

BOARD OF OPTOMETRIC EXAMINERS
(New Administrative Regulation)

201 KAR 5:038. 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. This includes advertising in all forms including print media and electronic media.

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 or other optical goods, alone shall clearly state: "does not include eye examination".
- (3) Any Doctor of Optometry 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. When advertising an eye examination, such examination shall follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care.

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.
- (4) The advertisement of optometric services rendered in Kentucky shall include whether the services will be performed by a licensed Doctor of Optometry:
 - (a) In-Person;
 - (b) Via live or real-time audio and video synchronous telehealth technology; or
 - (c) Via asynchronous store-and-forward telehealth technology.

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 they are a Doctor of Optometry, physician or osteopath.
- (2) An ophthalmic dispenser may advertise that they dispense contact lenses, if the patient presents a valid prescription from a Doctor of Optometry, physician or osteopath.

Section 5.

- (1) Advertising shall be prohibited if it represents a Doctor of Optometry as a specialist in an optometric specialty if they have not:
 - (a) Been certified by a certifying board which has been approved by the Kentucky Board of Optometric Examiners and recognized by the Federal Government; and
 - (b) Furnished proof of their 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) Under Kentucky law only Doctors of Optometry, osteopaths and physicians are authorized to fit contact lenses. Ophthalmic dispensers may fit contact lenses in the presence of and under the supervision of a Doctor of Optometry, osteopath or physician.

(2) The signed spectacle prescription, or contact lens prescription shall be given to the patient at the completion of the examination and payment of fees.

Section 7. A Doctor of Optometry shall use the letters "OD" or "O.D." in any advertisement where a Doctor of Optometry uses letters to denote an optometry degree.

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.

CONTACT PERSON: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.