

BOARDS AND COMMISSIONS

Board of Optometric Examiners

(Amended After Comments)

201 KAR 5:002. Board administration and optometric practice.

RELATES TO: KRS 7, 320.230, 320.295, 320.300(4), 320.310(1)(f), (2), (3), 326.060

STATUTORY AUTHORITY: KRS 320.230, 320.240, 320.240(4), (7), 320.295, 320.310(1)(f), (2), (3), 320.240(4), (7), (8)

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. 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. 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. KRS 320.310(2) permits each doctor of optometry to maintain branch offices. This administrative regulation requires each doctor of optometry to furnish information concerning each office to the board. KRS 320.230 allows the board members to receive per diem compensation to be determined by administrative regulation of the board not to exceed \$125. This administrative regulation prescribes the board member's per diem compensation. KRS 320.300(4) prohibits a person from practicing optometry under any name other than his own except as permitted by the board in its administrative regulations. This administrative regulation prescribes the instances where a doctor of optometry may practice under a trade name. 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) "Board Member's Compensation" shall mean that each board member is eligible for a per diem of \$100 for each day in which that member conducts work on behalf of the board.

(2) "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.

(3) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.

(4) "Expungement" means that:

(a) The affected records shall be sealed;

(b) The proceedings to which they refer shall be deemed not to have occurred; and

(c) The affected party may properly represent that no record exists regarding the matter expunged.

(5) "Minor violations" means:

(a) Failure to timely renew a license;

(b) Failure to timely obtain continuing education; and shall not include

(c) Any violations of the laws surrounding the advertisement of optometric services by Doctors of Optometry.

Section 2. Advertising.

- (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.
- (4) 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.
- (5) The advertisement of eye glass lenses shall include: single vision or specified type of multifocal lenses.
- (6) 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.
- (7) If dispensing fees are not included in the advertisement of visual aid glasses, the advertisement shall so state.
- (8) 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.
- (9) Except as provided in subsection (10) 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.
- (10) 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.
- (11) 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;
- (12) A doctor of optometry shall not advertise 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 3. Unprofessional Conduct.

- (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.
- (2) 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.
- (3) The signed spectacle prescription, or contact lens prescription shall be given to the patient at the completion of the examination and payment of fees.
- (4) 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.
- (5) 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.

(6) A doctor of optometry shall not be employed by an unlicensed doctor of optometry, firm, or corporation as an optometrist, except to the extent permitted by subsection (7) of this section or an entity approved by the Kentucky Board of Optometric Examiners.

(7) 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.

(8) The provisions of subsections (5), (6), and (7) of this section shall not prohibit employment of an optometrist by a:

(a) Licensed hospital;

(b) Licensed multidisciplinary health clinic;

(c) Professional service corporation;

(d) Governmental entity; or

(e) Other entity approved by the Kentucky Board of Optometric Examiners.

(9) ~~(7)~~ Clinical patient care shall be determined by the doctor of optometry and not determined by outside influences or third parties.

(10) ~~(8)~~ A doctor of optometry shall not engage in any unlawful, grossly unprofessional, or incompetent practice, nor shall they 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.

(11) ~~(9)~~ 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.

(12) ~~(10)~~ 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.

(13) ~~(11)~~ A doctor of optometry shall treat with confidentiality the protected health information obtained from the patient, except as otherwise required by law.

(14) ~~(12)~~ 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 regimens for which they are competent to perform and within the scope of practice.

(15) ~~(13)~~ 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.

(16) ~~(14)~~ 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.

~~(17)~~ ~~(15)~~ 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.

~~(18)~~ ~~(16)~~ It is unprofessional conduct for a doctor of optometry to fail to inform the board of the change in location, mailing address, and telephone number of each office they practice in within thirty (30) days of any change.

Section 4. Expungement Eligibility and Procedure.

(1) The licensed doctor of optometry shall 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

(2) They shall 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.

Section 5. Trade Names. A doctor of optometry may practice under a trade name if:

(1) It is not the same as his name; and

(2) The name of each doctor of optometry practicing in their office is prominently displayed on:

(a) The exterior of the main entrance to the office; and

(b) Stationery, prescription pads, telephone directory listings, and other items bearing or displaying the trade name, **including any form of electronic communication media.**

Section 6. Practice of Optometry Outside of Regular Office for a Charitable Purpose.

(1) In order for a Kentucky licensed doctor of optometry to provide optometric services outside the doctor of optometry's regular office for a charitable purpose, a charitable organization shall provide to the board:

(a) A written request to include the services of Kentucky licensed doctor of optometry at least thirty (30) days before the optometric services are to be offered;

(b) Proof of its nonprofit status;

(c) Assurance that the participating doctor of optometry shall not be compensated or remunerated in any manner;

(d) The names of all participating doctors of optometry;

(e) The address of the location where the optometric services will be offered;

(f) The dates and times the optometric services will be offered, which shall not exceed seven (7) days per event;

(g) 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;

(h) A statement that the charitable organization shall **retain and maintain a patient record for each individual treated by the participating doctor of optometry, and where the patient may seek access to such record**~~require every participating doctor of optometry to develop and maintain a permanent patient record for each individual treated by that doctor of optometry~~; and

(i) A statement that the charitable organization shall require every participating doctor of optometry to **follow the standards of care and established clinical practice guidelines adopted by the American Optometric Association at the time of the provision of care**~~comply with the minimum eye examination requirements of Section 3 of this administrative regulation~~.

(2) 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.

(3) 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.

(4) 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.

(5) **Lenses shall be first quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements.** ~~{Requirements for Eyeglasses Provided.}~~

~~{(a)} {If eyeglasses are provided as part of the charitable service, all materials shall be new, first quality and free from defects.}~~

~~{(b)} {Eyeglass material shall be:}~~

~~{1.} {First quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements; and}~~

~~{2.} {Made to meet the individual recipient's personal prescription.}~~

(6) Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval.

WILLIAM REYNOLDS, Board President

APPROVED BY AGENCY: March 15, 2023

FILED WITH LRC: March 15, 2023 at 11:30 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The regulation establishes standards for the appropriate regulation of Optometry Services in Kentucky as authorized by existing statutory law.

(b) The necessity of this administrative regulation:

KRS 320.240 and KRS 320.295 require the Board to promulgate administrative regulations to establish standards for the appropriate administration of Optometric practice in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The regulation establishes the standards for the appropriate administration and regulation of Optometry Services in Kentucky in conjunction with statutory authority and standards contained in KRS 320.240 and KRS 320.295, and is narrowly tailored to this purpose.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The regulation establishes standards for the appropriate administration and regulation of Optometry Services in Kentucky as authorized by existing statutory law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation:

This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes:

This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes:

No answer provided.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Licensed Kentucky Optometrists totaling approximately 1,000 will be affected as will the Agency itself as it enforces these provisions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Licensed Kentucky Optometrists will be affected by this administrative regulation, as will the agency as it seeks to enforce these provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no direct cost associated with these provisions as they simply establish the standards for appropriate regulation of Optometry Services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The agency will have more direct means of monitoring professional practice. (5)
Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

This will not cost the agency nor stakeholders any money to implement.

(b) On a continuing basis:

This will not cost the agency nor stakeholders any money to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Agency Restricted Funds from Licensing Fees. The agency receives no unrestricted state or federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No, that will not be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No, it does not.

(9) TIERING: Is tiering applied?

No. This administrative regulation treats all impacted entities the same.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Board of Optometric Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 7, and KRS Chapter 320.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated, unless fines are levied as a result of agency adjudication.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated, unless fines are levied as a result of agency adjudication.

(c) How much will it cost to administer this program for the first year?

No costs to administer the first year directly.

(d) How much will it cost to administer this program for subsequent years?

No costs to administer directly.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

There will be no effect on the regulated entities as it will not require a wholesale replacement of existing signage and advertising.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously because the administrative regulation expired and this filing is substantially similar.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There is no anticipated cost savings or cost increase for the regulated entities as these rules have generally been effect for years previously.

(c) How much will it cost the regulated entities for the first year?

There are no explicit new costs nor any indirect costs associated with this filing.

(d) How much will it cost the regulated entities for subsequent years?

There are no explicit new costs nor any indirect costs associated with this filing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

This filing reinitiates the KBOE's Expired Regulations for Advertising, Expungement of Minor Violations, and Unprofessional Conduct which had previously been effect largely in this form. Additionally it consolidates some other existing regulations. As such, there is no anticipated change in costs to regulated entities, who are optometrists and therefore no applicable dollar estimates to provide.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, that definition does not apply here for the reasons given above.