

§19311. Operation of kiosks

The following provisions govern the operation of kiosks by any person. [PL 2023, c. 580, §8 (NEW).]

1. Minimum standards for eye examination. Ownership and operation of a kiosk, including use of a kiosk by any person, must comply with the minimum standards for an eye examination under section 19309.

[PL 2023, c. 580, §8 (NEW).]

2. Enforcement. In addition to the disciplinary actions available to the board under section 19402, the board has the following powers of enforcement for violations of this chapter that relate in any way to kiosks, their use or the issuance of prescriptions arising out of their use. Nothing in this subsection may be construed to apply to enforcement for violations by physicians who are governed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure.

A. A person or governmental entity that believes a violation of this chapter in relation to a kiosk has occurred or has been attempted may make an allegation of that fact to the board in writing. [PL 2023, c. 580, §8 (NEW).]

B. If, upon reviewing an allegation under paragraph A, the board determines there is a reasonable basis to believe a violation of this chapter or attempted violation of this chapter has occurred in relation to a kiosk, the use of a kiosk or the issuance of a prescription arising out of kiosk use, the board shall investigate. [PL 2023, c. 580, §8 (NEW).]

C. The board may hold adjudicatory hearings and administer oaths and order testimony to be taken at a hearing or by deposition conducted pursuant to Title 5, chapter 375, subchapter 4 or 5. [PL 2023, c. 580, §8 (NEW).]

D. The board may proceed with an action if the board determines that a violation in relation to a kiosk, the use of a kiosk or the issuance of a prescription arising out of kiosk use has occurred. [PL 2023, c. 580, §8 (NEW).]

E. The board is not required to wait until human harm has occurred to initiate an investigation under this subsection. [PL 2023, c. 580, §8 (NEW).]

F. The board, upon finding, after notice and an opportunity for a hearing, that a person has violated any requirement related to a kiosk, the use of a kiosk or the issuance of a prescription arising out of kiosk use without meeting the minimum standards for an eye examination under section 19309, may impose an administrative fine of not more than \$10,000 for each violation or attempted violation and may issue an order requiring reimbursement of the reasonable costs to the board of investigation and hearing. [PL 2023, c. 580, §8 (NEW).]

G. The board shall advise the Attorney General of the failure of a person to pay a civil penalty imposed following an adjudicatory hearing or to reimburse costs to the board of investigation and hearing imposed under this subsection. The Attorney General may bring an action in a court of competent jurisdiction for the failure to pay any amount imposed under this subsection, including the reasonable costs of investigation and hearing. [PL 2023, c. 580, §8 (NEW).]

H. The board may request that the Attorney General file a civil action seeking an injunction or other appropriate relief to enforce this section. For violations of this section, a court may impose a fine of not more than \$20,000 for each violation. [PL 2023, c. 580, §8 (NEW).]

I. The board may adopt rules to implement, administer and enforce this section. Rules adopted pursuant to this paragraph are routine technical rules under Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 580, §8 (NEW).]

[PL 2023, c. 580, §8 (NEW).]

3. Attorney General may initiate action. Nothing in this section prohibits the Attorney General from initiating an action without referral or request from the board if the Attorney General determines there is a reasonable basis to believe a violation of this section occurred.
[PL 2023, c. 580, §8 (NEW).]

4. Prescription filled based in part on measurements from kiosk. It is neither a violation of this section nor grounds for professional discipline or liability for an optometrist to fill a prescription for a patient based in part on measurements obtained through a kiosk.
[PL 2023, c. 580, §8 (NEW).]

SECTION HISTORY

PL 2023, c. 580, §8 (NEW).

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