

BOARDS AND COMMISSIONS
Board of Optometric Examiners
(Amended at ARRS Committee)

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

RELATES TO: KRS 320.230, 320.240(7), 320.295, 320.300(4), 320.310(1)(f), (2), (3), 326.060

STATUTORY AUTHORITY: KRS 320.230, 320.240, 320.295, 320.300(4), 320.310(1)(f), (n), (2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.295 prohibits false, misleading, or deceptive advertising, and 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. KRS 320.240(4), (7), and (8) authorize the board 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. KRS 320.310(2) permits each doctor of optometry to maintain branch offices. KRS 320.230 authorizes board members to receive per diem compensation to be determined by administrative regulation of the board not to exceed \$125. KRS 320.300(4) prohibits a person from practicing optometry under any name other than his or her own except as permitted by the board in its administrative regulations. 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 requirements for advertising, minor violations subject to expungement, acts that constitute unprofessional conduct, the furnishing of information concerning each office to the board, board member per diem compensation, practice under a trade name, and the standards for the practice of optometry outside the licensee's office for a charitable purpose.

Section 1. Definitions.

- (1) "Board Member's Compensation" means 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 are sealed;
 - (b) The proceedings to which they refer are found not to have occurred; and
 - (c) The affected party properly represents 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
 - (c) Does not include 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 finds appropriate.
- (4) When advertising an eye examination, the 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 and available at <https://www.aoa.org/practice/clinical-guidelines/clinical-practice-guidelines?sso=y>.
- (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"; and
 - (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 he or she dispenses 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 the Doctor of Optometry has 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 his or her 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) Pursuant to KRS Chapters 311, 320, and KRS 326.030 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 his or her 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) A licensed multidisciplinary health clinic;

(c) A professional service corporation;

(d) A governmental entity; or

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

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

(10) 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) 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) A doctor of optometry shall keep the visual welfare of the patient uppermost at all times and on dismissal of patient shall provide adequate opportunity to obtain other eye care regardless of the patient's financial status.

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

(14) 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.

(15) 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 practice guidelines adopted by the American Optometric Association at the time of the provision of care.

(16) 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) 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) 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 he or she practices 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 or her name; and
- (2) The name of each doctor of optometry practicing in his or her 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 the record; 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.
- (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. Exigent circumstances, for example include instances such as a governor's state of emergency, or as based on some significant need with board approval retroactively at the next meeting.
- (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 established in the:
 - (a)

1. American National Standards Institute, ANSI Z80 recently approved accredited standards, which may be obtained through the Web site at <https://www.z80asc.com/>; and

2. ANSI Z80 list of currently active standards, which may be obtained through the Web site at <https://www.z80asc.com/Z80asc/Standards/Z80/Standards.aspx?hkey=c8f40f21-a61f-4df3-9821-9f8315e70bde>;

(b) ANSI/ISEA Z87.1-2020, and standards overseen by the ANSI committee relating to occupational and educational safety eyewear, which may be obtained through the ANSI Web store at webstore.ansi.org; and

(c) American Society for Testing and Materials, ASTM International, standards relating to eye safety for sports and recreational safety eyewear, under the ASTM F08.57 committee, which may be obtained through the Web site at <https://www.astm.org/get-involved/technical-committees/committee-f08/subcommittee-f08/jurisdiction-f0857>.

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

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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.