



**Board of Examiners in Optometry**  
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#### AGENDA

September 15, 2021  
Zoom Meeting  
Call In: 1-253-215-8782  
Meeting ID: 673 963 1412  
6:00 p.m. (CST)

1. Approval of Agenda
2. Board Member Request for Conflict Waiver
3. Approve minutes from the regular meeting on August 25, 2021.
4. New Business
  - a. Licensing
  - b. Extension of Continuing Education Approval Authorization
  - c. Statute and Administrative Rule Review
5. Public Comment
6. Time and place of next meeting
7. Adjournment

***The public may listen to and participate in the teleconference by calling 1-253-215-8782 (Meeting ID: 673 963 1412) or Barnett Vision Center, 508 Moccasin Drive, Aberdeen, SD 57401.***

***Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the in Board of Examiners in Optometry (605-279-2244) or [sdoptboard@goldenwest.net](mailto:sdoptboard@goldenwest.net) at least 24 hours advance of the meeting to make any necessary arrangements.***

CHAPTER ~~36-7~~  
OPTOMETRISTS

**NEW SECTION**

**Terms used in this chapter mean:**

- (1) **"Board," the South Dakota Board of Examiners in Optometry;**
- (2) **Department**
- (3) **"Optometrist," a person licensed as an optometrist pursuant to this chapter;**
- (4) **"Practice," the practice of optometry as defined by SDCL 36-7-1.**

**36-7-1. Scope of practice defined.**

The practice of optometry is declared to be a profession and defined as examination of the human eye and its appendages, and the employment of any means for the measurement of the powers of visions, or any visual, muscular, neurological, interpretative, or anatomical anomalies of the visual processes, and the prescribing or employment of lenses, prisms, frames, mountings, visual training procedure, the prescribing or administration, except by injection of pharmaceutical agents rational to the diagnosis and treatment of the human eye and its appendages, and any other means or method for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the visual processes of the human eye and its appendages except surgery. However, an optometrist may remove superficial foreign bodies from the eye. The prescription of contact lenses, except by a practitioner licensed under chapter 36-4, constitutes the practice of optometry. An optometrist is one who practices optometry under the provisions of this chapter.

**Source:** SDC 1939, § 27.0701; SL 1941, ch 125, § 1; SL 1951, ch 131, § 1; SL 1976, ch 232; SL 1979, ch 253, § 1; SL 1986, ch 306, § 7; SL 1991, ch 303, § 1; SL 1994, ch 296, § 1; SL 2003, ch 201, § 1.

**36-7-1.1. Restrictions on scope of practice.**

~~Notwithstanding anything in this chapter to the contrary, an optometrist, except an optometrist certified for diagnostic and therapeutic agents as provided by §§ 36-7-15.1 to 36-7-15.3, inclusive, and as provided in § 36-7-31, may not treat glaucoma or ocular hypertension.~~

**Source:** SL 1986, ch 306, § 8; SL 1991, ch 303, § 2; SL 1994, ch 296, § 2.

**36-7-1.2. Prohibitions on use of oral therapeutics and oral steroids.**

No optometrist may prescribe, administer, or dispense any oral therapeutic agent to any child under twelve years of age, or any oral steroid to any person, without prior consultation with a physician licensed pursuant to chapter 36-4.

**Source:** SL 2003, ch 201, § 3.

**36-7-3. Composition of Board of Examiners--Qualifications of members--Terms of office--Persons ineligible for membership.**

~~The State Board of Examiners in Optometry consists of four members appointed by the Governor, three of whom shall appoint a board consisting of five members. Four members shall be optometrists in active practice in South Dakota for at least five years preceding the appointment. Three of the optometrist members shall be fully qualified and licensed to prescribe and administer diagnostic and therapeutic pharmaceutical agents under this chapter. Each member shall have been a resident of this state actually engaged in the practice of optometry at least five years preceding the appointment. One member shall be a lay person who has been a resident of this state at least five years. The term of each member is three years commencing on July first. The Governor shall, by appointment, fill any vacancy. No member may serve more than three consecutive full terms. The appointment of a person to an unexpired term is not considered a full term. No member of any optical school or college, or instructor in optometry, or person connected therewith, or any jobber or jobber's representative, is eligible for the board.~~

**Commented [DA1]:**

**Commented [BM2]:** Rules were drafted with attorney Naomi Cromwell, Deni Amundson, Optometry board President and Megan Borchert. Presented at Board meeting 3/26 and vetted through those members and the association who was present.

**Commented [BM3]:** Will need to expound on this for complete list of definitions

**Commented [BM4]:** Antiquated. No longer separate distinctions.

**Commented [DA5]:** South Dakota Optometric Association has made a request to delete. This board will review request at the next meeting.

**Commented [BM6]:** Redrafted to include all composition terms. (36-7-3.1, 36-7-3.2)

**Source:** SDC 1939, § 27.0702; revised pursuant to SL 1973, ch 2, § 58; SL 1986, ch 306, § 13; SL 1989, ch 323; SL 1994, ch 296, § 3; SL 2005, ch 199, § 18.

#### **36-7-3.1. Lay member of board--Appointment and term of office.**

~~The membership of the Board of Examiners shall include one lay member who is a user of the services regulated by the board. The term lay member who is a user refers to a person who is not licensed by the board but where practical uses the service licensed, and the meaning shall be liberally construed to implement the purpose of this section. The lay member shall be appointed by the Governor and shall have the same term of office as other members of the board.~~

**Source:** SL 1973, ch 2, § 58; SL 1977, ch 292, § 1.

#### **36-7-3.2. Board continued within Department of Health--Records and reports.**

~~The Board of Examiners in Optometry shall continue within the Department of Health, and shall retain all its prescribed functions, including administrative functions. The board shall submit such records, information, and reports in the form and at such times as required by the secretary of health, except that the board shall report at least annually.~~

**Source:** SL 1973, ch 2, § 56 (q); SL 2003, ch 272, § 41.

#### **36-7-4. Employment of counsel and personnel by board--Compensation and expenses.**

~~The Board of Examiners may employ counsel and other necessary assistants to aid in the enforcement of this chapter, the compensation and expenses of whom shall be paid from the funds of the board.~~

**Source:** SDC 1939, § 27.0712.

**Commented [BM7]:** Redrafted to be included in general board duties section (36-7-15)

#### **36-7-5. Administration of oaths and taking of testimony by board.**

~~The Board of Examiners shall further have power by and through each member thereof to administer oaths and to take testimony pursuant to §§ 1-26-19.1 and 1-26-19.2 in the granting, revoking, or suspending of certificates of registration.~~

**Source:** SDC 1939, § 27.0703; SL 1951, ch 131, § 2; revised pursuant to SL 1972, ch 15, § 4.

**Commented [BM8]:** Redrafted to be included in general board duties section (36-7-15)

#### **36-7-6. Salary and expenses of board secretary--Payment from fees.**

~~The secretary of the State Board of Examiners in Optometry shall receive a salary which shall be fixed by the board, and shall also receive his traveling and other expenses necessarily incurred in the performance of his official duties. Such salary shall be fixed by the board; and all such fees and expenses and the compensation and reimbursement of expenses provided by law for members of the board shall be paid from the fees received by the State Board of Optometry under the provisions of this chapter.~~

**Source:** SDC 1939, § 27.0711; SL 1985, ch 299, § 6.

**Commented [BM9]:** Redrafted to be included in general board duties section (36-7-15)

#### **36-7-8. Annual determination of funds required.**

~~The State Board of Examiners in Optometry shall annually, and on or before July first of each year, determine the amount estimated by it to be reasonably required for its purposes for the succeeding year.~~

**Source:** SDC 1939, § 27.0709; SL 1947, ch 122, § 3; SL 1951, ch 131, § 5; SL 1967, ch 99; SL 1985, ch 299, § 8.

**Commented [BM10]:** Redrafted to be included in general board duties section (36-7-15)

#### **36-7-10. Practice of optometry without certificate as misdemeanor.**

~~It is a Class 2 misdemeanor for any person who is not the holder of a certificate of registration or exemption, issued and recorded as provided in this chapter, to practice or offer to practice optometry within the state. No person may engage in the practice of optometry, or display a sign, or in any other way advertise or hold oneself out as a person who practices optometry unless the person holds a current license issued by the board as provided in this chapter. A violation of this section is a Class 2 misdemeanor.~~

**Commented [BM11]:** Redrafted for uniformity amongst boards

Source: SDC 1939, § 27.0708; SL 1977, ch 190, § 153.

### 36-7-11. Requirements for practice.

A person entitled to practice optometry in South Dakota who is not already registered is any person who furnishes the Board of Examiners in Optometry satisfactory evidence as follows:

- (1) That the person is of the full age of eighteen years and a citizen of the United States or a resident of South Dakota;
- (2) That the person is of good moral character;
- (3) That the person is a graduate of an ~~recognized Class A~~ optometric school or college approved by the Accreditation Council on Optometric Education or approved by the Board of Examiners; ~~and~~
- ~~(4) That the person has passed all required sections of a national board examination; and~~
- (5) That the person possesses a licensed certificate of registration ~~obtained by taking and satisfactorily passing an examination given by the board for purpose of determining the person's qualifications for the practice of optometry.~~

Source: SDC 1939, § 27.0704; SL 1941, ch 125, § 2; SL 1947, ch 122, § 1; SL 1983, ch 270, § 1; SL 2020, ch 168, § 4.

### ~~36-7-12. Application for examination--Fees--Reexamination.~~

~~Any person desiring to take an examination to determine his or her qualifications for the practice of optometry shall file a sworn application with the secretary of the Board of Examiners in Optometry at least thirty days prior to the time set therefor and pay a fee set by rule promulgated pursuant to chapter 1-26 by the Board of Examiners before examination and an additional amount set by rule promulgated pursuant to chapter 1-26 by the Board of Examiners upon issuance of certificate. Upon failure to pass the first examination, the candidate may elect to be reexamined upon payment of such additional amount, not to exceed one hundred dollars, set by rule promulgated pursuant to chapter 1-26 by the Board of Examiners and take another examination within fifteen months.~~

Source: SDC 1939, § 27.0704 (5); SL 1941, ch 125, § 2; SL 1947, ch 122, § 1; SL 1977, ch 292, § 2; SL 1985, ch 299, § 1; SL 1986, ch 302, § 67; SL 2008, ch 191, § 14.

### 36-7-12.1. Pharmacology studies and clinical experience to be completed--Passing grade on pharmacology portion of national board examination to be attained.

Any applicant for licensure as an optometrist after July 1, 1986, shall satisfactorily complete all pharmacology studies and clinical experience required by this chapter and the board and attain a passing grade on the pharmacology portion of ~~the a~~ national board examination approved by the Board.

Source: SL 1986, ch 306, § 12.

### 36-7-12.2. Criminal background check of new applicants and licensees under disciplinary investigation.

Each new applicant for licensure as an optometrist, in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the Board of Examiners of Optometry shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the board all information obtained as a result of the criminal background check. This information shall be obtained before permanent licensure of the applicant. The board may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the board. Failure to submit to or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

Source: SL 2009, ch 179, § 1.

Commented [BM12]: Drafted to allow for delegation of accreditation of schools, addition of exam requirement, and removal of board examination

Commented [BM13]: Application rules in administrative section and no longer required to take board examination

Commented [BM14]: Redrafted to match ARSD 20:50:02:06 and 20:50:02:06.01

### **36-7-13. Licensure through endorsement from another United States jurisdiction--Fee--Promulgation of rules.**

~~By way of substitution for the requirements in subdivisions 36-7-11(3), (4), and (5) and in §§ 36-7-12, 36-7-12.1 and 36-7-31, a candidate for licensure in this state may be given a certificate of registration by paying a fee, not to exceed one hundred seventy-five dollars, upon proof to the Board of Examiners by certified copy of the certificate of registration issued to the candidate by another United States jurisdiction where the requirements for registration are deemed by the South Dakota State Board to be the equivalent to those provided by this chapter if the candidate passes the examination administered by the board required by this chapter or presents satisfactory evidence to the board of having passed substantially similar examinations in another jurisdiction, and the candidate has practiced optometry in the other state for at least five consecutive years immediately prior to the candidate's application for registration in South Dakota. The board may promulgate rules, pursuant to chapter 1-26, to establish standards for licensure through endorsement pursuant to this section, including the level and status of licensure required, the evidence required to establish that the requirements for registration in the jurisdiction in which the candidate is licensed are substantially similar to those required by this chapter, the procedure and contents required for submitting the application, any additional education, testing, or training necessary to ensure the competency of the candidate, and the fee provided for in this section.~~

**Commented [BM15]:** Redrafted to include all sections and parse down statute versus rule

~~Upon application and payment of the required fee, which may not exceed one hundred seventy five dollars, the board may issue a license to practice as an optometrist by endorsement to an applicant who has been licensed as an optometrist under the laws of another state or territory under U.S. jurisdiction, if, in the opinion of the board, the applicant meets the qualifications required of optometrists in this state at the time of original licensure and the applicant has engaged in the practice of optometry for at least five consecutive years immediately preceding application under this section. The board retains authority to require additional education, testing, or training prior to granting licensure if competency of any applicant is in question. Any applicant who has previously been denied a license by the board shall apply for and meet all initial licensure requirements.~~

~~Source: SDC 1939, § 27.0704 (6); SL 1941, ch 125, § 2; SL 1951, ch 131, § 3; SL 1986, ch 306, § 2; SL 2006, ch 196, § 1; SL 2008, ch 191, § 15.~~

### **36-7-14. Recording of certificate of registration.**

~~Before any certificate of registration is issued it shall be numbered and recorded in a book kept in by the office of the board and its number shall be noted upon the certificate.~~

~~Source: SDC 1939, § 27.0705; revised pursuant to SL 1972, ch 15, § 3.~~

**Commented [BM16]:** antiquated

### **36-7-15. Rules and regulations of board--Scope.**

~~The Board of Examiners in Optometry shall have power to make and promulgate under the provisions of chapter 1-26 such rules and regulations, not inconsistent with the laws of this state to:~~

- ~~(1) Provide for a method of examination of candidates for registration.~~
- ~~(2) Define what shall constitute a recognized Class A optometric school.~~
- ~~(3) Govern the practice of optometry, including the adoption of a code of ethics, or rules of professional conduct for all registrants.~~
- ~~(4) Govern the minimum amount and kind of continuing education in optometry to be required triennially of each optometrist seeking relicense to practice optometry in the State of South Dakota.~~

### NEW SECTION: Powers and duties of board.

The board may:

- (1) Establish standards for, and promote, the safe and qualified practice of optometry;

- (2) ~~Govern the practice of optometry, including the adoption of a code of ethics, or rules of professional conduct, and advertising;~~
- (3) ~~Prepare an annual budget for each fiscal year;~~
- (4) ~~Expend funds for administrative, legal, consultative and necessary services from fees received by the board;~~
- (5) ~~Examine, license, endorse, and renew the licenses of qualified applicants;~~
- (6) ~~Define what shall constitute an optometric school recognized by the board;~~
- (7) ~~Govern the minimum amount and kind of continuing education in optometry to be required of each optometrist seeking relicensure to practice optometry in South Dakota;~~
- (8) ~~Administer oaths and take testimony pursuant to §§ 1-26-19.1 and 1-26-19.2;~~

**Source:** SDC 1939, § 27.0703; SL 1951, ch 131, § 2; SL 1973, ch 243, § 1; SL 1979, ch 252, § 1.

### **36-7-15.1. Rules to ensure competence to administer topical agents.**

~~The State Board of Examiners in Optometry shall adopt rules pursuant to chapter 1-26 to specify additional educational qualifications and to ensure professional competence by those practitioners who apply to the board for a certification enabling them to prescribe and administer diagnostic and therapeutic topical pharmaceutical agents as described in § 36-7-1. The board shall, by rules promulgated pursuant to chapter 1-26, establish separate educational and examination requirements for the certification of optometrists for both diagnostic and therapeutic agents. The board shall make available annual, substantial, in-state pharmaceutical education for licensed optometrists. The initial educational requirements before certification are at least one hundred fifty classroom hours and at least forty hours of clinical experience in pharmaceutical education dealing with diagnosis and treatment of ocular disease. The board shall require a minimum of five hours of continuing pharmaceutical education annually for each optometrist certified for therapeutic agents.~~

**Source:** SL 1979, ch 253, § 2; SL 1986, ch 306, § 9; SL 1994, ch 296, § 4.

**Commented [BM17]:** antiquated, distinction no longer exists

### **36-7-15.2. Educational and examination requirements for certificate to administer topical agents--Fee.**

~~Only those optometrists who have satisfactorily completed a curriculum in general and ocular pharmacology at an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Office of Education within the Department of Health and Human Services and approved by the State Board of Examiners in Optometry are eligible to apply for the certificate issued pursuant to § 36-7-15.1. Those practitioners who have established their eligibility pursuant to this section shall also pass an examination approved by the board before they may be certified to administer the topical pharmaceutical agents described by § 36-7-1.~~

**Source:** SL 1979, ch 253, §§ 3, 5; SL 1985, ch 299, § 2; SL 1994, ch 296, § 5; SL 2008, ch 191, § 16; SL 2013, ch 173, § 1.

**Commented [BM18]:** antiquated, distinction no longer exists

### **36-7-15.3. Certification for use of therapeutic drugs--Examination.**

~~The board, in certifying optometrists for the use of therapeutic drugs, shall require that all applicants before certification either have taken and successfully passed the treatment and management of ocular disease portion of the National Board of Examiners in Optometry test or have taken and successfully passed an examination prepared or certified by the board as covering all areas of pharmacological education provided to graduates of accredited optometric colleges. The South Dakota State University School of Pharmacy may assist the board in the formulation or administration of the examination of optometrists for competency in therapeutic drugs.~~

**Source:** SL 1986, ch 306, § 10; SL 1994, ch 296, § 6; SL 2013, ch 173, § 2.

**Commented [BM19]:** antiquated, distinction no longer exists

### **36-7-17. Practice as individual or partner required--Exception for authorized corporate practice--Violation as misdemeanor--Optometrist not precluded from serving as officer or director of health maintenance organization.**

**Commented [BM20]:** gender

Every person who practices optometry in South Dakota shall furnish the Board of Examiners satisfactory evidence that ~~he the licensee~~ practices optometry as a profession, in ~~his an~~ individual personal capacity under ~~his the licensee's~~ own name or as a partner of another registered optometrist and not as a corporation, limited liability company or agent, employee, officer, member, or partner of a corporation or limited liability except where a practice as an officer, employee, member, or agent of a corporation is established under the terms of chapter 47-11B. A violation of this section is a Class 2 misdemeanor.

Nothing in this section shall preclude a licensed optometrist from serving as a shareholder, officer, or director of a corporation established under the terms of chapter 58-41 as a health maintenance organization or other alternate health care delivery system including, but not limited to, preferred provider organizations, individual practices association, or other form of entity whatever established for group health care purposes.

**Source:** SDC 1939, § 27.0704 (7); SL 1941, ch 125, § 2; SL 1972, ch. 249, § 24; SL 1987, ch 269, § 1; SL 1992, ch 158, § 77; SL 1993, ch 344, § 39J.

### **36-7-17.1. Certain healing arts practitioners to participate in alternate health care delivery systems.**

Any licensed optometrist may organize or contract for services with a corporation organized under the laws of this state by licensed practitioners of the healing arts, for the purpose of negotiating group health care contracts and providing services within the scope of their respective licenses with alternate health care delivery systems, including, but not limited to, health maintenance organizations, preferred provider organizations, individual practices organizations or other similar forms of entity whatever.

**Source:** SL 1987, ch 269, § 2.

### **36-7-18. Display of certificate in office--Exhibition to state board--Violation as misdemeanor.**

~~Every person practicing optometry shall:~~

- ~~(1) Display the certificate of registration or exemption in a conspicuous place in the principal office wherein he practices place of business; and~~
- ~~(2) Exhibit the certificate to the State Board of Examiners or its authorized representative upon request.~~

~~Each license issued by the board under this chapter, shall be conspicuously displayed by the licensee at the licensee's primary place of practice. Each licensee shall post and keep conspicuously displayed the annual renewal certificate issued by the board.~~

~~A violation of this section is a Class 2 misdemeanor.~~

**Source:** SDC 1939, § 27.0706; SL 1947, ch 122, § 2; SL 1992, ch 158, § 78; SL 2013, ch 173, § 3.

### **36-7-19. Advertising regulated by board--Fees not regulated.**

~~The Board of Examiners may, in compliance with chapter 1-26, prescribe the mediums of advertising that may be used by optometrists and the size, nature, and type of signs and professional cards that may be used. Said board shall not have power or authority to fix the fees to be charged by its members for professional services.~~

**Source:** SDC 1939, § 27.0703 (3) as added by SL 1951, ch 131, § 2; revised pursuant to SL 1972, ch 15, § 4.

### **36-7-20. Annual renewal of certificate--Revocation on default--Restoration of certificate.**

Each licensed optometrist residing in or in active practice within the State of South Dakota shall, on or before the first day of October in each year pay to the State Board of Examiners in Optometry a fee to be set in rule by the Board of Examiners, in default of which the board may, in compliance with chapter 1-26, revoke ~~his the~~ license or certificate, either for failure to comply with the continuing education requirements or nonpayment of such fee, but the payment of such fee at or before the time of hearing, with such additional sum as may be fixed in rule by the board, shall excuse the default.

**Commented [BM21]:** redrafted to modernize

**Commented [BM22]:** combined in 36-7-15

**Commented [BM23]:** gender

**Source:** SDC 1939, § 27.0709; SL 1947, ch 122, § 3; SL 1951, ch 131, § 5; SL 1967, ch 99; SL 1973, ch 243, § 3; SL 1979, ch 252, § 2; SL 1985, ch 299, § 3; SL 1986, ch 302, § 68.

#### **36-7-20.1. Continuing education required--Purpose.**

~~All registered optometrists whenever licensed in the State of South Dakota are and shall be required to take courses of study in subjects relating to the practice of the profession of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public.~~

~~**Source:** SL 1973, ch 243, § 2; SL 1979, ch 252, § 4.~~

**Commented [BM24]:** Already have authority to promulgate in 36-7-15 so parsed down and removed unnecessary sections

#### **36-7-20.2. Courses of continuing education specified by board--Certification of attendance--Waiver.**

~~The length of study required by § 36-7-20.1 Requirements for continuing education shall be prescribed by the Board of Examiners in Optometry but shall not exceed forty-five hours in any three consecutive calendar years. Attendance must be at a course or courses certified by the Council on Optometric Practitioner Education (COPE) or approved by the board. Attendance at any course or courses of study are to be certified by the board upon a form provided by the board and shall be submitted by each registered optometrist at the time he makes of application is made to the board for the license renewal of his license and payment of his renewal fee payment remitted. In no instance may the board require a greater number of hours of study than are available at approved courses held within the state and shall be allowed to. The board may waive any or all of this requirement in case of certified illness or undue hardship.~~

~~**Source:** SL 1973, ch 243, § 2; SL 1979, ch 252, § 5.~~

**Commented [BM25]:** Added COPE authority

#### **36-7-20.3. Contracts to provide continuing education--Funds used--Federal matching grants.**

~~The Board of Examiners in Optometry is authorized to use up to one-half of its annual renewal fees for the purpose of contracting with institutions of higher learning, professional organizations, or qualified individuals for the providing of educational programs that meet this requirement. The board is further authorized to treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education.~~

~~**Source:** SL 1973, ch 243, § 2; SL 1985, ch 299, § 10.~~

**Commented [BM26]:** Already have authority to promulgate in 36-7-15 so parsed down and removed unnecessary sections

#### **36-7-20.4. Certificate of compliance with continuing education requirements--Exemptions.**

~~Each licensed optometrist residing in or in active practice within the State of South Dakota shall, on or before September first in the third year after his initial licensure, and every third year thereafter, annually certify on forms provided by the Board of Examiners in Optometry that he has complied compliance with §§ 36-7-20.1 and 36-7-20.2. This provision shall not apply to any licensee serving in the armed forces during any part of the thirty-six months preceding the certification nor to any licensee submitting proof that he was of suffering from a serious or disabling illness or physical disability which prevented his attendance at any qualified educational program within the State of South Dakota during the thirty-six months immediately preceding the certification.~~

~~**Source:** SL 1979, ch 252, § 3.~~

**Commented [BM27]:** Already have authority to promulgate in 36-7-15 so parsed down and removed unnecessary sections

#### **36-7-21. Remission of annual fee while in military service.**

The Board of Examiners shall have power to remit the license fee of all registrants while on active duty in the armed forces of the United States.

**Source:** SDC 1939, § 27.0709 as added by SL 1951, ch 131, § 5; SL 1967, ch 99

The term "active duty in the armed forces" as used in this chapter shall mean full-time duty in the active military service of the United States, including members of the Army, Navy, Air Force, Marine Corps, Coast Guard and the reserve component (National Guard and Reserve), while

**Commented [BM28]:** Added section to address questions regarding who was eligible- wanted to be inclusive to all active duty military and took federal definition to aid licensees



servicing under published orders for active duty or full-time training.

### 36-7-24. Grounds for revocation of certificate.

The Board of Examiners, in compliance with chapter 1-26, may ~~revoke the certificate of exercise disciplinary sanctions against~~ any registrant for any one, or any combination, of the following causes:

- (1) Conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- (2) Obtaining, or attempting to obtain, a certificate of registration by fraudulent misrepresentation;
- (3) Malpractice;
- (4) Continued practice by a person knowingly having an infectious or contagious disease or after sustaining any physical or mental disability which renders the further practice of a licensee's profession potentially harmful or dangerous;
- (5) ~~Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs; use of alcohol or other substances to such an extent to render unfit to practice with reasonable skill and safety;~~
- (6) Unprofessional conduct;
- (7) Failure to submit to or cooperate with the criminal background investigation requested by the board.

**Source:** SDC 1939, § 27.0707; SL 1951, ch 131, § 4; revised pursuant to SL 1972, ch 15, § 4; SL 2005, ch 199, § 19; SL 2009, ch 179, § 2; SL 2013, ch 173, § 4.

### 36-7-25. Unprofessional conduct defined--No basis for criminal prosecution.

The term, unprofessional conduct, as used in this chapter, means:

- (1) Any conduct of a character likely to deceive or defraud the public;
- (2) The loaning of a license or certificate by any licensed optometrist or any person or corporation;
- (3) ~~The employment of cappers or steerers to obtain business; violating any provision of this chapter or any rule promulgated thereunder;~~
- (4) Splitting or dividing a fee or compensation with any person or corporation;
- (5) The obtaining of any fee or compensation by fraud or misrepresentation;
- (6) Employing either directly or indirectly any suspended or unlicensed optometrist to perform any work covered by this chapter;
- (7) The advertising by any means whatsoever of optometric practice, ~~or~~ treatment, ~~or~~ advice, ~~or~~ costs in which untruthful, improbable, misleading, or impossible statements are made;
- (8) ~~Advertising by printed matter, radio, display, or any other means, the quotation of prices for a discount on or any specific amount of payment for eyeglasses, spectacles, or accessories thereto, ophthalmic lenses, frames or mountings, or the phrases "free examinations," "moderate prices," "low prices," "guaranteed glasses," "satisfaction guaranteed," or any variations thereof, or words of similar import; engaging in lewd or immoral conduct in connection with the delivery of optometric services to a patient;~~
- (9) Seeking patronage by means of handbills, posters, circulars, newspapers, radio or periodicals, which means set forth more than the name, profession, title, location, phone number and office hours of the optometrist; failure to maintain adequate safety and sanitary conditions or meet the requirements for an optometric clinic in accordance with the standards set forth in this chapter or any rule promulgated thereunder;
- (10) ~~Advertising wherein the optometrist employs any form of newspaper, sign, literature or directory professional card or window or public exhibition display of optical materials, handbills, road signs, clock signs, novelties or favors contrary to or violating the code of ethics or any of the other lawful rules and regulations properly promulgated by the state board; any inappropriate prescribing to any person in quantities and under circumstances making it apparent to the board that the prescription was not made for legitimate medicinal purposes related to the practice of optometry or prescribing in a manner or in amounts~~

**Commented [BM29]:** Did cross section of other boards and included additional provisions to ensure ability to prosecute any issues that were a danger to public protection

**Commented [BM30]:** Did cross section of other boards and included additional provisions to ensure ability to prosecute any issues that were a danger to public protection. Removed repetitive sections or outdated provisions.

calculated in the opinion of the board to endanger the wellbeing of an individual patient or the public in general;

- (11) The failure to refer a patient to a physician licensed pursuant to chapter 36-4 if examination of the eye indicates a substantial likelihood of pathology which requires the attention of a physician licensed pursuant to chapter 36-4;
- (12) Any conviction of a felony or violation of a Board of Examiners in Optometry rule as determined by the board after notice and hearing pursuant to chapter 1-26;
- (13) Consistently misdiagnosing or consistently prescribing improper therapy;
- (14) Failing to hold in professional confidence all information concerning a patient.
- (15) Failing to comply with state or federal laws on keeping records regarding possessing and dispensing of controlled substances or habit-forming drugs;
- (16) Falsifying the records of a patient;
- (17) The exercise of influence within the optometrist-patient relationship for the purposes of engaging a patient in sexual activity. For purposes of this subdivision, the patient is presumed incapable of giving free, full, and informed consent to sexual activity with the optometrist;
- (18) Engaging in sexual harassment;
- (19) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of the public or patients or engaging in conduct which is unbecoming of an optometrist;
- (20) Discipline by another state or territory under U.S. jurisdiction licensing board or the licensing board of the District of Columbia if the violation is also a violation of this chapter or any rules promulgated thereunder;
- (21) Not reporting to the board discipline by another state or territory under U.S. jurisdiction; and
- (22) Not reporting to the board a conviction of any felony criminal offense or any conviction of a criminal offense arising out of the practice of optometry.

Unprofessional conduct, as defined in this section, shall not be the basis for criminal prosecution unless otherwise declared unlawful.

**Source:** SDC 1939, § 27.0707; SL 1951, ch 131, § 4; SL 1979, ch 253, § 6; SL 1983, ch 270, § 2; SL 2013, ch 173, § 5.

#### **36-7-26. Appeal from Board of Examiners.**

An appeal from the decision of the Board of Examiners may be taken as provided by chapter 1-26.

**Source:** SDC 1939, § 27.0707; SL 1951, ch 131, § 4; revised pursuant to SL 1972, ch 15, § 4.

#### **36-7-27. Reinstatement of certificate after revocation.**

After one year and upon application and proof that the disqualification has ceased the Board of Examiners may reinstate a person whose certificate has been revoked, if no other basis for denial of the license exists.

**Source:** SDC 1939, § 27.0707; SL 1951, ch 131, § 4; SL 2013, ch 173, § 6.

#### **36-7-28. Injunction to prevent violation of chapter--Election of remedies.**

Any person violating the provisions of this chapter may be enjoined from further violations in the circuit courts of this state in actions to be brought by the State Board of Examiners in Optometry. Such suits may also be brought by any citizen of the state. An action for injunction shall be an alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

**Source:** SDC 1939, § 27.0703 (5) as added by SL 1964, ch 85; revised pursuant to SL 1972, ch 15, §§ 3, 4.

#### **36-7-29. Immunity from liability of professional society committee members--Conditions--Official immunity unaffected.**

**Commented [BM31]:** Unnecessary- covered under PEPL

~~There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly appointed committee of a state professional society, comprised of optometrists licensed to practice their profession in the State of South Dakota, for any act or proceeding undertaken or performed within the scope of the functions of any such committee which is formed to maintain the duly established professional standards of the society or the requirements of law, if such committee member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he acts, and acts in a reasonable belief that the action taken by him is warranted by the facts known to him after such reasonable effort to obtain facts. "Professional society" includes optometric organizations having as members at least a majority of the eligible licensees in the state. The provisions of this section do not affect the official immunity of an officer or employee of a public corporation or of an optometrist serving on a committee or board or other entity authorized by state or federal law.~~

**Source:** SL 1976, ch 231.

**36-7-30. Entry and inspection by board--Purpose--Drug records and inventories.**

The Board of Examiners, or any of its officers or employees so authorized, may, during business hours, enter and inspect any place where optometry is practiced for the purpose of enforcing this chapter and rules adopted pursuant hereto. Such inspection may include any records and inventories relating to drugs and controlled substances required to be kept under the provisions of chapter 34-20B.

**Source:** SL 1986, ch 306, § 6.

**36-7-31. Use of therapeutic pharmaceutical agents to treat glaucoma or ocular hypertension--Education and examination required.**

~~Before using therapeutic pharmaceutical agents for the treatment of glaucoma or ocular hypertension an optometrist certified for diagnostic and therapeutic pharmaceutical agents shall complete education with emphasis on treatment and management of glaucoma and ocular hypertension provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Office of Education within the Department of Health and Human Services and approved by the Board of Examiners in Optometry by rule promulgated pursuant to chapter 1-26. Upon completion of the education, the optometrist shall pass an oral or written examination approved by the board. The board shall suspend the certification for therapeutic pharmaceutical agents of any optometrist who fails to comply with this section by July 1, 1996.~~

**Source:** SL 1994, ch 296, § 7.

**36-7-34. Sale of contact lenses without prescription prohibited--Violation as misdemeanor.**

No person may sell contact lenses without a valid prescription signed by a licensed optometrist or practitioner licensed pursuant to chapter 36-4. For purposes of this section, the term, contact lenses, includes any contact lens, with or without visual correction. A violation of this section is a Class 1 misdemeanor.

**Source:** SL 2010, ch 189, § 1.

ARTICLE 20:50  
OPTOMETRY

CHAPTER 20:50:01  
DEFINITIONS

**20:50:01:01. Definitions.** Words defined in SDCL 36-7 have the same meaning when used in this article. In addition the following words mean:

**Commented [BM32]:** Antiquated- no longer a distinction

**Commented [BM33]:** Encompassed in statute

~~(1) "Board," the State Board of Examiners in Optometry of the state of South Dakota as provided for in SDCL 36-7-3 and 36-7-3.1; and~~

~~(2) "Practice," the practice of optometry as defined by SDCL 36-7-1.~~

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-1.

#### CHAPTER 20:50:02

#### EXAMINATIONS OF APPLICANTS

#### LICENSING AND REGISTRATION

**20:50:02:01. Time of examinations.** ~~The examinations for South Dakota state law and ethics shall be given upon request by an applicant.~~

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 31 SDR 101, effective January 19, 2005; 39 SDR 127, effective January 21, 2013.

**General Authority:** SDCL 36-7-15(1), 36-7-15.1.

**Law Implemented:** SDCL 36-7-11, 36-7-12.

**20:50:02:02. Filing of applications for examination.** Applications ~~for the right to take examinations~~ shall be filed in the office of the secretary of the board upon forms to be furnished by the board.

**Source:** SL 1975, ch 16, § 1; SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-11, 36-7-12.

**20:50:02:03.01. Examination fees.** The application fee for ~~taking the initial examination licensure, which includes the state law and ethics examination,~~ is \$175. An additional amount of \$25 shall be paid upon the issuance of a certificate.

**Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986; 31 SDR 101, effective January 19, 2005; 39 SDR 127, effective January 21, 2013.

**General Authority:** SDCL 36-7-12.

**Law Implemented:** SDCL 36-7-12.

**20:50:02:04. Examination subjects— Admission to practice.** The ~~examination application~~ for admission to practice, ~~which may be either written or oral, or both, shall cover subjects including but not limited to theoretical optics; visual science I; visual science II; ocular anatomy; ocular pathology; theory and practice of optometry; ophthalmic optics; public health, community optometry, and optometric jurisprudence; ocular pharmacology and treatment; practical examination, diagnosis, and treatment; and include a statement, attested by the applicant, upon a form to be furnished by the board, that the applicant has reviewed and agrees to comply with~~ South Dakota optometry law and ~~ethics.~~

**Commented [BM34]:** Change title to be more descriptive of section

**Commented [BM35]:** No longer requiring this- board member has to give the exam to applicant who must appear in person. Test is open book. Considered a barrier to licensure so wanting to just provide a "rules booklet" and attestation in application that individual agrees to comply with practice act

**Commented [BM36]:** This is the replacement for the board ethics exam

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-11.

**20:50:02:04.03. Endorsement certification** An applicant for licensure by endorsement shall submit the application form prescribed by the board, and include a fee of \$175, and must be supported by written evidence satisfactory to the board showing that the applicant: and meet all of the following conditions:

**Commented [BM37]:** Clearing up endorsement, including requirement for background check

(1) ~~Be is~~ licensed in good standing to practice optometry in a state or territory under U.S. jurisdiction that required passage of a written, entry-level examination at the time of initial licensure;

(2) ~~Be is~~ licensed at a level of prescriptive authority that, in the judgment of the board, is equal to or higher than the requirement in this state ~~as provided in SDCL 36-7-15.3 for therapeutic drugs;~~

(3) ~~Have Has~~ been actively and routinely engaged in the practice of optometry, including the use of therapeutic pharmaceutical agents, for at least five consecutive years immediately preceding making application under this section; and

~~— (4) Have submitted directly to the board all transcripts, reports, or other information the board requires; and~~

(5) ~~Have passed the written examination submitted attestation regarding~~ Attests to compliance with the optometry laws and administrative rules governing optometrists in this state upon forms to be furnished by the board.

The applicant shall request any optometry licensing agency of any U.S. jurisdiction in which the applicant is licensed or has ever been licensed to practice optometry to provide reports directly to the board describing the applicant's current standing and any past or pending actions taken with respect to the applicant's authority to practice optometry in those jurisdictions, including any investigations, entrances into consent agreements, suspensions, revocations, and refusals to issue or renew a license. The reports must be provided directly from the licensing jurisdiction to the board. Any application received from an optometrist who has been sanctioned by revocation of license by another optometric licensing jurisdiction must be reviewed on a case-by-case basis by the board.

The applicant shall also submit a set of fingerprints on a standard card provided by the board for the purpose of obtaining a state and federal criminal background check through the Division of Criminal Investigation. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record to the board. The fingerprint card, authorization and release form, and fee must accompany the application for licensure by endorsement.

The board retains the authority to require additional education, testing, or training prior to granting licensure under SDCL 36-7-13 if the competency of any applicant is in question. Any applicant who has previously been denied a license by the board shall apply for and meet all initial licensure requirements.

**Source:** 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 35, effective August 30, 1994; 31 SDR 101, effective January

19, 2005; 32 SDR 225, effective July 5, 2006; 34 SDR 323, effective July 2, 2008; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-13, 36-7-15(3), 36-7-15.1, 36-7-15.2, 36-7-15.3.

**Law Implemented:** SDCL 36-7-13, 36-7-15.1, 36-7-15.2, 36-7-15.3.

**Cross-Reference:** Passing grade, § 20:50:02:06.01.

**20:50:02:04.04. Minimum educational requirements -- Pharmaceutical agents.** ~~For the purpose of fulfilling the minimum educational requirements set forth in SDCL 36-7-15.1 the board may approve prior classroom and clinical experience hours dealing with diagnosis and treatment of ocular disease. Clinical experience must be hours in the office or clinic of a licensed ophthalmologist or an optometrist certified to prescribe and administer diagnostic and therapeutic pharmaceutical agents in South Dakota.~~

**Commented [BM38]:** Antiquated- no longer a distinction

**Source:** 13 SDR 44, effective October 20, 1986; 31 SDR 101, effective January 19, 2005.

**General Authority:** SDCL 36-7-15.1.

**Law Implemented:** SDCL 36-7-15.1.

**20:50:02:06. National board examination required.** An applicant is required to pass an examination certified by the National Board of Examiners in Optometry or other national board examination approved by the board in any of the subjects required by § 20:50:02:04 and Part I (Applied Basic Science), Part II (Patient Assessment and Management), Part III (Clinical Skills), and the Treatment and Management of Ocular Disease (TMOD). The board may require an applicant to take additional tests ~~on any subjects listed in § 20:50:02:04~~, including the National Board of Clinical Skills examination. The application shall indicate when the applicant took the national board examinations and the subjects covered. The applicant must have passed the examinations within the five years before the date of licensure in this state unless licensed through endorsement.

**Commented [BM39]:** Removed reference to repealed statute and indicated endorsement applicants exempt

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 17 SDR 199, effective June 30, 1991; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-12, 36-7-12.1.

**20:50:02:06.01. Passing grade.** The board may accept certification of a passing examination grade of an examination administered by a national board as evidence of an applicant having satisfied the requirements of § 20:50:02:06. ~~On any examination administered by the board, a minimum grade of 75 percent in each subject must be achieved.~~

**Commented [BM40]:** No longer administering board exam

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; transferred from § 20:50:02:05, 17 SDR 199, effective June 30, 1991.

**General Authority:** SDCL 36-7-15, 36-7-15.1.

**Law Implemented:** SDCL 36-7-11, 36-7-12, 36-7-12.1, 36-7-15.2, 36-7-15.3.

**20:50:02:07. Certificate of registration.** After a candidate has successfully passed the examination, the certificate of registration for admission to practice shall not be issued until the candidate has secured and equipped an office within the state of South Dakota meeting the minimum requirements of § 20:50:06:01 or has arranged a bona fide association with a registered optometrist licensed under the laws of the state of South Dakota who has an office meeting those requirements. The certificate of

registration shall not be issued as a result of the examination unless the requirements of all sections of this article are met within one year from the date the candidate was notified of passing the examination. This section does not apply when the candidate is in or entering the military or other governmental service.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-12.

**Cross-Reference:** Inspection of office, § 20:50:06:02.

**20:50:02:08. Annual renewal fees.** The annual renewal fee for licensed optometrists is \$300 if paid by the first day of October of each year. The additional fee for reinstatement after a default, pursuant to SDCL 36-7-20, is \$100 for each calendar month the fee is late, up to a maximum of twelve months, after which a license may be renewed only if, in the discretion of the board, good cause is shown for the delinquency.

An optometrist who has not actively and routinely practiced for a period of greater than one year, but not more than three years, may, at the discretion of the board, be reinstated upon a showing of good cause, payment of the annual renewal fee for each year of absence, payment of the late fee for each month of absence as provided in this section, and upon providing proof of being current on all continuing education requirements.

**Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986; 31 SDR 101, effective January 19, 2005; 32 SDR 225, effective July 5, 2006; 41 SDR 109, effective January 12, 2015; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-20.

**Law Implemented:** SDCL 1-26-6.9, 36-7-20.

#### CHAPTER 20:50:03 OPTOMETRIC SCHOOLS

**20:50:03:01. Recognized optometric schools or colleges.** The optometric schools or colleges referred to in SDCL 36-7-11(4) (3) are those optometric schools or colleges certified by the Council on Optometric Education of the American Optometric Association as approved optometric schools or colleges ~~as of June, 1985. Any schools or colleges certified after that date which meet the standards of certification in existence on June, 1985, may apply to the board for approval. Upon request, the board will provide a current list of approved institutions and curriculum as defined in SDCL 36-7-11(4)(3) and 36-7-15.2.~~

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15, 36-7-15.2.

**Law Implemented:** SDCL 36-7-11, 36-7-15.2.

**References:** List of Accredited Optometric Educational Programs, ~~June, 1985~~, Council on Optometric Education, American Optometric Association. Copies may be obtained from the Council on Optometric Education, American Optometric Association, ~~243 North Lindbergh Blvd., St. Louis, Missouri 63141; no cost for list.~~ <https://www.aoa.org>

**Commented [BM41]:** Correcting wrongly cited statute and providing reference to approved schools

**CHAPTER 20:50:04  
CODE OF ETHICS**

**20:50:04:01. Confidential communications.** All information received from the patient in the course of treatment shall be treated as a privileged communication and held inviolate.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:02. Advising patient.** If, during the course of an examination of a patient, an optometrist discovers a health condition that should have care by persons outside the field of optometry, the optometrist shall so advise the patient.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:03. Serving as optician prohibited.** Optometrists shall not in any manner publicize themselves as or hold themselves forth as opticians.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:04. Maintenance of office.** An office maintained for practice of optometry must be clean and sanitary. The office must be exclusive of any other business and must be physically disconnected from any commercial business or influence in the same building by use of floor-to-ceiling wall separations and a separate front entrance to the outside or to common hallways.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 35, effective August 30, 1994.

**General Authority:** SDCL 36-7-15, 36-7-17.

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:05. Use of word "doctor."** No optometrist, when using the title of "doctor" in advertising, may qualify it in any way other than by the use of the word "optometrist." When not using the title, optometrists may use after their names the letters "O.D." or the word "optometrist," or both. Approved listings include Dr. John Doe, Optometrist; John Doe, O.D., Optometrist; John Doe, Optometrist; and John Doe, O.D.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-15(3).



**20:50:04:06. Optometrist to write and release prescription -- Requests for medical records.** Upon the request of a patient for whom an optometrist has prescribed spectacle lenses, the optometrist shall issue the prescription and deliver a copy of it to the patient. A spectacle lens prescription expires on the date specified by the prescriber, based upon the medical judgment of the prescriber with respect to the ocular health of the patient. If a prescription expires in less than one year, the reasons for the expiration date must be documented in the patient's medical record. No prescriber may specify a prescription expiration date that is earlier than the date on which reexamination of the patient is medically necessary. Requests for medical records are governed by SDCL 36-2-16.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 99, effective December 11, 2017; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-1, 36-7-15(3).

**20:50:04:07. Claims of superiority.** Optometrists may not claim to have superior qualifications or to be superior to other similarly certified optometrists as to the equipment available for use in their practice or as to the quality of service they are able to render to their patients. An optometrist certified to prescribe and administer pharmaceutical agents may, however, indicate such qualifications.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 31 SDR 101, effective January 19, 2005.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:09. Division of fees -- Payments to employees.** An optometrist may not directly or indirectly divide, share, split, or allocate a fee for optometric services or materials with a layperson, firm, or corporation, or another optometrist or licensed medical practitioner except on the basis of a division of service or responsibility. This section does not prohibit any of the following:

(1) An optometrist from paying an employee in the regular course of employment;

(2) A practice established under the terms of SDCL chapter 47-11B; or

(3) An optometrist from being employed on a salary, with or without a bonus arrangement, by an optometrist or licensed medical practitioner, regardless of the amount of supervision exerted by the employer over the office in which the employee works. However, this bonus arrangement may not be based on the business or income of an optical company.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 32 SDR 129, effective January 31, 2006.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:11. Improper business relationships.** To ensure that the services provided by an optometrist to a patient are based solely on the optometrist's professional judgment and not influenced by other business considerations, the following business relationships are prohibited:

(1) An office rental, lease, or office space-sharing arrangement which by virtue of location causes the optometrist to be in violation of SDCL 36-7-17 by being directly employed by or connected with another person or entity other than an optometrist, ophthalmologist, or other licensed healing arts professional or in which the optometrist's office, location, or place of practice is owned, operated, supervised, staffed, directed, or attended by any other person, corporation, or entity not licensed to practice optometry, ophthalmology, or other healing arts in the state of South Dakota; and

(2) An arrangement or agreement, express or implied, with any firm, business, corporation, person, or other entity not licensed to practice optometry in this state which would interfere with the optometrist's independent ability to provide professional care for patients without outside influence.

Nothing in this section shall be construed to prohibit a practice established under the terms of SDCL chapter 47-11B or affect referrals between persons authorized to practice medicine or optometry in the state of South Dakota.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 35, effective August 30, 1994; 32 SDR 129, effective January 31, 2006.

**General Authority:** SDCL 36-7-15, 36-7-17, 36-7-25.

**Law Implemented:** SDCL 36-7-15(3).

**20:50:04:12. Scope of practice -- Procedural codes.** A licensed optometrist may perform the optometric clinical procedures listed in Appendix A.

**Source:** 32 SDR 225, effective July 5, 2006.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-1, 36-7-15.

#### CHAPTER 20:50:05 ADVERTISING

**Cross Reference:** It is a violation of the Federal Trade Commission Act for any state agency to enforce any prohibition on the dissemination of information concerning ophthalmic goods and services or eye examinations, 16 C.F.R. chapter 1, subchapter D, § 456.3.

**20:50:05:01. Advertising.** False, fraudulent, deceptive, misleading, or sensational advertising is prohibited. Advertising, whether paid for or not, is considered prohibited under this section if it meets any of the following criteria:

- (1) Contains a misrepresentation of fact or omits a material fact necessary to prevent deception or misrepresentation;
- (2) Promises relief or recovery unobtainable by the average patient by the methods publicized;
- (3) Contains a testimonial pertaining to quality or efficacy of optometric care of services that does not represent typical experiences of other patients;

**Commented [BM42]:** No other board has procedure codes in rule. Purpose was to ensure insurance covering procedures but no public protection aspect. Expecting the medical association to challenge (probably to the extent they think the optometrists are trying to expand scope of practice). Have spoken with the association who agrees to keep the list and work with the board to update/maintain. Public deserves access to new technologies and services-restricted by having this in the rule and how its been utilized to inappropriately define the scope of practice.

(4) Is intended or is likely to create false or unjustified expectations of favorable results;

(5) Contains a claim that the optometrist possesses skills, provides services, or uses procedures superior to those of other optometrists with similar training, unless the claim can be factually substantiated by scientific and accepted evidence;

(6) Takes advantage of a person's fears, vanity, anxiety, or similar emotions;

(7) Contains a claim that is likely to deceive or mislead the average member of the public to whom it is directed;

(8) Contains a false or misleading prediction or implication that a satisfactory result or cure will result from performance of professional services;

(9) Contains a claim that the optometrist uses or provides products which are superior unless claims can be factually substantiated by scientific and accepted evidence;

(10) Describes availability of products, procedure, or services which are not permitted by law;

(11) Is likely to attract patients by use of exaggerated claims;

(12) Contains a statement of uninvited direct solicitation of patients who, because of their particular circumstances, are vulnerable to undue influences;

(13) Fails to be identified as a paid announcement or solicitation when it is not apparent from the context that it is a paid announcement or solicitation, including but not limited to advertising giving the impression it is a news story or an informational article; or

(14) Contains a statement of fees charged for specific professional services but fails to indicate whether additional fees may be required for related services which may also be required.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986; 39 SDR 127, effective January 21, 2013.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-19.

#### CHAPTER 20:50:06

##### OFFICE AND EQUIPMENT REQUIREMENTS

**20:50:06:01. Minimum office equipment.** The minimum equipment with which licensed optometrists shall operate their offices and engage in the practice of optometry consists of the following items, all of which shall be kept in good condition:

- (1) Ophthalmic chair and instrument unit;
- (2) Retinoscope;
- (3) Ophthalmoscope;
- (4) Phoropter;
- (5) Keratometer;

- (6) Trial lens set;
- (7) Trial frame;
- (8) Transilluminator;
- (9) Projector chart or other luminous acuity chart;
- (10) Biomicroscope;
- (11) Instrument to evaluate intraocular pressure;
- (12) Permanent patient record system;
- (13) Visual fields instrument;
- (14) Color vision test equipment; and
- (15) Sanitary lavatory basin.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 34 SDR 101, effective October 18, 2007.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-15.

**20:50:06:02. Inspection of office.** Within 60 days following the establishment of a new practice of optometry in this state, a new licensee shall inform ~~the secretary of~~ the board. ~~At least one member of the board shall who may~~ conduct an inspection of the office facility and procedures. ~~This section and § 20:50:06:01 also apply to an optometrist admitted under endorsement provisions or a licensed optometrist who changes location or opens an additional office. The inspection of the office of an optometrist previously licensed in this state is at the option of the board.~~

**Commented [BM43]:** Cleaning up the purpose of statute and how inspections work

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 35, effective August 30, 1994; 34 SDR 101, effective October 18, 2007.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-13, 36-7-15(3).

**Cross-Reference:** Certificate of registration, § 20:50:02:07.

#### **CHAPTER 20:50:07 MINIMUM EXAMINATION**

**20:50:07:01. Minimum comprehensive optometric examination.** When a comprehensive examination is warranted, the minimum comprehensive optometric examination shall consist of the following:

- (1) Patient case history and visual acuity;
- (2) Internal and external physical ocular examination;
- (3) Objective and subjective analysis of refractive error by an optometrist that does not consist solely of information generated by an automated or internet-based testing device;
- (4) Analysis of accommodation, convergence, and fusional ability when clinically necessary;
- (5) Tonometry;
- (6) Pupil evaluation, extraocular movement testing, and visual field testing (confrontation or electronic);
- (7) Assessment and plan; and
- (8) Where indicated by case history and findings produced by the current examination, any additional tests that should be performed to enable the optometrist to advise the patient and prescribe for or refer, as indicated.

No prescription for ophthalmic lenses or contact lenses may be written based solely upon the diagnosis of a refractive error of the human eye as generated using automated equipment or internet-based devices.

Failure to make or supervise the minimum comprehensive examination in all cases and to keep a permanent record of it is unprofessional conduct unless there are professional reasons to the contrary.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986; 39 SDR 127, effective January 21, 2013; 44 SDR 99, effective December 11, 2017.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-1, 36-7-15.

#### CHAPTER 20:50:08 CONTINUING EDUCATION REQUIREMENTS

**20:50:08:01. Continuing education requirements.** ~~To be eligible for the renewal of the initial license to practice in this state and for each annual renewal thereafter, a~~An optometrist must complete 45 hours of continuing education as defined in SDCL 36-7-20.1 and 36-7-20.4 within each three-year period after the date of initial licensure. ~~The board shall make at least 12 hours of continuing education courses available each year.~~

**Commented [BM44]:** CE was scattered throughout statute/rule. Attempt to put it all in one place to help licensees know what is required and make it possible to be tracked.

Those optometrists certified to use pharmaceutical agents for diagnostic or therapeutic purposes must complete 5 hours annually of continuing pharmaceutical education in the area of diagnosis and treatment of ocular disease to be eligible for renewal of certification. The 5 hours of annual pharmaceutical education count toward the 45 hours required each three years.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986; 15 SDR 40, effective September 13, 1988; 17 SDR 199, effective June 30, 1991; 21 SDR 35, effective August 30, 1994; 31 SDR 101, effective January 19, 2005; 37 SDR 133, effective January 18, 2011.

**General Authority:** SDCL 36-7-15(4), 36-7-15.1.

**Law Implemented:** SDCL 36-7-15.1, 36-7-20, 36-7-20.1, 36-7-20.2, 36-7-20.4.

**20:50:08:02. Acceptable courses of study.** ~~The board shall determine acceptable continuing education courses. The board may approve courses on the following subjects or similar suitable subjects as determined by the board:~~ All continuing education courses must be accredited by The Council on Optometric Practitioner Education (COPE) or approved by the board. ~~on the following subjects or similar suitable subjects:~~

**Commented [BM45]:** Clarifying what courses are eligible for credit

- ~~— (1) Binocular vision and perception;~~
- ~~— (2) Pathology;~~
- ~~— (3) Contact lenses;~~
- ~~— (4) Pharmacology;~~
- ~~— (5) Low vision;~~
- ~~— (6) Vision training or vision therapy;~~
- ~~— (7) Pediatric vision care;~~
- ~~— (8) Geriatric vision care;~~

- ~~—— (9) New instrumentation and techniques;~~
- ~~—— (10) Public health and optometric care;~~
- ~~—— (11) Optometric examinations, diagnosis, and treatment; and~~
- ~~—— (12) Patient protection and compliance issues.~~

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 91, effective January 6, 1998; 43 SDR 61, effective October 24, 2016; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-15(4).

**Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

**20:50:08:02.01. ~~Limits on self-directed learning. Surgical/ophthalmologist observation. No more than nine hours of self-directed learning may be credited to a licensee in a three-year period to fulfill continuing education requirements. The number of credit hours is limited for each self-directed learning category as follows:~~**

~~(1) Surgical/ophthalmologist observation -- one hour credit for every two hours of observation, up to four hours credit. If the location of the observation being submitted for credit is the optometrist's regular office, evidence must be provided to the board that the subject of the observation is other than the optometrist's regular practice expertise. The board must be provided with documentation signed by the ophthalmologist evidencing the observation, including a summary detailing the type of observation and the educational goal and outcome of the observation on a form provided by the board;~~

~~—— (2) Video, recorded webinars, and teleconferences — up to two hours credit. The course must be proctored to receive credit;~~

~~—— (3) Correspondence courses from colleges or occupational journals — up to four hours credit. The course must have self-testing to receive credit; and~~

~~—— (4) Live webinars — up to four hours credit. A certificate of attendance stating it is a live webinar must be provided to the board in order to receive live webinar credit.~~

~~—— In the event of an emergency or situation not within the control of the licensee, and for good cause shown, a live stream presentation may receive credit as a live presentation.~~

**Source:** 24 SDR 91, effective January 6, 1998; 37 SDR 133, effective January 18, 2011; 44 SDR 99, effective December 11, 2017; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-15(4).

**Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

**20:50:08:02.02. ~~Limits on self-directed learning for continuing pharmaceutical education. Subject to § 20:50:08:02.01, those optometrists certified to use pharmaceutical agents for diagnostic or therapeutic purposes may not use more than two hours of instruction obtained through self-directed learning, to fulfill the annual requirement of five hours of continuing pharmaceutical education.~~**

**Source:** 24 SDR 91, effective January 6, 1998; 31 SDR 101, effective January 19, 2005; 37 SDR 133, effective January 18, 2011.

**General Authority:** SDCL 36-7-15.1.

**Commented [BM46]:** There were so many categories of continuing education that it was incredibly difficult to track. Moving toward accepting anything COPE approved and the observation opportunity. After COVID, a lot of opportunities have been moved to online opportunities and it will be hard to limit that again.

**Law Implemented:** SDCL 36-7-15.1.

**20:50:08:02.03. Limits on continuing education courses in practice management and patient protection and compliance issues.** In a three-year period, up to eight hours of instruction in the management of an optometric practice, including patient protection and compliance issues, may be used to fulfill continuing education requirements.

**Source:** 24 SDR 91, effective January 6, 1998; 43 SDR 61, effective October 24, 2016.

**General Authority:** SDCL 36-7-15(4).

**Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

**20:50:08:04. Obtaining evidence of compliance.** To show compliance with educational requirements, each licensee shall obtain evidence of attendance or completion from the sponsoring organization for each course. Documentation must show the name of the licensee, the title of the course, the COPE identification number, if applicable, the date of attendance or completion of the course, the location of the course or the medium used for instruction, and the hours in attendance or required for completion. The evidence of compliance must accompany the licensee's application for renewal of license.

**Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 91, effective January 6, 1998; 43 SDR 61, effective October 24, 2016; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-15(4).

**Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

#### **CHAPTER 20:50:10 PRESCRIBING OF CONTACT LENSES**

**20:50:10:01. Acts constituting prescribing of contact lenses.** Any of the following shall constitute the prescribing of contact lenses except when performed by or under the direction of and direct physical supervision of a person licensed under SDCL 36-4:

- (1) Determining whether or not a patient may safely and comfortably wear contact lenses;
- (2) Evaluating the physical fit of a contact lens through use of a "black light" and fluorescein or any similar substance;
- (3) Evaluating the physical fit of a contact lens through the use of a biomicroscope or a similar instrument with magnification qualities;
- (4) Using a phoropter, hand-held lens, or any automated instrument for the purpose of determining the prescription or change in prescription necessary in a contact lens;
- (5) Using a spectacle prescription or a prescription determined through the use of a vertometer, or its equivalent, on a pair of spectacles as a basis for designing, manufacturing, or duplicating a new contact lens;
- (6) Prescribing a schedule of time for wearing of contact lenses for a patient;

(7) Measuring and evaluating the curvature of the cornea through any means by any instrument including photographic, mechanical, or reflected light methods; and

(8) Determining the type and design of contact lenses and care procedure for the wearing of contact lenses.

**Source:** 3 SDR 92, effective July 12, 1977; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 13 SDR 44, effective October 20, 1986.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-1.

**20:50:10:02. Provision of contact lens prescription.** A person licensed under SDCL chapter 36-7 may not issue a validated contact lens prescription until a licensed optometrist has completed follow-up evaluation of the contact lens design on the patient's eye to assure the compatibility of the lens to the eye and the patient's ocular health.

After the completion of the follow-up evaluation by the licensed optometrist, ~~if the patient requests, in writing, a copy of the contact lens specifications pursuant to SDCL 36-2-16,~~ the prescribing optometrist shall provide a copy of the validated prescription **in compliance with state and federal law.** The optometrist shall clearly state the expiration date on the prescription.

**Commented [BM47]:** There is a new federal law that says optometrists must provide contact lens prescriptions and get confirmation of the same. They do not have to request in writing, so just making sure our rules comply with the federal rules.

If a patient refuses to permit the prescribing optometrist to complete a follow-up evaluation, the prescribing optometrist shall deliver a nonvalidated prescription to the patient that includes a statement that the prescription cannot be validated without follow-up evaluation.

**Source:** 21 SDR 35, 21 SDR 50, effective January 1, 1995.

**General Authority:** SDCL 36-7-15.

**Law Implemented:** SDCL 36-7-1.

**20:50:10:03. Expiration of contact lens prescription.** A contact lens prescription expires:

- (1) Not less than one year after the issue date of the prescription; or
- (2) On the date specified by the prescriber, based upon the medical judgment of the prescriber with respect to the ocular health of the patient.

If a prescription expires in less than one year, the prescriber shall document the reasons for that expiration date in the patient's medical record. No prescriber may specify a prescription expiration date that is earlier than the date on which a reexamination of the patient is medically necessary.

**Source:** 44 SDR 99, effective December 11, 2017; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-1.

#### **CHAPTER 20:50:11 CORPORATE PRACTICE**

**20:50:11:01. Application for registration.** Initial applications for registration for professional corporations shall include the following:



- (1) Name and address of the corporation;
- (2) A copy of its certificate of incorporation;
- (3) A copy of its articles of incorporation;
- (4) A copy of the minutes of its organizational meeting;
- (5) A copy of the corporation's insurance binder;
- (6) A registration fee of \$50; and
- (7) A sworn statement from the president of the corporation stating that the corporation will not

hold itself out to the public as possessing any skills or expertise not possessed by optometrists in noncorporate practice.

**Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 47-11B-23.

**Law Implemented:** SDCL 47-11B-8, 47-11B-9, 47-11B-18.

**20:50:11:02. Professional corporation -- Admitting shareholder.** No later than 30 days after a change in membership or shareholders, the corporation shall notify the board in writing of the change, indicating the identity, licensure status, and residence address of any new shareholder or member.

**Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 46 SDR 119, effective May 4, 2020.

**General Authority:** SDCL 47-11B-23.

**Law Implemented:** SDCL 47-11B-3.

**20:50:11:03. Renewal of certificate of registration.** Each registered corporation shall submit to the board by December 1 of each year an application for renewal of its certificate of registration. The application fee as required by SDCL 47-11B-13 shall accompany the application.

**Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL 47-11B-23.

**Law Implemented:** SDCL 47-11B-13.

#### CHAPTER 20:50:12 COMPLAINT INVESTIGATION

**20:50:12:01. Complaints.** Upon receipt of a written complaint, the board may initiate an investigation pursuant to SDCL 36-1C. Any person filing a complaint shall submit the complaint in writing to the executive secretary, on a form provided by the executive secretary. A complaint is not a public record. ~~Any complaint that concerns matters over which the board does not have jurisdiction will be dismissed, and the complainant will be notified of that action.~~ An investigation may also be initiated upon receipt by the executive secretary of information sufficient to create a reasonable suspicion that a licensee is in violation of any applicable standard for professional conduct, or that the health or welfare of the public is endangered.

**Source:** 41 SDR 109, effective January 12, 2015.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-24, 36-7-25, 36-7-26, 47-11B-7, 47-11B-14, 47-41B-15.

**20:50:12:02. Investigations.** If the complaint alleges a violation of a matter within the board's authority or compliance with licensing standards and requirements, the executive secretary shall promptly

**Commented [BM48]:** HB 1014 did not change any authority for complaint process so just updating anything that was in conflict or needing to be referencing 36-1C

investigate the complaint or provide the complaint to the board investigator for investigation pursuant to SDCL 36-1C. The executive secretary shall give written notice to the license, permit, or certificate holder of the complaint, along with a statement that the licensee is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The licensee ~~will be requested to~~ shall provide a written response to the complaint, which the licensee must provide to the executive secretary within twenty days of receipt of the request, and will be notified that a copy of that response may be provided to the complainant. Upon completion of a complaint investigation, the investigator shall prepare a report to present to the executive secretary of the investigator's findings and conclusions for review. Upon review of the investigator's report, the executive secretary may direct further investigation of the matter.

**Source:** 41 SDR 109, effective January 12, 2015.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-24, 36-7-25, 36-7-26, 47-11B-7, 47-11B-14, 47-11B-15.

**20:50:12:03. Completion of complaint investigation.** Upon completion of a complaint investigation, the following sanctions may be imposed after a determination by the board that a violation exists:

- (1) A letter of concern, which shall be placed in the licensee's permanent records; a letter of concern is not a public record;
- (2) Formal reprimand;
- (3) Require that the licensee comply with specified terms and conditions;
- (4) Probation of license to practice optometry in the state of South Dakota;
- (5) Suspension of license to practice optometry in the state of South Dakota;
- (6) Revocation of license to practice optometry in the state of South Dakota; or
- (7) Restitution and payment of all costs and expenses of the investigation and proceedings, including attorney fees.

If the licensee disputes the determination, a contested case hearing shall be held pursuant to SDCL ch. 1-26 and SDCL ch. 36-1C. Pursuant to SDCL 1-26-20, informal disposition may be made by stipulation, agreed settlement, consent order, or default. A final action taken in disposition of a complaint matter is public unless otherwise provided for by law.

**Source:** 41 SDR 109, effective January 12, 2015.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-24, 36-7-25, 36-7-26, 47-11B-7, 47-11B-14, 47-11B-15.

**20:50:12:04. Status of complainant.** The complainant is not a party to any contested case hearing resulting from the investigation of a complaint, although the complainant may be called as a witness in the hearing. A complainant shall be notified of any public final action taken by the board as a result of a complaint.

**Source:** 41 SDR 109, effective January 12, 2015.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-24, 36-7-25, 36-7-26, 47-11B-7, 47-11B-14, 47-11B-15.

**20:50:12:05. Failure to renew during investigation.** An optometrist may choose not to renew the license after a complaint has been initiated. A failure to renew after the licensee has been notified that

an investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license file and in any national databases to which the board is required to report licensure action.

**Source:** 41 SDR 109, effective January 12, 2015.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 36-7-24, 36-7-25, 36-7-26, 47-11B-7, 47-11B-14, 47-11B-15.

**20:50:12:06. Costs of disciplinary actions.** The board may assess against a licensee or applicant all or part of its expenses, including investigator and attorney fees, associated with a contested case proceeding which results in discipline action. If assessing such expenses, a statement of expenses shall be presented to the board or hearing examiner at the time proposed findings of fact and conclusions of law are submitted.

**Source:** 41 SDR 109, effective January 12, 2015.

**General Authority:** SDCL 36-7-15(3).

**Law Implemented:** SDCL 1-26-29.1.