§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of certificate.

(a) The Board shall have the power to make, adopt, and promulgate such rules and regulations, including rules of ethics, as may be necessary and proper for the regulation of the practice of the profession of optometry and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules and regulations, including rules of ethics, made against any optometrist licensed to practice in North Carolina. The Board shall also have the power and authority to: (i) refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal of a license to practice optometry; (iii) revoke or suspend a license to practice optometry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that such applicant or licensee meets any of the following criteria:

(1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;

(2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice optometry;

(3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;

(4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;

(5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any State or federal narcotic or barbiturate law;

(6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;

(7) Repealed by Session Laws 2023-129, s. 5.1(c), effective October 1, 2023.

(7a) Is unable to practice optometry with reasonable skill and safety by reason of abuse of alcohol, drugs, chemicals, or any other type of substance, or by reason of any physical or mental illness, abnormality, or other limiting condition;

(8) Repealed by Session Laws 1981, c. 496, s. 12.

(9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of optometry or in attempting to fraudulently obtain a license to practice optometry;

(10) Has engaged in such immoral conduct as to discredit the optometry profession;

(11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;

(12) Has been negligent in the practice of optometry;

(13) Has employed a person not licensed in this State to do or perform any act of service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article can lawfully be done or performed only by an optometrist licensed in this State;

(14) Is incompetent in the practice of optometry;

(15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients, including false or misleading advertising;
(16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
(17) Has committed any fraudulent or misleading acts in the practice of optometry;
(18) Repealed by Session Laws 1981, c. 496, s. 12.
(19) Has, in the practice of optometry, committed an act or acts constituting malpractice;
(20) Repealed by Session Laws 1981, c. 496, s. 12.
(21) Has permitted an optometric assistant in his employ or under his supervision to do or perform any act or acts violative to this Article or of the rules and regulations promulgated by the Board;
(22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of optometry;
(23) Has persistently maintained, in the practice of optometry, unsanitary offices, practices, or techniques;
(24) Is a menace to the public health by reason of having a serious communicable disease;
(25) Has engaged in any unprofessional conduct as the same may be from time to time defined by the rules and regulations of the Board.

(a1) The Board may, in its discretion, order an applicant or licensee to submit to a mental or physical examination by physicians or physician assistants, or other appropriate licensed health care providers, designated by the Board during the pendency of the licensing application, or before or after charges may be presented against the applicant or licensee. The results of the examination shall be admissible in evidence in a hearing before the Board in accordance with the provisions of this Article. An adjudication of mental incompetency in any court of competent jurisdiction or a determination of mental incompetency by other lawful means shall be conclusive proof of unfitness to practice optometry, unless or until that applicant or licensee is subsequently lawfully declared mentally competent. An adjudication or determination of mental incompetency shall constitute good cause for the issuance of an order by the Board that the licensee immediately cease practice and surrender their license to the Board. Failure to comply with an order under this subsection may be considered unprofessional conduct.

(a2) In addition to and in conjunction with the actions described in subsections (a) and (a1) of this section, the Board may make a finding adverse to a licensee or applicant but withhold imposition of judgment and penalty or it may impose judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. The Board may administer a public or private reprimand or a private letter of concern, and the private reprimand and private letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and shall not be disclosed to any person except the licensee. The Board may require a licensee to: (i) make specific redress or monetary redress; (ii) provide free public or charity service; (iii) complete educational, remedial training, or treatment programs; (iv) pay a fine; and (v) reimburse the Board for disciplinary costs.

(b) If any person engages in or attempts to engage in the practice of optometry while his license is suspended, his license to practice optometry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional license and intern permit.

(g) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice optometry and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice optometry, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice. (1973, c. 800, s. 20; 1981, c. 496, ss. 12, 13; 2000-184, s. 6; 2023-129, s. 5.1(c).)