciplinary action shall include, but shall not be limited to:

- (a) Engaging in, authorizing, or aiding or abetting fraud, deceit, misrepresentation of material facts, the provision of false or forged evidence, or bribery in connection with any application for a full license as a licensed dispensing optician or for registration as an apprentice optician;
- (b) Violating any provision of any state or federal law or regulation relating to the authorized practice of opticianry, as defined in 235 CMR 2.04, or the performance of opticianry functions or services;
- (c) Engaging in willful and/or gross misconduct in the practice of his or her profession as a dispensing optician or apprentice optician;
- (d) Engaging in practice which is fraudulent or beyond the authorized scope of practice for the level of license or registration held by the respondent;
- (e) Practicing with gross incompetence or gross negligence on a particular occasion, or with negligence on repeated occasions;
- (f) Practicing while his or her ability to practice is impaired by physical disability, or while he or she has been adjudged mentally ill or mentally incompetent by a court of competent jurisdiction;
- (g) Engaging in the current, unlawful use of, alcohol, narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects to an extent which impairs his or her ability to practice;
- (h) Knowingly permitting, or aiding or abetting, an unlicensed person to perform activities which require a license for purposes of fraud, deception or personal gain;
- (i) Having been convicted of any criminal offense which involves moral turpitude or which reasonably calls into question his or her fitness or ability to practice as a licensed dispensing optician or apprentice optician;
- (j) Having been denied or refused issuance of any license to practice as a dispensing optician or apprentice optician by the applicable governmental licensing authority of another state, territory or political subdivision of the United States (including but not limited to the District of Columbia or the Commonwealth of Puerto Rico);
- (k) Having any license to practice as a dispensing optician or apprentice optician issued by the applicable governmental licensing authority of another state, territory or political subdivision of the United States (including but not limited to the District of Columbia or the Commonwealth of Puerto Rico) suspended, revoked, placed on probation, or otherwise subjected to disciplinary action, as defined elsewhere in this section;
- (l) Violating any provision of M.G.L. c. 112, §§ 73C through 73L or any chapter or section of 235 CMR 2.00 through 5.00.

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5.08: continued

For purposes of 235 CMR 5.08, the term "disciplinary action" shall include, but shall not be limited to: denial, revocation or suspension of a full license or provisional license; refusal to renew a full license or provisional license; issuance of a letter of censure; issuance of a written reprimand; or placement of a licensee on probation.

5.09: Requirement to Cooperate with the Board

(1) A licensee shall respond within 30 days to a written communication from the Board or its designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about the licensee's professional conduct. The 30-day period commences on the date the Board sends the communication by registered or certified mail with return receipt requested to the licensee's last known address.

(2) A licensee shall cooperate with any reasonable request from a Division agent or employee acting on behalf of the Board while investigating a complaint or allegation regarding the licensee's professional conduct as a Dispensing Optician.

REGULATORY AUTHORITY

235 CMR 5.00: M.G.L. c. 112, § 73F.

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