

4725-5-10. Practicing under unlicensed control

(A) The performance of optometric services for the public while in the employ of or while under the direct or indirect control of any person or entity of any kind other than a holder of a certificate of licensure, a corporation of holders of certificates of licensure, a not for profit charitable corporation or foundation, or a professional corporation as defined in Chapter 1785. of the Revised Code, ~~of holders of certificates of licensure constitutes "dishonesty and unprofessional conduct" as that phrase is used in Section 4725.19 of the Revised Code~~ is prohibited.

(1) The direct or indirect control of the performance of optometric services includes, but is not limited to:

(a) Setting or attempting to set the professional fees ~~or hours~~ of an optometrist or the number of patients to be seen by an optometrist or by limiting ~~or dictating~~ third party payer agreements;

(b) Restricting or attempting to restrict an optometrist's discretion to schedule appointments at times convenient to the optometrist's patients;

~~(c) Terminating or threatening to terminate a lease with an optometrist as a means to control the professional judgment or practice of the optometrist. (TO BE REMOVED)~~

(d) Restricting an optometrist's access to leased office space when the optometrist needs such access to provide emergency care to a patient;

(e) Restricting or attempting to restrict the scope of practice of an optometrist in a way that prevents the optometrist from providing the full range of diagnostic and treatment services authorized by Ohio law.

(f) Limiting or attempting to limit the optometric services and ophthalmic materials that the optometrist may prescribe to patients or the information which may be disseminated to patients or the public;

(g) Controlling or attempting to maintain control of patient records; and

(h) Limiting or attempting to limit the optometrist's exercise of independent professional judgment or responsibility in any way.

(B) If an optometrist leases space from a general corporation or an unlicensed individual, the optometrist shall do so on a flat rate basis. The leasing of space by an optometrist from a general corporation or unlicensed individual in any manner other than on a flat rate basis is prohibited. The Board may request copies of written leases from licensees working within general corporations and with individual owners. The licensee is responsible for negotiating and maintaining a proper lease relationship with unlicensed entities. The intent of this rule is to maintain the licensee's professional autonomy from the corporation or individual owner. This ensures that corporation and individual ownership objectives do not influence clinical decisions and the licensee's primary responsibilities to the patient.

(1) As used in this section the phrase "flat rate basis" means a pricing structure based on the space and or equipment leased and shall not include any terms or conditions related to the "performance of optometric services" as specified in 4725-5-10(A)(1).

(2) For the purposes of this rule, nonprofit charitable corporations or foundations that are primarily financed by federal grants, state grants and endowments, such as "Prevent Blindness Ohio" and low vision centers, may employ optometrists as long as no control is exerted over optometric procedures that are deemed necessary by optometrists working at these locations.

A violation of this section constitutes "dishonest and unprofessional conduct" as that phrase is used in section 4725.19 of the revised code.