

1984 WL 249941 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1984

\*1 Mr. Willard W. Banks  
Secretary-Treasurer  
South Carolina Board of Examiners in Opticianry  
Post Office Box 541  
Fountain Inn, South Carolina 29644

Dear Mr. Banks:

By your letter of December 28, 1983, you have asked this Office to examine the South Carolina statutes regarding the licensing of opticians, to determine whether an optician licensed in another state must undergo a practical examination for licensure within this State, or whether a license may be granted on the basis of a practical examination given by the licensing board in another State.

It is assumed that you and the prospective licensee are referring to [Section 40-38-120, Code of Laws of South Carolina](#) (1983 Cum.Supp.), which provides in part:

A person is qualified to receive a certificate of registration as a registered optician who:

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(3) Has passed a satisfactory examination conducted by the board and shows proficiency in processing a lens, frame or any other optical device or appurtenance in accordance with an optometrist's or physician's prescription. [Emphasis added.]

The Key language is the phrase 'shows proficiency.' We would advise that the Board of Examiners in Opticianry appears to have discretion in their determination of such proficiency: the Board may establish its own practical examination or use whatever other criteria the Board feels to be demonstrative of proficiency. Furthermore, because the statute contains the term 'and,' such a showing of proficiency is required in addition to the examination, which is further provided for by [Section 40-38-120](#). See, 1A [Sutherland Statutory Construction](#), § 21.14.

We would also advise that upon examination of the statutes governing licensure of opticians, we do not find any provisions for the granting of a license to practice opticianry completely by reciprocity or endorsement of an applicant licensed in another state. As a comparison, we would note that [Section 40-47-160 of the Code](#) provides for reciprocal certification of physicians and osteopaths; [Section 40-43-90](#), reciprocal licenses for pharmacists; [Section 40-33-560](#), registration of nurses without examination; and other Code sections concerning licensure of professions specifically permit the waiver of examinations for persons licensed in that profession in another state. Similar statutes are not found within the opticianry licensing statutes. Where the General Assembly specifically permitted complete reciprocity within certain professions, it is to be presumed that such reciprocity was not intended by the General Assembly within those professions not specified. See, 2A [Sutherland Statutory Construction](#), § 47.23; [Home Building & Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1938).

Moreover, it should be noted that the State of South Carolina has the right, under its police power, to define the qualifications that one should possess to practice opticianry in this State. The State may properly require that such a practitioner possess the

necessary technical skills to practice his profession. [South Carolina State Board of Dental Examiners v. Breeland](#), 208 S.C. 469, 38 S.E.2d 644 (1946). Additionally, such statutes are intended to protect the public health and welfare. [Ezell v. Ritholz](#), 188 S.C. 39, 198 S.E. 419 (1939). Thus, we would conclude that the Board of Examiners in Opticianry, to ensure the proper qualifications of a licensee and to protect the public, may use its discretion to determine the showing of proficiency required by [Section 40-38-120 of the Code](#), by whatever method, as long as the Board is satisfied that the licensee has shown proficiency.<sup>1</sup>

\*2 Because the prospective licensee appears to be concerned only with that aspect of licensure concerning the practical examination, this opinion is limited strictly to consideration of the practical examination and does not address any other portion of the examination requirement.

We apologize for the length of time taken to respond to your inquiry and do hope that we have satisfactorily resolved the question for you. Please advise us if you need additional information or clarification.

Sincerely,

Patricia D. Petway  
Assistant Attorney General

Footnotes

<sup>1</sup> We would advise that criteria used to determine such proficiency must be reasonable.

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