

**BOARD OF OPTOMETRIC EXAMINERS**  
**(New Administrative Regulation)**

**201 KAR 5:045. 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. A Doctor of Optometry 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 working, clean and sanitary manner.

Section 2.

(1) A Doctor of Optometry 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 in return for the referral of optometric patients, or in order to secure optometric patients. Payment between health providers or from a health services industry, solely for the referral of a patient, is considered fee splitting and unprofessional conduct.

(2) A Doctor of Optometry shall not enter into a contract, agreement, or arrangement, for the hire or leasing of their professional services, except that upon the:

(a) Death of a Kentucky licensed Doctor of Optometry, the surviving spouse or estate of the deceased Doctor of Optometry may contract optometric services or employ a Kentucky licensed Doctor of Optometry for a period not to exceed eighteen (18) months from the time of death; or

(b) Permanent disability of a Kentucky licensed Doctor of Optometry, the spouse, legal guardian, or disabled Doctor of Optometry may contract optometric services or employ a Kentucky licensed Doctor of Optometry for a period not to exceed eighteen (18) months from the time of disability.

(3) Clinical patient care shall be determined by the Doctor of Optometry and not determined by outside influences or third parties.

Section 3.

(1) A Doctor of Optometry shall not practice in premises where others engage in any unlawful, grossly unprofessional, or incompetent practice, if that practice is known to the Doctor of Optometry, or would have been known to a person of reasonable intelligence.

(2) A Doctor of Optometry 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. A Doctor of Optometry shall keep the visual welfare of the patient uppermost at all times and on dismissal of patient must provide adequate opportunity to obtain other eye care regardless of their person's financial status.

Section 5. A Doctor of Optometry shall treat with confidentiality the protected health information obtained from the patient, except as otherwise required by law.

Section 6.

(1) A Doctor of Optometry shall provide care that is consistent with established clinical practice guidelines, specifically those adopted by the American Optometric Association at the time of the provision of care, and shall only employ those clinical procedures and

treatment regiments for which they are competent to perform and within the scope of practice.

(2) It is unprofessional conduct to fail to maintain in good working order, or to be unable to operate instruments and equipment necessary to provide competent clinical care as established in the clinical optometric guidelines adopted by the American Optometric Association at the time of the provision of care.

Section 7. The patient care performed in a patient's case shall be left to the professional judgment of the Doctor of Optometry and determined by the established American Optometric Association clinical practice guidelines in effect at that time.

Section 8. An act constituting a violation of KRS Chapter 320, or any applicable state or federal law related to provider-patient care shall be unprofessional conduct.

*WILLIAM REYNOLDS, O.D., President*

APPROVED BY AGENCY: October 10, 2022

FILED WITH LRC: October 12, 2022 at 2:25 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, December, 21st 2022 at 2:00 p.m. at 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify this agency of their intent to attend in writing five workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.