

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. 7-2-1975; 5 Ky.R. 927; eff. 8-1-1979; 17 Ky.R. 2490; 2944; eff. 4-5-1991; 27 Ky.R. 2869; 28 Ky.R. 351; eff. 8-15-2001; 34 Ky.R. 1523; 1935; eff. 2-14-2008.)