

KENTUCKY REVISED STATUTES
CHAPTER 320
(KRS 320)

320.200 Declaration of legislative policy concerning practice of optometry.

The practice of optometry in the Commonwealth of Kentucky is hereby declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is hereby declared to be a learned profession and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this chapter and the optometric profession merit and receive the confidence of the public and that only qualified persons be admitted to the practice of optometry and be permitted to so practice in the Commonwealth of Kentucky. This chapter shall be liberally construed to carry out these objects and purposes in accordance with this declaration of policy.

History: Created 1954 Ky. Acts ch. 183, sec. 1.

320.210 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

- (1) "Board" means the Kentucky Board of Optometric Examiners;
- (2) "Practice of optometry" means:
 - (a) The evaluation, diagnosis, prevention, or surgical, nonsurgical, or related treatment of diseases, disorders, or conditions of the eye and its appendages and their impact on the human body provided by an optometrist within the scope of his or her education, training, and experience and in accordance with this chapter, the ethics of the profession, and applicable law. The practice of optometry includes the examination, diagnosis, and treatment of the human eye and its appendages to correct and relieve ocular abnormalities and to determine eye health, the visual efficiency of the human eye, or the powers or defects of vision in any authorized manner, including but not limited to:
 1. Prescribing and adapting lenses, contact lenses, spectacles, eyeglasses, prisms, ocular devices, and all routes of administration of pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized by KRS 320.240; or
 2. Employing vision therapy or orthoptics, low vision rehabilitation, and laser surgery procedures, excluding retina, LASIK, and PRK.
The practice of optometry includes the correction and relief of ocular abnormalities by surgical procedures not excluded in paragraph (b) of this subsection;
 - (b) The following procedures are excluded from the scope of practice of optometry, except for the preoperative and postoperative care of these procedures:
 1. Retina laser procedures, LASIK, and PRK;
 2. Nonlaser surgery related to removal of the eye from a living human being;
 3. Nonlaser surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye;
 4. Penetrating keratoplasty (corneal transplant), or lamellar keratoplasty;
 5. Nonlaser surgery requiring incision of the iris and ciliary body, including iris diathermy or cryotherapy;
 6. Nonlaser surgery requiring incision of the vitreous;

7. Nonlaser surgery requiring incision of the retina;
 8. Nonlaser surgical extraction of the crystalline lens;
 9. Nonlaser surgical intraocular implants;
 10. Incisional or excisional nonlaser surgery of the extraocular muscles;
 11. Nonlaser surgery of the eyelid for eyelid malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis, and tarsorrhaphy;
 12. Nonlaser surgery of the bony orbit, including orbital implants;
 13. Incisional or excisional nonlaser surgery of the lacrimal system other than lacrimal probing or related procedures;
 14. Nonlaser surgery requiring full thickness conjunctivoplasty with graft or flap;
 15. Any nonlaser surgical procedure that does not provide for the correction and relief of ocular abnormalities;
 16. Laser or nonlaser injection into the posterior chamber of the eye to treat any macular or retinal disease; and
 17. The administration of general anesthesia;
- (c) Any person shall be regarded as practicing optometry if he or she:
1. Performs or advertises to perform optometric operations of any kind, including diagnosing or treating diseases of the eye or visual system or deficiencies of the eye and its appendages, or attempts to correct the vision thereof;
 2. Prescribes, provides, furnishes, adapts, uses, or employs lenses, prisms, contact lenses, visual therapy, orthoptics, ocular exercise, autorefraction, or any other means or device for the aid, relief, or correction of the human eye and its appendages, except upon the written prescription of a licensed optometrist; or
 3. Uses the words "optometrist," "doctor of optometry," the letters "O.D.," or other letters or title in connection with his or her name, which in any way represents him or her as being engaged in the practice of optometry; and
- (d) Low vision rehabilitation;
- (3) "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus;
 - (4) "Visual aid glasses" means eyeglasses, spectacles, or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify;
 - (5) "Orthoptic technician" means a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter if such training and directions are done pursuant to and under the instructions of a duly-licensed physician, osteopath, or optometrist and consists solely of visual training, orthoptics, or ocular exercises; and
 - (6) "Low vision rehabilitation" means the evaluation, diagnosis, and management of the low vision patient, including but not limited to, prescription, low vision rehabilitation therapy, education, and interdisciplinary consultation when indicated. Any person who prescribes or provides comprehensive low vision care for the rehabilitation and

treatment of the visually impaired or legally blind patient; prescribes corrective eyeglasses, contact lenses, prisms, or filters; employs any means for the adaptation of lenses, low vision devices, prisms, or filters; evaluates the need for, recommends, or prescribes optical, electronic, or other low vision devices; or recommends or provides low vision rehabilitation services independent of a clinical treatment plan prescribed by an optometrist, physician, or osteopath is engaged in the practice of optometry.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 1, sec. 1, effective June 8, 2011. -- Amended 2000 Ky. Acts ch. 361, sec. 1, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 376, sec. 1, effective July 15, 1996. -- Amended 1986 Ky. Acts ch. 12, sec. 1, effective July 15, 1986. -- Amended 1978 Ky. Acts ch. 179, sec. 1, effective June 17, 1978. -- Created 1954 Ky. Acts ch. 183, sec. 2.

Legislative Research Commission Note (6/8/2011). 2011 Ky. Acts ch. 1, sec. 4, provides that this section and KRS 320.240 shall be known and may be cited as the "Better Access to Quality Eye Care Act."

320.220 Licensure requirement -- Exemptions.

- (1) No person shall practice optometry in this Commonwealth or hold himself or herself out as being able to do so unless he or she is the holder of a license duly issued to him or her by the board and registered in the manner provided by KRS 320.290.
- (2) A license to practice optometry shall not be required by physicians or osteopaths currently licensed to practice medicine or osteopathy at any place in the Commonwealth of Kentucky.
- (3) Nothing in this chapter shall be construed to prohibit persons from fitting, adjusting, or dispensing visual aid glasses or other lenses or appurtenances if the fitting, adjusting, or dispensing is done upon the written prescription of a currently licensed optometrist, physician, or osteopath, nor shall this chapter be construed as requiring these persons to be licensed under this chapter.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 2, effective July 14, 2000. -- Created 1954 Ky. Acts ch. 183, sec. 3.

320.230 Kentucky Board of Optometric Examiners -- Appointment -- Qualifications -- Vacancies -- Quorum -- Compensation.

- (1) The Kentucky Board of Optometric Examiners shall consist of five (5) members appointed by the Governor. Four (4) members shall be Kentucky licensed practicing optometrists whose licenses are in good standing and who are appointed by the Governor from a list containing three (3) names for each appointment recommended by the Kentucky Optometric Association. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The members shall serve for a term of four (4) years and until their successors are appointed and qualified. They shall receive per diem compensation to be determined by administrative regulations promulgated by the board, not to exceed one hundred twenty-five dollars (\$125) per day for attending board meetings. Members shall be reimbursed for actual expenses incurred in the performance of their duties under this chapter.
- (2) Each optometrist member shall be a Kentucky licensed practicing optometrist in good standing for not less than five (5) years immediately preceding his or her appointment to the board. The member shall not be in any way connected with or interested in any optometric school, college, or institution of learning or optometric supply business.
- (3) Any vacancy occurring on the board as the result of a member not completing the term for which he or she was appointed shall be filled, for the unexpired term, in the

same manner as is provided in subsection (1) of this section for the appointment of members.

- (4) A majority of the members of the board shall constitute a quorum for the transaction of business.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 3, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 7, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 154, sec. 34, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 206, sec. 14. -- Amended 1966 Ky. Acts ch. 255, sec. 250. -- Created 1954 Ky. Acts ch. 183, sec. 4.

320.240 Board's meetings, officers, powers, and duties -- Licensure and classification of optometrists -- Board to have sole authority over practice of optometry -- Authorization to administer and prescribe pharmaceutical agents and certain oral medications.

- (1) The board shall meet at least once each year, at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board, upon call of its officers, may hold meetings at any time as it deems necessary. A full record of the board's proceedings shall be kept in the office of the board and shall be open to inspection at all reasonable times.
- (2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.
- (3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.
- (4) Subject to and consistent with the provisions of this chapter, the board shall promulgate reasonable administrative regulations and do any and all things that it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists. The administrative regulations shall include the classification and licensure of optometrists by examination or credentials, retirement of a license, and reinstatement of a license.
- (5) An optometrist shall not administer drugs, prescribe drugs, or perform laser or nonlaser surgery procedures until he or she is licensed by the board. Any therapeutically licensed optometrist authorized to practice under this section shall meet the educational and competence criteria set forth by the board in order to perform expanded therapeutic procedures. Evidence of proof of continuing competency shall be determined by the board.
- (6) Nothing in this chapter shall be construed as allowing any agency, board, or other entity of this state other than the Kentucky Board of Optometric Examiners to determine what constitutes the practice of optometry.
- (7) The board shall have the sole authority to determine what constitutes the practice of optometry and sole jurisdiction to exercise any other powers and duties under this chapter. The board may issue advisory opinions and declaratory rulings related to this chapter and the administrative regulations promulgated under this chapter.
- (8) The board shall have:
 - (a) A common seal;
 - (b) The right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter; and
 - (c) Other powers and duties as authorized by this chapter.

- (9) The board may administer oaths and require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process that shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided for disobedience of a subpoena or subpoena duces tecum in a civil action.
- (10) The board may assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.
- (11) The board shall report its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.
- (12) The board may permit persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of the diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.
- (13) The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (12) of this section to utilize and prescribe therapeutic pharmaceutical agents in the examination or treatment of any condition of the eye or its appendages. Any therapeutically certified optometrist licensed under the provisions of this subsection shall be authorized to prescribe oral medications, except controlled substances classified in Schedules I and II, for any condition which an optometrist is authorized to treat under the provisions of this chapter. The use of injections for other than treatment of the human eye and its appendages shall be limited to the administration of benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction. In a public health emergency, the commissioner of health may authorize therapeutically licensed optometrists to administer inoculation for systemic health reasons. The authority to prescribe a Schedule III, IV, or V controlled substance shall be limited to prescriptions for a quantity sufficient to provide treatment for up to seventy-two (72) hours. No refills of prescriptions for controlled substances shall be allowed. The utilization or prescribing of therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

These six (6) semester hours are in addition to the six (6) semester hours required by subsection (12) of this section, making a total of twelve (12) semester hours.

- (14) Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics. Any optometrist authorized by the board to utilize therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (12) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein.

Effective: June 8, 2011

History: Amended 2011 Ky. Acts ch. 1, sec. 2, effective June 8, 2011. -- Amended 2000 Ky. Acts ch. 361, sec. 4, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 376, sec. 2, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 256, sec. 8, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 12, sec. 2, effective July 15, 1986. -- Amended 1978 Ky. Acts ch. 179, sec. 2, effective June 17, 1978. -- Created 1954 Ky. Acts ch. 183, sec. 5.

Legislative Research Commission Note (6/8/2011). 2011 Ky. Acts ch. 1, sec. 4, provides that this section and KRS 320.210 shall be known and may be cited as the "Better Access to Quality Eye Care Act."

320.242 Immunity from liability of board members and employees.

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any current or former member, officer, administrator, agent, or employee of the board, either as a part of the board's operation or as an individual, as the result of any act, omission, proceeding, conduct, or decision relating to official duties undertaken or performed within the scope of the function of the board, except where actual malice or willful misconduct is shown. A person bringing an action under this section shall prove its elements by clear and convincing evidence.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 256, sec. 5, effective July 13, 1990.

320.250 Eligibility for license -- Examinations -- Applications for license.

- (1) Licenses to engage in the practice of optometry shall be issued only to those who qualify under the provisions of KRS 320.260 or 320.270, or who successfully pass examinations conducted or approved by the board at a time and place fixed by the board. Each license certificate shall be signed by the president and secretary-treasurer and authenticated by the seal of the board.
- (2) The examinations may consist of written, clinical, or practical examinations and shall relate to the skills needed for the practice of optometry in this Commonwealth at the time of the examination and shall seek to determine the applicant's preparedness to exercise these skills. The examining board may:
- (a) Prepare, administer, and grade the examination;
 - (b) Accept the scores of the applicant from an examination prepared, administered, and graded by the National Board of Examiners in Optometry or any other organization approved by the board as qualified to administer the examination; and
 - (c) Require passage of an examination on Kentucky optometric law.

- (3) Any person seeking a license to practice optometry under the provisions of this section shall submit an application to the board on forms furnished by the board. The applicant shall show proof of the following:
- (a) The applicant is not less than eighteen (18) years of age and is of good moral character;
 - (b) The applicant is a graduate of a school or college of optometry that is accredited by a regional or professional accreditation organization that is recognized or approved by the council on postsecondary accreditation, or by the United States Department of Education, and is in good standing, as approved by the board. All applicants shall have transcript credit of at least six (6) semester hours in a course or courses from a school or college as described in this subsection in general and ocular pharmacology with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye and six (6) semester hours in ocular pathology and therapy with emphasis on utilization of therapeutic pharmaceutical agents. All hours shall be from a school or college as described in this subsection;
 - (c) All other information requested by the board as is set out on the application.
- (4) The nonrefundable fee for each license application shall not exceed six hundred dollars (\$600).
- (5) No application shall be considered by the board after one (1) year from the date in which the board received the application has lapsed. After the lapse of the one (1) year period, an applicant shall submit a new application and another nonrefundable fee for further consideration by the board.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 113, sec. 19, effective June 24, 2015. -- Amended 2000 Ky. Acts ch. 361, sec. 5, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 9, effective July 13, 1990; and ch. 443, sec. 24, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 337, sec. 1, effective July 15, 1982. -- Amended 1970 Ky. Acts ch. 120, sec. 12. -- Created 1954 Ky. Acts ch. 183, sec. 6.

320.255 Repealed, 2000.

Catchline at repeal: Inactive status for license.

History: Repealed 2000 Ky. Acts ch. 361, sec. 18, effective July 14, 2000. -- Created 1990 Ky. Acts ch. 256, sec. 6, effective July 13, 1990.

320.260 Holder of existing license exempt from examination.

Any person, who, on June 17, 1954, was the holder of a valid, unrevoked license to practice optometry issued to him under the laws of this state, shall not be required to take an examination under this chapter, but shall secure an annual renewal of his license, and in every other respect shall be subject to this chapter.

History: Created 1954 Ky. Acts ch. 183, sec. 7.

320.270 Licensing by endorsement of persons from other states.

The board may license by endorsement an optometrist who holds a valid license that was obtained by examination from another state or territory of the United States if the applicant for licensure by endorsement:

- (1) Has engaged in the active practice of optometry for at least five (5) years immediately preceding his or her application for licensure;
- (2) Has not committed any act that would constitute a violation of this chapter and the administrative regulations promulgated under this chapter and is not the subject of any pending or unresolved board action or malpractice suit in this or any other state or territory;

- (3) Meets all of the qualifications for regular state licensure as set forth by the board; and
- (4) Has completed and submitted an application for licensure by endorsement to the board, submitted a nonrefundable fee to be determined by the board in administrative regulations of no more than seven hundred dollars (\$700), and has authorized any state in which the applicant is licensed to submit information to the board indicating whether or not the applicant is in good standing with the respective state's licensing board.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 6, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 10, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 337, sec. 2, effective July 15, 1982. -- Created 1954 Ky. Acts ch. 183, sec. 8.

320.280 Renewal certificates.

- (1) All optometrists desiring to continue practice shall annually, prior to March 1, secure from the secretary-treasurer of the board a renewal certificate upon the payment of a fee of not more than two hundred dollars (\$200). Not later than February 15 of each year the board shall notify by mail all optometrists of the renewal date and fee. Application for a renewal shall be upon a form prescribed by the board and the optometrist shall furnish the information required by the form.
- (2) As a prerequisite for license renewal, all optometrists now or hereafter licensed in the Commonwealth of Kentucky are and shall be required to take annual courses of study in subjects relating to the practice of optometry to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research will assure expansive and comprehensive care to the public. The length and content of study shall be prescribed by the board but shall not exceed eight (8) hours in any calendar year, with the exception of those optometrists who are authorized to prescribe therapeutic agents who shall be required to have additional credit hours of continuing education in ocular therapy and pharmacology, the amount of required credit hours to be determined by the board, but not to exceed an additional seventeen (17) credit hours, for a total not to exceed twenty-five (25) credit hours per year. Attendance shall be at a course or by a sponsor approved by the board. Attendance at any course or courses of study is to be certified to the board upon a form provided by the board and shall be submitted by each licensed optometrist at the time he makes application to the board for the renewal of his license and payment of his renewal fee. The board may waive the continuing education requirement in cases of illness or undue hardship.
- (3) Failure of any optometrist to secure his renewal certificate within sixty (60) days after March 1, shall constitute sufficient cause for the board to revoke his license.

Effective: June 24, 2015

History: Amended 2015 Ky. Acts ch. 113, sec. 20, effective June 24, 2015. -- Amended 2000 Ky. Acts ch. 361, sec. 7, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 11, effective July 13, 1990; and ch. 443, sec. 11, effective June 13, 1990. -- Amended 1986 Ky. Acts ch. 12, sec. 3, effective July 15, 1986. -- Amended 1978 Ky. Acts ch. 313, sec. 5, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 37, sec. 1. -- Amended 1958 Ky. Acts ch. 133, sec. 1. -- Created 1954 Ky. Acts ch. 183, sec. 9.

320.290 Display of licenses.

Every practicing optometrist shall display in a conspicuous place at the entrance to his office the true full name of the person practicing therein and shall keep his license

certificate conspicuously displayed in his place of practice so that it can easily be seen and read.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 8, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 12, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 84, sec. 10, effective June 17, 1978. -- Created 1954 Ky. Acts ch. 183, sec. 10.

320.295 Prohibition against false, misleading, or deceptive advertising.

No optometrist shall engage in advertising of any form that is false, misleading, or deceptive.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 9, effective July 14, 2000. -- Created 1990 Ky. Acts ch. 256, sec. 4, effective July 13, 1990.

320.300 Unlawful practices.

It shall be unlawful and a violation of the provisions of this chapter for any person:

- (1) To sell, fit, or dispense visual aids except upon the written prescription of an optometrist, physician, or osteopath regularly licensed to practice optometry, medicine, or osteopathy;
- (2) To practice optometry, directly or indirectly, or to hold oneself out as being able so to do without first having obtained a license from the board;
- (3) Who writes a prescription for visual aid glasses, to receive any part of the price paid to a third person for filling the prescription or for the third person to pay to the person writing the prescription any part of the price paid for filling the prescription;
- (4) To practice optometry under any name other than his own, except as permitted by the board in its regulations.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 10, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 13, effective July 13, 1990. -- Created 1954 Ky. Acts ch. 183, sec. 11.

320.310 Causes for refusal, limitation, revocation, or suspension of licenses -- Restitution or fines -- Branch offices -- Expungement.

- (1) The board may refuse to issue, refuse to renew, limit or restrict, revoke, or suspend a license, may place on probation, or reprimand a licensee, may order restitution, may impose a fine not to exceed one thousand dollars (\$1,000) for each violation of this chapter or the corresponding administrative regulations, or may impose any combination of these penalties if it finds that an applicant or a licensee has:
 - (a) Engaged in any practice of fraud or deceit in obtaining or attempting to obtain a license;
 - (b) Been convicted of any felony or has been convicted of a misdemeanor involving sexual misconduct. A record of the conviction or a certified copy of the record shall be conclusive evidence;
 - (c) Chronic or persistent inebriety or addiction to a drug habit to an extent that continued practice is dangerous to patients or to the public safety;
 - (d) Been granted a license upon a mistake of material fact;
 - (e) Engaged in incompetence, as determined by the board;
 - (f) Practiced as an itinerant, peddled from door to door, established a temporary office, or practiced optometry outside of or away from his or her regular office or place of practice, except that the board may promulgate administrative regulations to authorize the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board;

- (g) Employed, procured, induced, aided, or abetted any person, not holding a Kentucky license, to practice optometry or in practicing optometry;
 - (h) Used the title "doctor" or its abbreviation without further qualifying this title or abbreviation with the word "optometrist" or suitable words or letters designating an optometry degree;
 - (i) Engaged in any conduct likely to deceive or defraud the public;
 - (j) Violated any order issued by the board;
 - (k) Had his or her license to practice optometry in any other jurisdiction revoked, suspended, limited, placed on conditions of probation, or subjected to any other disciplinary action by that jurisdiction's licensing authority;
 - (l) Prescribed any therapeutic agent in an amount that the optometrist knows, or should know, is excessive under accepted and prevailing standards, or which the optometrist knows, or has reason to know, will be used or is likely to be used other than for an accepted therapeutic purpose;
 - (m) Developed a physical or mental disability, or other condition, which renders the continued practice by the optometrist dangerous to patients or the public; or
 - (n) Violated any statute under this chapter or administrative regulation promulgated under those statutes.
- (2) Nothing in this section shall prevent an optometrist from establishing branch offices if each office contains minimum equipment as required by administrative regulation of the board, ensures patient care as necessary, and has a Kentucky licensed optometrist in charge of the office.
- (3) Any licensee, permit holder, or certificate holder who is disciplined under this chapter for a minor violation may request in writing that the board expunge the minor violation from the licensee's, permit holder's, or certificate holder's permanent record.
- (a) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee, permit holder, or certificate holder has completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
 - (b) No person may have his or her record expunged under this chapter more than once.

The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this subsection. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; adversely affect the public health, safety or welfare; or result in economic or physical harm to a person, or create a significant threat of such harm.

Effective: March 11, 2009

History: Amended 2009 Ky. Acts ch. 5, sec. 1, effective March 11, 2009. -- Amended 2002 Ky. Acts ch. 335, sec. 2, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 361, sec. 11, effective July 14, 2000. -- Amended 1990 Ky. Acts ch. 256, sec. 14, effective July 13, 1990. -- Created 1954 Ky. Acts ch. 183, sec. 12.

Legislative Research Commission Note (7/15/2002). A manifest clerical or typographical error has been corrected in codification in subsection (3)(a) of this statute as amended by 2002 Ky. Acts ch. 335, sec 2, under the authority of KRS 7.136(1)(h), by removing the duplicated words "completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has."

320.312 Physical or mental examination of an optometrist -- Limited license.

- (1) When the board has reason to believe, based upon its own information or a complaint or inquiry directed to the board, that an optometrist is suffering from a physical or mental condition that might impede his ability to practice competently,

- the board may order the optometrist to undergo a physical or mental examination by persons designated by the board, at the expense of the optometrist.
- (2) Failure of an optometrist to submit to an examination when directed shall constitute an admission that the concerned optometrist has developed a physical or mental disability, or other conditions, that continued practice is dangerous to patients or to the public and the board may act accordingly pursuant to KRS 320.310.
 - (3) The board may limit the optometrist's license privileges pursuant to this section in addition to the other alternatives set forth in KRS 320.310.
 - (4) An optometrist whose license has been suspended, limited, or revoked under this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that he is able to resume the competent practice of optometry with reasonable skill and safety to patients.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 12, effective July 14, 2000. -- Created 1990 Ky. Acts ch. 256, sec. 3, effective July 13, 1990.

320.320 Repealed, 1990.

Catchline at repeal: Proceedings for revocation or suspension of licenses.

History: Repealed 1990 Ky. Acts ch. 256, sec. 15, effective July 13, 1990. -- Created 1954 Ky. Acts ch. 183, sec. 13.

320.321 Grievances -- Disciplinary proceedings.

- (1) Grievances may be submitted by an individual, organization, or entity, including the board based upon information within the board's knowledge. The board may investigate any licensee or unlicensed individual or entity engaged in the practice of optometry suspected of conduct which would be grounds for disciplinary or court action and may hire or appoint persons who are knowledgeable in the practice of optometry to investigate on its behalf. The board shall have the power to issue investigatory subpoenas for the appearance before the board of any person within the jurisdiction of the Commonwealth of Kentucky and to require production of any record, document, or other item. The board may seek enforcement of investigatory subpoenas in the courts of the Commonwealth as may be necessary. A copy of the grievance shall be mailed to the licensee or unlicensed individual or entity engaged in the practice of optometry at the last address that the board has on record or has been able to determine. If the licensee or unlicensed individual or entity engaged in the practice of optometry chooses to respond to the grievance, he or she shall submit a response within ten (10) days after the date on which the grievance was mailed.
- (2) Notwithstanding any other provision of law, the board may initiate disciplinary proceedings or court actions based upon information within its knowledge or received from other persons. A majority of the board members may direct the issuance of a complaint; in these instances, the board shall prepare a written complaint, in accordance with KRS Chapter 13B, that shall be signed by the chairman of the board and shall contain sufficient information to apprise the named optometrist or unlicensed individual or entity engaged in the practice of optometry of the nature of the charges. A copy of the complaint shall be delivered to the charged optometrist or unlicensed individual or entity engaged in the practice of optometry by personal delivery or sent by certified mail to the optometrist's last address that the board has on record or to a site found for an unlicensed individual or entity engaged in the practice of optometry. The optometrist or unlicensed individual or entity engaged in the practice of optometry shall file a response within twenty (20)

days after the complaint was sent or personally served upon the optometrist or unlicensed individual or entity engaged in the practice of optometry. Failure to submit a timely response or avoidance of service may be taken by the board or the court as an admission of the charges contained in the complaint. The board may then review the grievance, information obtained by the board, and the optometrist's response or the response of the unlicensed individual or entity engaged in the practice of optometry, and dismiss the grievance, issue a complaint and notice of hearing, investigate further, or bring an action in a court of competent jurisdiction to enforce the provisions of this chapter.

- (3) The hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The board may impose discipline upon the licensee under KRS 320.310 if the board finds a violation of this chapter or administrative regulations promulgated under this chapter, after a hearing.
- (5) All costs of the proceeding may be assessed against the charged optometrist or unlicensed individual or entity engaged in the practice of optometry if a finding of guilt is made by the board or by the court.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 25, sec. 1, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 361, sec. 13, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 318, sec. 280, effective July 15, 1996. -- Created 1990 Ky. Acts ch. 256, sec. 1, effective July 13, 1990.

320.330 Repealed, 1990.

Catchline at repeal: Appeal from order revoking license.

History: Repealed 1990 Ky. Acts ch. 256, sec. 15, effective July 13, 1990. -- Created 1954 Ky. Acts ch. 183, sec. 14.

320.331 Appeal to Circuit Court.

An optometrist who, by final order of the board has been subjected to any disciplinary action may file an appeal. The action on appeal shall be filed with the Circuit Court of the county in which the violation occurred in accordance with KRS Chapter 13B. The commencement of proceedings under this section shall not operate as a stay on the board's order, unless specifically ordered otherwise by the court.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 14, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 318, sec. 281, effective July 15, 1996. -- Created 1990 Ky. Acts ch. 256, sec. 2, effective July 13, 1990.

320.340 Reissuance of revoked license.

Upon application the board may reissue a license to practice optometry that has been revoked. No such application shall be made prior to one (1) year after revocation. The board may prescribe the manner and form of application.

History: Created 1954 Ky. Acts ch. 183, sec. 15.

320.350 Places where optometry not to be practiced.

No person shall practice optometry on premises not separate from premises whereon eyeglasses, lenses, eyeglass frames or any other merchandise or products are sold by any other person. For the purposes of this section, any room or suite of rooms in which optometry is practiced shall be considered separate premises if it has a separate and direct entrance from a street or public hallway or corridor within a building, which corridor is partitioned off by partitions from floor to ceiling.

History: Created 1954 Ky. Acts ch. 183, sec. 16.

320.360 Agency fund for administration.

All fees imposed and collected under the provisions of this chapter shall be paid to the board for the use of the board, and shall be deposited in the State Treasury to the credit of an agency fund for the use of the board. The board may make such expenditures from the fund as may, in the opinion of the board, serve to further the purposes of this chapter, including payment for professional services.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 361, sec. 15, effective July 14, 2000. -- Amended 1958 Ky. Acts ch. 134, sec. 1. -- Created 1954 Ky. Acts ch. 183, sec. 17.

320.370 Injunctions.

The board may institute in its own name an action to enjoin, temporarily or permanently, a violation of any of the provisions of this chapter, or a violation of any rule or regulation promulgated pursuant to this chapter.

History: Created 1954 Ky. Acts ch. 183, sec. 18.

320.372 Injunction to restrain practice of optometry -- Petition by board.

- (1) The board may institute, in its own name, proceedings to temporarily or permanently restrain and enjoin the practice of optometry by the following:
 - (a) An individual who is not licensed to practice optometry pursuant to this chapter, or who is involved in conduct not specifically exempted from the requirements of this chapter by KRS 320.220; or
 - (b) An individual who was previously licensed by the board to practice optometry but is currently practicing optometry in violation of this chapter, regardless of whether the respondent has been convicted of violating the penal provisions thereof.
- (2) A petition for injunction filed under subsection (1) of this section may be filed in Franklin Circuit Court, and the board shall not be required to pay any costs or filing fees or furnish any bond in connection therewith.
 - (a) In the petition, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of optometry in violation of this chapter. No showing of damage or injury shall be required.
 - (b) Issuance of an injunction shall enjoin any act specified under this chapter and shall remain in place as long as necessary to prevent the unlawful practice of optometry.
 - (c) Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by this chapter or otherwise.
 - (d) Violation of an injunction or restraining order shall be punished as a contempt without the intervention of a jury.

Effective: June 24, 2003

History: Created 2003 Ky. Acts ch. 25, sec. 2, effective June 24, 2003.

320.380 Optometrist qualified as competent witness in optometry.

- (1) The testimony of an optometrist duly licensed under the laws of the Commonwealth of Kentucky shall be received by any official, board, commission or other agency of the Commonwealth or any of its subdivisions or municipalities as qualified evidence with respect to any matter defined in the law as constituting the practice of optometry.
- (2) Every such official, board, commission or other agency shall accept the services of duly licensed optometrists without discrimination between optometrists and any

other persons authorized by law to render the same professional services, when such services are desired, and shall pay for such services in the same manner as other professions may be paid for the same services.

History: Created 1960 Ky. Acts ch. 202, sec. 1.

320.390 Duty of treating optometrist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definitions of "telehealth".

- (1) A treating optometrist who provides or facilitates the use of telehealth shall ensure:
 - (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and
 - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.
- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:
 - (a) Prevent abuse and fraud through the use of telehealth services;
 - (b) Prevent fee-splitting through the use of telehealth services; and
 - (c) Utilize telehealth in the provision of optometric services and in the provision of continuing education.
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 376, sec. 18, effective July 14, 2000.

320.400 Statutory construction.

Nothing in this chapter shall interfere with the professional activities of any optometrist licensed by the Kentucky Board of Optometric Examiners, or prevent him from keeping any pharmaceutical agent that he may need and is authorized to use in his practice.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 179, sec. 3, effective June 17, 1978.

320.410 Fitting and dispensing ocular devices containing or delivering pharmaceutical agents.

- (1) Ocular devices approved by the federal Food and Drug Administration as a drug, including but not limited to contact lenses, that contain and deliver pharmaceutical agents pursuant to a prescription from a physician or osteopath licensed under KRS Chapter 311 or a licensed optometrist as authorized in KRS 320.240 shall be fitted by an ophthalmologist licensed under KRS Chapter 311 or an optometrist licensed under this chapter.
- (2) Ocular devices containing or delivering pharmaceutical agents may be dispensed by a licensed optometrist as authorized in KRS 320.240 or an ophthalmologist licensed under KRS Chapter 311.
- (3) Nothing in this section shall be construed to:
 - (a) Expand the prescriptive authority of an optometrist licensed under this chapter;or

(b) Prohibit, limit, or restrict a pharmacist licensed under KRS Chapter 315 from dispensing a prescription for an ocular device that contains a pharmaceutical agent.

Effective: July 15, 2008

History: Created 2008 Ky. Acts ch. 99, sec. 6, effective July 15, 2008.

320.990 Penalties.

Any person who violates any of the provisions of this chapter shall be guilty of a Class A misdemeanor and shall pay a fine not to exceed five thousand dollars (\$5,000) per violation.

Effective: June 24, 2003

History: Amended 2003 Ky. Acts ch. 25, sec. 3, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 361, sec. 16, effective July 14, 2000. -- Repealed, reenacted, and amended 1954 Ky. Acts ch. 183, sec. 21. -- Created 1950 Ky. Acts ch. 86, sec. 19.

KENTUCKY ADMINISTRATIVE REGULATIONS

KENTUCKY BOARD OF OPTOMETRIC EXAMINERS

201 KAR 5:010. Application for licensure; endorsement.

RELATES TO: KRS 218A.205(3)(g), 320.220, 320.250, 320.270

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 320.240(7), 320.270(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.220 requires all persons who practice optometry in this state to be licensed by the Kentucky Board of Optometric Examiners. KRS 320.250 establishes criteria for an applicant to apply for a license. KRS 320.270 grants the board the discretion to admit to practice in Kentucky persons licensed to practice optometry in other states. KRS 218A.205(3)(g) requires fingerprint-supported criminal record checks and queries to the National Practitioner Data Bank on applicants. This administrative regulation prescribes the procedures to be followed in making application to the board for a license.

Section 1.

- (1) A person wishing to apply for a license to practice optometry shall submit to the board, within fifteen (15) days of board review, the following items:
 - (a) A completed Application for License to Practice Optometry;
 - (b) Birth certificate;
 - (c) A certified copy of college transcripts received directly from the registrar's office;
 - (d) A certified copy of optometry school transcripts received directly from the registrar's office;
 - (e) National board results;
 - (f) Therapeutic Management of Ocular Disease, "TMOD" results;
 - (g) Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;
 - (h) Proof of successful completion of State Law Exam results;
 - (i) A passport-sized, recent photograph of head and shoulders, front view;
 - (j) A money order or cashier's check payable to the Kentucky State Treasurer in the amount of \$500; and
 - (k) A money order or cashier's check in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer for the purpose of submitting a query on the applicant to the National Practitioner Data Bank of the United States Department of Health and Human Services.
- (2)
 - (a) Prior to approval for examination, the board shall receive and consider:
 - 1 A national and state, fingerprint-supported criminal record check conducted by the:
 - a. Federal Bureau of Investigation; or
 - b. Kentucky State Police; and
 2. A query for any relevant data from the National Practitioner Data Bank of the U.S. Department of Health and Human Services.
 - (b) Both of the items required to be furnished by this subsection shall be less than sixty (60) days old when reviewed by the board.

Section 2.

- (1) A person wishing to apply for a license to practice optometry by endorsement shall submit to the board, within fifteen (15) days of board review, the following items:
 - (a) A completed Application for License by Endorsement to Practice Optometry;
 - (b) Verification that the applicant has been licensed in optometry and in active practice the past five (5) years;
 - (c) Information regarding any resolved, pending, or unresolved board action or malpractice suit in any state or territory;
 - (d) A certified copy of college transcripts received directly from the registrar's office;
 - (e) A certified copy of optometry school transcripts received directly from the registrar's office;
 - (f) A certificate of good standing from the board where the applicant is currently licensed and from all state boards where the applicant has held a license in the past;
 - (g) A copy of the credential that proves the applicant is therapeutically licensed;
 - (h) Two (2) letters of recommendation, one (1) of which shall be from a licensed optometrist;
 - (i) Proof of successful completion of Kentucky State Law Exam;
 - (j) A passport-sized, recent photograph of head and shoulders, front view;
 - (k) A certified check or money order made payable to the Kentucky State Treasurer in the amount of \$700;
 - (l) A notarized statement explaining why the applicant wishes to be admitted to practice in Kentucky; and
 - (m) A money order or cashier's check in the amount of twenty-five (25) dollars made payable to the Kentucky State Treasurer for the purpose of submitting a query on the applicant to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant.
- (2)
 - (a) Prior to approval for licensure, the board shall receive and consider:
 1. A national and state, fingerprint-supported criminal record check conducted by the:
 - a. Federal Bureau of Investigation; or
 - b. Kentucky State Police; and
 2. A query for any relevant data from the National Practitioner Data Bank of the U.S. Department of Health and Human Services.
 - (b) Both of the items required to be furnished by this subsection shall be less than sixty (60) days old when reviewed by the board.

Section 3.

- (1) A person whose license has been revoked pursuant to KRS 320.280(3) may apply for reinstatement of his or her license.
- (2) Except as provided in subsection (3) of this section, a person applying for reinstatement shall submit to the board:
 - (a) Evidence of completion of the continuing education requirements established in 201 KAR 5:030; and
 - (b) Payment of the annual renewal fee established in 201 KAR 5:090, Section 2.
- (3) To apply for reinstatement, an optometrist whose license has been revoked pursuant to KRS 320.280(3) shall submit to the board:

- (a) Evidence of completion of the annual continuing education requirement for each year, or any portion of a year, that the license was not renewed up to a maximum of sixty (60) hours; and
- (b) Payment of the renewal fee of \$200 for each year, or any portion of a year, that the license was not renewed.

Section 4. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for License to Practice Optometry", August 2012; and
 - (b) "Application for License by Endorsement to Practice Optometry", August 2012.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 163 West Short Street, Suite 550, Lexington, KY 40507, phone (859) 246-2744, Monday through Friday, 8:30 a.m. to 5 p.m. (2 Ky.R. 506; eff. 4-14-76; Am. 5 Ky.R. 927; eff. 8-1-79; 17 Ky.R. 2485; 2940; eff. 4-5-91; 27 Ky.R. 2865; 28 Ky.R. 349; eff. 8-15-2001; 32 Ky.R. 1142; eff. 3-2-06; 39 Ky.R. 509; 1376; eff. 2-1-2013.)

201 KAR 5:030. Annual courses of study required.

RELATES TO: KRS 218A.202, 218A.205(3)(h), 320.280

STATUTORY AUTHORITY: KRS 218A.205(3)(h), 320.240(7), 320.280(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(2) requires all licensed optometrists to annually take courses of study in subjects relating to the practice of optometry. KRS 218A.205(3)(h) requires optometrists to obtain seven and one-half (7.5) percent of their continuing education credits in the use of the electronic monitoring system established pursuant to KRS 218A.202, pain management, or addiction disorders. This administrative regulation establishes the required hours of study and prescribes the approved programs and those records that shall be maintained and submitted showing proof of attendance at those programs.

Section 1.

- (1) The annual course of study shall be completed each calendar year.
- (2)
 - (a) A licensee shall attend a minimum of eight (8) continuing education credit hours.
 - (b) In addition to the requirements of paragraph (a) of this subsection, an optometrist who is authorized to prescribe therapeutic agents shall attend a minimum of seven (7) credit hours in ocular therapy and pharmacology, for a total of at least fifteen (15) continuing education credits.
 - (c) In addition to the requirements of paragraph (a) and (b) of this subsection, an optometrist who is credentialed by the board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of at least twenty (20) continuing education credits.
 - (d) A licensee who is authorized to prescribe controlled substances shall obtain two (2) credit hours that relate to the use of the electronic monitoring system established in accordance with KRS 218A.202 known as Kentucky All Schedule

Prescription Electronic Reporting (KASPER), pain management, or addiction disorders as part of the licensee's total continuing education credits.

Section 2. In order to be approved, an educational course shall be sponsored by a recognized not for profit state, regional (multistate), or national optometric association, an accredited college of optometry, or an accredited college of medicine.

Section 3.

- (1) In order to be credited for an educational course, a licensee shall submit an attendance form to the board.
- (2) The attendance form shall be submitted on or before December 31 of each calendar year.

Section 4. A sponsor of an approved educational course shall furnish an attendance form to a licensee. The attendance form shall contain the following information:

- (1) Name of the sponsoring organization;
- (2) Name and address of the licensee;
- (3) Educational topics addressed at the course;
- (4) Identity of the speakers;
- (5) Number of hours attended by the licensee;
- (6) Date of the program;
- (7) Statement by the licensee that he or she has attended the course; and
- (8) Signature of an official of the sponsoring organization.

Section 5. Credit shall not be given for more than two (2) hours attendance in a course of office management and administration.

Section 6.

- (1) Except as established in subsection (2) of this section, credit may be granted for a maximum of five (5) hours continuing education through the Internet.
- (2) The credit hours required by Section 1(2)(c) of this administrative regulation shall not be obtained through the Internet. (1 Ky.R. 61; eff. 11-13-1974; Am. 17 Ky.R. 2486; 2941; eff. 4-5-1991; 27 Ky.R. 2866; 28 Ky.R. 350; eff. 8-15-2001; 28 Ky.R. 2639; 29 Ky.R. 430; eff. 8-12-2002; 39 Ky.R. 511; eff. 2-1-2013; 42 Ky.R. 824; 1460; eff. 11-18-2015.)

201 KAR 5:037. Advertising.

RELATES TO: KRS 320.295, 326.060

STATUTORY AUTHORITY: KRS 320.240(4), (7), 320.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.295 prohibits false, misleading, or deceptive advertising. This administrative regulation describes what an advertisement shall include to avoid being characterized as false, misleading, or deceptive.

Section 1.

- (1) An advertisement shall state if additional charges may be incurred in an eye examination for related services in individual cases.

- (2) An advertisement of price for visual aid glasses, including contact lenses, alone shall clearly state: "does not include eye examination".
- (3) Any optometrist who has been subjected to any disciplinary measures for advertising violations may be required by the board to secure prepublication approval of all advertisements by the board for any period of time which the board deems appropriate.

Section 2. In the absence of compelling reasons to the contrary, a minimum examination, as described in 201 KAR 5:040, Section 7, shall be performed when advertising an eye examination.

Section 3.

- (1) The advertisement of eye glass lenses shall include: single vision or specified type of multifocal lenses.
- (2) Advertisement of contact lenses shall include:
 - (a) Description of type of lens; for example, "soft, tinted, extended wear toric";
 - (b) Whether or not professional fees are included in the advertised price.
- (3) If dispensing fees are not included in the advertisement of visual aid glasses, the advertisement shall so state.

Section 4.

- (1) Except as provided in subsection (2) of this section, a person, individually or while employed or connected with a corporation or association, shall not advertise the fitting of contact lenses unless he is an optometrist, physician or osteopath.
- (2) An ophthalmic dispenser may advertise that he fits contact lenses if all fittings occur in the presence, and under the supervision, of an optometrist, physician or osteopath.

Section 5.

- (1) Advertising shall be prohibited if it represents an optometrist as a specialist in an optometric specialty if he has not:
 - (a) Been certified by a certifying board which has been approved by the Kentucky Board of Optometric Examiners; and
 - (b) Furnished proof of his certification to the Kentucky Board of Optometric Examiners.
- (2) Uses a coded or special name for a visual material or service that has an established trade name, if the coded or special name would deceive consumers.

Section 6.

- (1) A prescription may contain the following or similar language: "The (below) (above) contains those measurements and directions which are included in a prescription for spectacle lenses. The person fitting or attempting to fit contact lenses will probably have to take additional measurements and make interpretations of those measurements as they relate to this prescription. Under Kentucky law only optometrists, osteopaths and physicians are authorized to fit contact lenses. Ophthalmic dispensers may fit contact lenses in the presence of and under the supervision of an optometrist, osteopath or physician."
- (2) The signed spectacle prescription shall be given to the patient upon request at the completion of the examination and payment of fees.

Section 7. An optometrist shall use the letters "OD" or "O.D." in any advertisement where an optometrist uses letters to denote an optometry degree. (5 Ky.R. 954; eff. 11-7-79; Am. 17 Ky.R. 2488; 2943; eff. 4-5-91; 27 Ky.R. 2867; 28 Ky.R. 557; eff. 9-10-2001; 29 Ky.R. 1299; eff. 1-15-03.)

201 KAR 5:040. Unprofessional conduct.

RELATES TO: KRS 320.310(1)(n)

STATUTORY AUTHORITY: KRS 320.240(4), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4), (7), and (8) that the board shall have the power to promulgate an administrative regulation about what acts constitute unprofessional conduct. KRS 320.310(1)(n) authorizes the board to discipline a licensee who violates an administrative regulation promulgated by the board. This administrative regulation establishes the acts that constitute unprofessional conduct.

Section 1. An optometrist shall not practice optometry in an office if the instruments and equipment, including office furniture, fixtures and furnishings, contained therein are not maintained in a clean and sanitary manner.

Section 2.

- (1) An optometrist shall not give or receive a fee, salary, commission, or other remuneration or thing of value, in any manner, or under any pretext, to or from any person, firm, or corporation:
 - (a) In return for the referral of optometric patients; or
 - (b) In order to secure optometric patients.
- (2) An optometrist shall not enter into a contract, agreement, or arrangement, for the hire or leasing of his professional services, except that upon the:
 - (a) Death of a Kentucky licensed optometrist, the surviving spouse or estate of the deceased optometrist may contract optometric services or employ a Kentucky licensed optometrist for a period not to exceed eighteen (18) months from the time of death; or
 - (b) Permanent disability of a Kentucky licensed optometrist, the spouse, legal guardian, or disabled optometrist may contract optometric services or employ a Kentucky licensed optometrist for a period not to exceed eighteen (18) months from the time of disability.
- (3) An optometrist shall not be employed by an unlicensed optometrist, firm, or corporation as an optometrist, except to the extent permitted by subsection (2) of this section.
- (4) Optometric decision-making shall be determined by the optometrist and not determined by outside influences or third parties.
- (5) The provisions of subsections (1), (2), and (3) of this section shall not prohibit employment of an optometrist by a:
 - (a) Licensed hospital;
 - (b) Licensed multidisciplinary health clinic;
 - (c) Professional service corporation; or
 - (d) Governmental entity.

Section 3.

- (1) An optometrist shall not practice in premises where others engage in any unlawful, grossly unprofessional, or incompetent practice, if that practice is known to the optometrist, or would have been known to a person of reasonable intelligence.
- (2) An optometrist shall not be associated with or share an office or fees with a person who is engaged in the unauthorized practice of optometry.

Section 4. An optometrist shall keep the visual welfare of the patient uppermost at all times and shall strive to see that a person calling as a patient shall not lack visual care, regardless of the person's financial status.

Section 5. An optometrist shall treat with confidentiality the professional information obtained from the patient, except as otherwise required by law.

Section 6.

- (1) Instruments and equipment necessary to perform the minimum examination specified in Section 7 of this administrative regulation shall be maintained in an office where optometry is practiced.
- (2) It shall be unprofessional conduct for an optometrist to fail to maintain in good working order, or to be unable to operate, instruments and equipment necessary to perform the minimum examination specified in Section 7 of this administrative regulation.

Section 7.

- (1) The procedures performed in a patient's case shall be left to the professional judgment of the optometrist and determined by the standard of care in optometry. If a complete eye examination is warranted by profession standards, it shall be unprofessional conduct and incompetence for an optometrist to fail to perform the following as part of a minimum examination and keep a permanent record thereof:
 - (a) Complete case history (ocular, physical, occupational, medical, generic, and other pertinent information);
 - (b) Chief ocular complaint;
 - (c) Aided and unaided visual acuity;
 - (d) External examination (eye and adnexa);
 - (e) Internal ophthalmoscopic examination (media, lens, fundus, etc.);
 - (f) Neurological integrity;
 - (g) Static retinoscopy or auto refractor;
 - (h) Far and near point subjective;
 - (i) Test of accommodation and convergence and binocular coordination at far and near;
 - (j) For patients over twenty-five (25), tonometry; and
 - (k) Biomicroscopic examination.
- (2) In addition to the above, the minimum examination for contact lenses shall include the following:
 - (a) Use of Fluorescein or Rose Bengal dyes, if indicated;
 - (b) Diagnostic evaluation with lenses on eye; and
 - (c) Corneal curvature measurements dioptral.

Section 8. An act constituting a violation of KRS Chapter 320 shall be unprofessional conduct. (OptoE:U5; 1 Ky.R. 719; eff. 7-2-75; Am. 5 Ky.R. 927; eff. 8-1-79; 17 Ky.R. 2490; 2944; eff. 4-5-91; 27 Ky.R. 2869; 28 Ky.R. 351; eff. 8-15-2001; 34 Ky.R. 1523; 1935; eff. 2-14-2008.)

201 KAR 5:050. Office locations.

RELATES TO: KRS 320.310(2)

STATUTORY AUTHORITY: KRS 320.240, 320.310(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.310(2) permits each optometrist to maintain branch offices. This administrative regulation requires each optometrist to furnish information concerning each office to the board.

Section 1. An optometrist shall inform the board of the change in location, mailing address, and telephone number of each office he works in within thirty (30) days of any change. (1 Ky.R. 719; eff. 7-2-75; Am. 17 Ky.R. 2492; eff. 4-5-91; 27 Ky.R. 2870; eff. 8-15-2001.)

201 KAR 5:055. Telehealth.

RELATES TO: KRS 320.300, 320.390

STATUTORY AUTHORITY: KRS 320.390(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.390(2) requires the Board of Optometric Examiners to promulgate administrative regulations to prevent abuse and fraud through the use of telehealth services, prevent fee-splitting through the use of telehealth services, and utilize telehealth in the provision of optometric services and in the provision of continuing education. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions.

- (1) "Contact lens prescription" is defined by KRS 367.680(3).
- (2) "Eye examination" means an examination that meets the requirements for a complete eye examination established in 201 KAR 5:040, Section 7(1).
- (3) "Face to face" means in person and not via telehealth.
- (4) "Licensed health care professional" means an optometrist licensed pursuant to KRS Chapter 320, or a physician or osteopath licensed under KRS 311.550(12).
- (5) "Optometrist" means an individual licensed by the Kentucky Board of Optometric Examiners to engage in the practice of optometry.
- (6) "Patient" means the person receiving services or items from an optometrist or a physician.
- (7) "Physician" is defined by KRS 311.550(12).
- (8) "Practice of optometry" is defined by KRS 320.210(2).
- (9) "Prescription" means an order for a pharmaceutical agent, or any other therapy within the scope of practice of an optometrist or a physician.

- (10) "Prescription for eyewear" means a written prescription for visual aid glasses or a contact lens prescription after a complete eye examination is performed by an optometrist or physician.
- (11) "Telehealth" is defined by KRS 320.390(3).
- (12) "Telehealth provider" means an optometrist licensed pursuant to KRS Chapter 320 who performs a telehealth consultation.
- (13) "Telepractice" means the practice of optometry that is provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.
- (14) "Visual aid glasses" is defined by KRS 320.210(4).

Section 2. Patient Identity, Communication and Informed Consent Requirements.

- (1) An optometrist-patient relationship shall not commence via telehealth.
- (2) An initial, in-person meeting for the optometrist and patient who will prospectively utilize telehealth shall occur in order to evaluate whether the potential or current patient is a candidate to receive services via telehealth.
- (3) An optometrist who uses telehealth to deliver vision or eye care services shall at the initial, face-to-face meeting with the patient:
 - (a) Verify the identity of the patient;
 - (b) Establish a medical history and permanent record for the patient;
 - (c) Obtain alternative means of contacting the patient other than electronically such as by the use of a telephone number or mailing address;
 - (d) Provide to the patient alternative means of contacting the optometrist other than electronically such as by the use of a telephone number or mailing address;
 - (e) Provide contact methods of alternative communication the optometrist shall use for emergency purposes such as an emergency on call telephone number;
 - (f) Document if the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the optometrist; and
 - (g) Inform the patient in writing and document acknowledgement of the risk and limitations of:
 1. The use of technology in the use of telepractice;
 2. The potential breach of confidentiality of information or inadvertent access of protected health information due to technology in telepractice;
 3. The potential disruption of technology in the use of telepractice;
 4. When and how the optometrist will respond to routine electronic messages;
 5. The circumstances in which the optometrist will use alternative communications for emergency purposes;
 6. Others who may have access to patient communications with the optometrist;
 7. How communications shall be directed to a specific optometrist;
 8. How the optometrist stores electronic communications from the patient; and
 9. Whether the optometrist may elect to discontinue the provision of services through telehealth.

Section 3. Jurisdictional Considerations. A licensed health care professional providing eye and vision services via telehealth shall be licensed by the Kentucky Board of Optometric Examiners or the Kentucky Board of Medical Licensure if services are provided:

- (1) To a person physically located in Kentucky; or
- (2) By a person who is physically located in Kentucky.

Section 4. Representation of Services and Code of Conduct.

- (1) A telehealth provider shall not engage in false, misleading, or deceptive advertising. A person shall not advertise an eye examination unless the requirements of 201 KAR 5:040, Section 7(1) are met. A person shall not purport to write a prescription for eyewear solely by using an autorefractor or other automated testing device.
- (2) Treatment and consultation recommendations made in an online setting, including a prescription or a prescription for eyewear via electronic means, shall be held to the same standards of appropriate practice as those in traditional practice, face-to-face settings. Treatment, including issuing a prescription for eyewear based solely on an online autorefraction, shall not constitute an acceptable practice or standard of care.
- (3) Prescriptions for controlled substances shall not be made via telehealth.
- (4) A telehealth provider shall:
 - (a) Not split fees in accordance with KRS 320.300(3);
 - (b) Shall maintain a medical record of a service or item provided to a patient via telepractice;
 - (c) Document the patient's presenting problem, purpose, or diagnosis and include which services were provided by telepractice;
 - (d) Use secure communications with each patient including encrypted text messages, via email or secure Web site and not use personal identifying information in non-secure communications; and
 - (e) Dispense visual aids only in accordance with KRS 320.300(1).

Section 5. Utilization of Telehealth in Provision of Continuing Education. Credit for telehealth educational presentations shall be granted in accordance with 201 KAR 5:030, Section 2. Educational hours obtained through telehealth shall be considered as part of the credit hours granted in accordance with 201 KAR 5:030, Section 6(1).

Section 6. This administrative regulation shall not be construed as giving jurisdiction over physicians licensed under KRS Chapter 311 to the Kentucky Board of Optometric Examiners. (41 Ky.R. 672; 1040; 1308; eff. 11-19-2014.)

201 KAR 5:090. Annual renewal fees.

RELATES TO: KRS 320.280

STATUTORY AUTHORITY: KRS 320.240, 320.280(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(1) requires that optometrists annually secure a renewal certificate upon payment of a fee of not more than \$200. This administrative regulation prescribes the renewal fee.

Section 1. The annual renewal fee for an optometrist shall be \$200. (17 Ky.R. 2565; eff. 4-5-91; Am. 27 Ky.R. 2871; eff. 8-15-2001.)

201 KAR 5:100. Expungement.

RELATES TO: KRS 320.310(3)

STATUTORY AUTHORITY: KRS 320.310(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.310(3) authorizes the board to promulgate an administrative regulation to establish minor violations that are subject to expungement. This administrative regulation establishes the violations considered minor and the criteria and procedure for expungement.

Section 1. Definition. "Expungement" means that:

- (1) The affected records shall be sealed;
- (2) The proceedings to which they refer shall be deemed not to have occurred; and
- (3) The affected party may properly represent that no record exists regarding the matter expunged.

Section 2. Minor Violations and Expungement Procedure.

- (1) The following violations shall be considered minor in nature:
 - (a) Failure to timely renew a license;
 - (b) Failure to timely obtain continuing education; or
 - (c) Failure to timely obtain required HIV/AIDS continuing education.
- (2)
 - (a) Not have been the subject of a subsequent violation of the same nature for a period of three (3) years after the date of completion of disciplinary sanctions imposed for the violation sought to be expunged; and
 - (b) Submit a written request to the board.

The board shall consider each request and shall, if the requirements established in KRS 320.310(3) and this administrative regulation are satisfied, expunge the record of the subject disciplinary order. (30 Ky.R. 1704; Am. 1905; eff. 2-16-2004.)

201 KAR 5:110. Expanded therapeutic procedures.

RELATES TO: KRS 320.210(2), 320.240(4), (5), (7), 320.310(1)

STATUTORY AUTHORITY: KRS 320.210(2), 320.240(4), (5), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.240(4) authorizes the Kentucky Board of Optometric Examiners to promulgate administrative regulations for classification and licensure of optometrists by examination and credentials. KRS 320.240(5) requires a therapeutically licensed optometrist to meet educational and competence criteria set forth by the board in order to perform expanded therapeutic procedures, and evidence of proof of continuing competency shall be determined by the board. This administrative regulation establishes the educational and competence criteria necessary for a therapeutically licensed optometrist to perform expanded therapeutic procedures.

Section 1. Qualifications for a Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures. A Kentucky licensed optometrist shall be credentialed to perform expanded therapeutic procedures if:

- (1) The applicant provides proof that the applicant:
 - (a) Holds an active license in good standing by another state;
 - (b) Is also credentialed by that state to perform expanded therapeutic procedures; and
 - (c) The requirements in the state of licensure for performing expanded therapeutic procedures meet or exceed the requirements in this section; or
- (2) The optometrist:
 - (a) Is currently therapeutically licensed in Kentucky; and
 - (b) Provides proof of completion of a course approved by the board that includes:
 1. Didactic classroom instruction covering:
 - a. Laser physics; hazards and safety;
 - b. Biophysics of laser;
 - c. Laser application in clinical optometry;
 - d. Laser tissue interactions;
 - e. Laser indications; contraindications and potential complications;
 - f. Gonioscopy;
 - g. Laser therapy for open angle glaucoma;
 - h. Laser therapy for angle closure glaucoma;
 - i. Posterior capsulotomy;
 - j. Common complications; lids, lashes, and lacrimal;
 - k. Medicolegal aspects of anterior segment procedures;
 - l. Peripheral iridotomy;
 - m. Laser trabeculoplasty
 - n. Minor surgical procedures;
 - o. Overview of surgical instruments; asepsis and OSHA;
 - p. The surgical anatomy of the eyelids;
 - q. Emergency surgical procedures;
 - r. Chalazion management;
 - s. Epiluminescence microscopy;
 - t. Suture techniques;
 - u. Local anesthesia; techniques and complications;
 - v. Anaphylaxis and other office emergencies;
 - w. Radiofrequency surgery; and
 - x. Post-operative wound care;
 2. Clinical or laboratory experience including:
 - a. Video tape demonstration;
 - b. In vitro observation or participation;
 - c. In vivo observation; and
 - d. A formal clinical or laboratory practical examination; and
 3. Passage of a written test utilizing the National Board of Examiners in Optometry format.
- (3) A board approved course shall be:
 - (a) Provided by an accredited optometry or medical school;
 - (b) Taught by full-time or adjunct faculty members of an accredited optometry or medical school;
 - (c) A minimum of thirty-two (32) clock hours in length; and
 - (d) Sponsored by an organization that meets the standards of 201 KAR 5:030.

Section 2. Qualifications for a New Applicant for Licensure to be Credentialed to Utilize Expanded Therapeutic Procedures. A new applicant for licensure as an optometrist shall be credentialed to perform expanded therapeutic procedures if:

- (1) The applicant provides proof that the applicant has graduated from an optometry school with a program that includes all of the education, training, and testing requirements established in Section 1 of this administrative regulation; or
- (2) By the end of the second licensure renewal period, the licensee shall provide proof of compliance with Section 1 of this administrative regulation.

Section 3. Qualifications for an Applicant for Licensure by Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures. An applicant for licensure by endorsement shall be credentialed to perform expanded therapeutic procedures in Kentucky if:

- (1) The applicant provides proof that:
 - (a) The applicant holds an active license in good standing by another state;
 - (b) Is credentialed by that state to perform expanded therapeutic procedures; and
 - (c) The requirements in the state of licensure for performing expanded therapeutic procedures meet or exceed the requirements in Section 1; or
- (2) By the end of the second licensure renewal period, the licensee provides proof of compliance with Section 1 of this administrative regulation.

Section 4. Qualifications for an Optometrist to be Credentialed to Utilize Expanded Therapeutic Laser Procedures.

- (1) An optometrist credentialed in Kentucky to perform expanded therapeutic procedures shall be credentialed to perform expanded therapeutic laser procedures if the optometrist:
 - (a) Provides documentation to the board from a board approved preceptor indicating that the optometrist has:
 1. Performed the anterior segment laser procedure in the presence of the board approved qualified preceptor; and
 2. Demonstrated clinical proficiency to the board approved preceptor in the performance of the procedure on a living human eye.
- (2) The board approved preceptor shall document in writing the preceptor's observations of the optometrist's performance and state that the optometrist has satisfactorily demonstrated the optometrist's knowledge and qualifications in the performance of the procedure.
- (3) A board approved preceptor shall be:
 - (a) A licensed optometrist or ophthalmologist whose license is in good standing;
 - (b) A full-time or adjunct faculty member of an accredited optometry or medical school; and
 - (c) Credentialed in the expanded therapeutic procedure or expanded therapeutic laser procedure that the preceptor is teaching.

Section 5. Prohibitions and Referrals.

- (1) Performing expanded therapeutic procedures without credentialing based upon the education requirements established in this administrative regulation shall be grounds for discipline pursuant to the requirements of KRS 320.310(1).
- (2) An injection into the posterior segment/chamber or retinal tissue to treat any macular or retinal disease shall be prohibited under KRS 320.210(2)(b)16.

- (3) Any eyelid or adnexal lesion found to be malignant shall be referred to a practitioner trained and qualified to treat those lesions.

Section 6. Annual Course of Study.

- (1) In addition to the continuing education credit hours required by 201 KAR 5:030, Section 1(1) and (2)(a) and (b), an optometrist who is credentialed by the board to perform expanded therapeutic procedures shall attend a minimum of five (5) additional credit hours in expanded therapeutic procedures, for a total of twenty (20) continuing education credits.
- (2) The five (5) required contact credit hours in expanded therapeutic procedures shall not be obtained through the internet.

Section 7. Applications and Forms.

- (1) An education provider shall complete and submit the Application for Expanded Therapeutic Procedures Course.
- (2) A current licensee applying for credentialing for expanded therapeutic procedures who has completed the thirty-two (32) hour expanded therapeutic procedures course shall complete and submit the Application for Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures.
- (3) Each new applicant shall complete the Application for New Applicant to be Credentialed to Utilize Expanded Therapeutic Procedures.
- (4) An applicant already licensed in another state and credentialed in expanded therapeutic procedures who is applying for Kentucky licensure shall complete and submit the Application for Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures.
- (5) A licensed optometrist or ophthalmologist who is a professor or adjunct professor at a college of optometry or medicine and who is licensed and qualified to practice expanded therapeutic laser procedures shall complete and submit the Preceptor Approval Form.
- (6) After a preceptor has observed an optometrist successfully perform a laser procedure pursuant to Section 4 of this administrative regulation, the preceptor shall complete and submit the Preceptor Evaluation of Expanded Therapeutic Laser Procedure.
- (7) After an optometrist has successfully performed a laser procedure observed by a preceptor, the optometrist shall complete and submit the Application to Utilize Expanded Therapeutic Laser Procedures.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Expanded Therapeutic Procedures Course", August 2011;
 - (b) "Application for Kentucky Licensed Optometrist to be Credentialed to Utilize Expanded Therapeutic Procedures", August 2011;
 - (c) "Application for New Applicant to be Credentialed to Utilize Expanded Therapeutic Procedures", August 2011;
 - (d) "Application for Endorsement to be Credentialed to Utilize Expanded Therapeutic Procedures", August 2011;
 - (e) "Preceptor Approval Form", August 2011;
 - (f) "Preceptor Evaluation of Expanded Therapeutic Laser Procedure", August 2011;
and
 - (g) "Application to Utilize Expanded Therapeutic Laser Procedure(s)", August 2011.

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Optometric Examiners, 163 W. Short St., Suite 550, Lexington, Kentucky 40507, telephone (859) 246-2744, Monday through Friday, 8:00 a.m. to 4:30 p.m. (38 Ky.R. 167; 621; 872; 11-4-2011; 42 Ky.R. 826; 1461; eff. 11-18-2015.)

201 KAR 5:120. Practice of optometry outside of regular office for a charitable purpose.

RELATES TO: KRS (7), 320.310(1)(f)

STATUTORY AUTHORITY: KRS 320.240(4), (7), 320.310(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.310(1)(f) authorizes the board to promulgate administrative regulations to permit the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board. This administrative regulation establishes the standards for the practice of optometry outside the licensee's office for a charitable purpose.

Section 1. Definitions.

- (1) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.
- (2) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.

Section 2. In order for a Kentucky licensed optometrist to provide optometric services outside the optometrist's regular office for a charitable purpose, a charitable organization shall provide to the board:

- (1) A written request to include the services of Kentucky licensed optometrists at least thirty (30) days before the optometric services are to be offered;
- (2) Proof of its nonprofit status;
- (3) Assurance that the participating optometrist shall not be compensated or remunerated in any manner;
- (4) The names of all participating optometrists;
- (5) The address of the location where the optometric services will be offered;
- (6) The dates and times the optometric services will be offered, which shall not exceed seven (7) days per event;
- (7) A statement of the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;
- (8) A statement that the charitable organization shall require every participating optometrist to develop and maintain a permanent patient record for each individual treated by that optometrist; and
- (9) A statement that the charitable organization shall require every participating optometrist to comply with the minimum eye examination requirements of 201 KAR 5:040, Section 7.

Section 3. The board or its acting president may waive the thirty (30) day requirement based on exigent circumstances that prevented the charitable organization from complying with the thirty (30) day requirement.

Section 4. The board or its acting president shall notify the charitable organization in writing if its request has been approved within ten (10) business days of receipt of the completed request.

Section 5. A written request may include multiple events on different dates if the events are scheduled within twelve (12) months of the date the completed request is received by the board.

Section 6. Requirements for Eyeglasses Provided.

- (1) If eyeglasses are provided as part of the charitable service, all materials shall be new, first quality and free from defects.
- (2) Lenses shall be:
 - (a) First quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements; and
 - (b) Made to meet the individual recipient's personal prescription.

Section 7. Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval. (35 Ky.R. 1673; 2080; 2408; eff. 6-5-2009.)

201 KAR 5:130. Controlled substances.

RELATES TO: KRS 218A.205(3)

STATUTORY AUTHORITY: KRS 218A.205(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3) requires the board to promulgate administrative regulations on: prescribing standards for controlled substances; a procedure to temporarily suspend, limit, or restrict a license if unrestricted practice poses a danger to the health, welfare, or safety of patients or the public; a procedure for the expedited review of complaints pertaining to controlled substances; and penalties for convictions of offenses related to controlled substances. This administrative regulation establishes the requirements relating to controlled substances in the practice of optometry.

Section 1. Prescribing Standards.

- (1) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall:
 - (a) Have a current and valid DEA number;
 - (b) Register with Kentucky All Schedule Prescription Electronic Reporting (KASPER);
 - (c) Prescribe controlled substances only for the treatment or relief of pain for a condition of the eye and its appendages;
 - (d) Prescribe only Schedule III, IV, or V controlled substances;
 - (e) Prescribe controlled substances for a quantity therapeutically sufficient, up to seventy-two (72) hours;

- (f) Examine the patient face-to-face and in-person prior to prescribing a controlled substance;
 - (g) Verify the fact that the patient that is prescribed a controlled substance is who the patient claims to be;
 - (h) Establish a documented diagnosis through the use of accepted medical practices; and
 - (i) Keep accurate, readily accessible medical records which shall include:
 - 1. History and eye examination;
 - 2. Diagnostic, therapeutic, and laboratory results;
 - 3. Evaluations and consultations;
 - 4. Treatment objectives;
 - 5. Discussions of risk, benefits, and limitations of treatments;
 - 6. Treatments;
 - 7. Medication including date, type, dosage, and quantity prescribed; and
 - 8. Instructions and agreements.
- (2) A Kentucky licensed optometrist authorized to prescribe controlled substances for humans shall not:
- (a) Dispense any controlled substances;
 - (b) Write a prescription for a controlled substance that is refillable; and
 - (c) Prescribe:
 - 1. With the intent or knowledge that a medication will be used, or is likely to be used, for other than a medicinal or an accepted therapeutic purpose; or
 - 2. With the intent to evade any law with respect to sale, use, or disposition of the medication.

Section 2. Temporary Suspension, Limit, or Restriction of License.

- (1) The board may, without benefit of a hearing, temporarily suspend, limit, or restrict the license of an optometrist authorized to prescribe controlled substances if the board finds on the basis of reasonable evidence that the licensee has violated a statute or administrative regulation the board is empowered to enforce, and continued unrestricted practice by the licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public.
- (2) The temporary suspension, limit, or restriction of a license shall take effect upon receipt by the licensee of written notice, delivered by certified mail or in person, specifying the statute or administrative regulation violated. At the time the temporary suspension, limit, or restriction order issues, the board shall schedule a disciplinary hearing to be held in accordance with the provisions of KRS Chapter 13B within ten (10) days.

Section 3. Complaints.

- (1) The board shall consider all written complaints and sufficient anonymous complaints pertaining to the improper, inappropriate, or illegal prescribing of controlled substances. An anonymous complaint shall be considered sufficient if it is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.
- (2) Upon receipt of a complaint pertaining to the improper, inappropriate, or illegal prescribing of controlled substances, the board shall:
 - (a) Send a copy of the complaint to the Office of the Attorney General, the

Department of the Kentucky State Police, and the Cabinet for Health and Family Services within three (3) business days;

- (b) Commence an investigation within seven (7) business days of the complaint; and
- (c) Produce a charging decision within 120 days of the complaint, unless an extension for a definite time period is requested in writing by a law enforcement agency due to an ongoing criminal investigation.

Section 4. Penalties.

- (1) Pursuant to the provisions of KRS 218A.205(3):
 - (a) A licensee convicted of a felony offense related to prescribing a controlled substance shall, at a minimum, have a lifetime revocation on prescribing any and all controlled substances;
 - (b) The board shall impose restrictions short of a permanent ban from prescribing controlled substances on a licensee convicted of a misdemeanor offense related to the prescribing of controlled substances. A licensee who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; and
 - (c) A licensee disciplined by a licensing board of another state related to the improper, inappropriate, or illegal prescribing of controlled substances shall, at a minimum, have the same disciplinary action imposed by the licensing board of the other state.
- (2) A licensee who is authorized to prescribe controlled substances shall be subject to discipline by the board if:
 - (a) A licensee who is required to register for an account with KASPER fails to do so or does not maintain continuous registration during the licensee's term of licensure; or
 - (b) A licensee or applicant fails to report to the board, within thirty (30) days of the action:
 - 1. Any conviction involving controlled substances; or
 - 2. Disciplinary action taken by another licensure board involving controlled substances.
- (3) Pursuant to the provisions of KRS 218A.205(3)(f), the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent. (39 Ky.R. 656; eff. 2-1-2013.)