

1978 S.C. Op. Atty. Gen. 156 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-125, 1978 WL 22593

Office of the Attorney General

State of South Carolina

Opinion No. 78-125

JUNE 22, 1978

**\*1 SUBJECT: Optometry and Optometrists**

The Board of Optometry and Opticianry Examiners may impose upon an individual who has not been relicensed to practice either as an optometrist or optician in South Carolina for three or more years reasonable requirements prior to such individual's relicensure.

TO: Jack S. Folline

Member

Board of Optometry and Opticianry

QUESTION:

What is the applicability of [§ 40-37-200 of the Code of Laws of South Carolina \(1976\)](#) on an individual who has not been relicensed to practice either as an optometrist or optician in South Carolina for three or more years?

STATUTES AND CASES:

South Carolina Code of Laws (1976), [§ 40-37-200](#);

[Jones v. S. C. Highway Department](#), 247 S.C. 132, 146 S.E.2d 166 (1966);

[Dantzer v. Callison](#), 230 S.C. 75, 94 S.E.2d 177 (1956);

[Stephens v. Hendricks](#), 226 S.C. 79, 83 S.E.2d 634 (1954);

[Ezell, et al. v. Ritholz, et al.](#), 188 S.C. 39, 198 S.E. 419 (1938).

DISCUSSION:

The purpose of the legislative regulation of the practice of opticianry and optometry is to safeguard the health and welfare of the public. [Ezell, et al. v. Ritholz, et al.](#), 188 S.C. 39, 198 S.E. 419 (1938). And the state's legitimate concern for maintaining high standards of practice in the fields of optometry and opticianry extends beyond the initial licensing requirement. Cf. [Dantzer v. Callison](#), 230 S.C. 75, 94 S.E.2d 177 (1956). Thus, the legislature having recognized the need for safeguards to insure the continuing competency of persons licensed to practice enacted [§ 40-37-200 of the 1976 Code](#).

[Section 40-37-200](#) divides practitioners who are delinquent in registration requirements into two classes: those who have not reregistered for less than three years and those who have not registered for three years or more. As to this second category of delinquent practitioners the legislative mandate is clear and unambiguous:

If the license has been lapsed for a period of three years or over, he (Practitioner) shall appear before the Board, which shall then determine if his license should be reinstated, and the requirements or terms upon which such reinstatement shall be made. [§ 40-37-200, Code of Laws of South Carolina](#), 1976, as amended.

[Section 40-37-200](#) also imposes a continuing education requirement upon practitioners. The fulfillment of this requirement is a prerequisite to relicensure.

Although § 46-37-200 contains certain ambiguities elsewhere, it must be construed in light of its intended purpose and in a manner reasonable in application. [Jones v. S. C. Highway Department](#), 247 S.C. 132, 146 S.E.2d 166 (1966); [Stephens v. Hendricks](#), 226 S.C. 79, 83 S.E.2d 634 (1954).

The legislature, obviously realizing the potential harm to the public of permitting a practitioner who has not been relicensed for three or more years to automatic relicensure upon application and payment of specified fees placed such person in a category requiring him to meet Board imposed requirements which demonstrate his ability to competently and safely practice prior to relicensure. His license is deemed to have lapsed, irrespective of the Board's action or inaction to affirmatively revoke said license. The legislature used the term 'lapse' advisedly as opposed to revocation. Lapse generally means a 'termination or failure of a right or privilege through neglect to exercise within some limit of time or through some failure of contingency.' [Webster's Third New International Dictionary](#) (1976). The distinction makes it apparent that the legislature intended for a practitioner who has not had a current license in this State for three or more years to demonstrate to the Board his competency regardless of whether or not his prior license had been revoked.

\*2 The requirement of continuing education on practitioners as requisites to relicensure additionally supports this interpretation.

#### CONCLUSION:

The Board of Optometry and Opticianry Examiners may impose upon an individual who has not been relicensed to practice either as an optometrist or optician in South Carolina for three or more years reasonable requirements prior to such individual's relicensure.

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