

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 12, 2026

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 12, 2026, at 1:05 PM in Room 149 of the Capitol Annex. Representative Derek Lewis, Chair, called the meeting to order, and roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senator Mike Wilson; and Representatives Randy Bridges, Deanna Gordon, and Mary Lou Marzian.

LRC Staff: Karen Howard, Emily Harkenrider, Carrie Nichols, Stacy Auterson, Laura Begin, and Callie Lewis.

Guests: Carole Catalfo, Policy Specialist, Kentucky Public Pensions Authority (KPPA); Nathan Goodrich, Staff Attorney Supervisor, KPPA; Mary Beth Morris, President, Board of Optometric Examiners (KBOE); Christopher Thacker, General Counsel, Office of Attorney General (OAG); Matt Cole, Commissioner, Department of Vehicle Regulation (DVR), Transportation Cabinet (KYTC); Jon Johnson, Assistant General Counsel, KYTC; Tom McDaniel, Director, Division of Motor Carriers (DMC), KYTC; Todd G. Allen, General Counsel, Department of Education (KDE); Chad Collins, General Counsel, Kentucky High School Athletic Association (KHSAA); Julian Tackett, Commissioner, KHSAA; Susie Edwards, Deputy Executive Director, Office of Vocational Rehabilitation (OVR), Education and Labor Cabinet (ELC); Bernadette Leveridge, Staff Attorney, ELC; Cora McNabb, Executive Director, OVR, ELC; Shaun T. Orme, Executive Advisor, Department of Insurance (DOI), Public Protection Cabinet (PPC); Beth A. Taylor, Counsel, DOI, PPC; Christina Nguyen Kemp, Optometrist, Kentucky School for the Blind (KSB); James Campbell, President, National Board of Examiners in Optometry (NBEO); Jill Bryant, Executive Director, NBEO; and Patrick O'Neill, Board Member, Association of Regulatory Boards of Optometry (ARBO).

Approval of April 13, 2026, Minutes

A motion was made by Co-Chair West and seconded by Representative Marzian to approve the minutes of the April 13, 2026, meeting. Minutes were approved by voice vote without objection.

Administrative Regulations Reviewed by this Subcommittee:

KENTUCKY PUBLIC PENSIONS AUTHORITY

105 KAR 001:380. Minimum distribution.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Optometric Examiners

201 KAR 005:021E. Licensure Compliance Review.

In response to Chair Lewis, Mary Beth Morris, President, KBOE, stated an October 2025 OAG opinion requires KBOE to complete a comprehensive review of graduates from 2020 to 2023 who were licensed under alternative methods and waivers during the Covid era. The board does have authority over tests and waivers, but it failed to implement the requirements through the regulatory process, nullifying the alternative licensure methods. KBOE filed an emergency regulation on December 31, 2025, requiring Covid-era licensees, prior to license renewal, to provide proof of passage of NBEO I or the Optometry Examining Board of Canada (OBEC) examination; NBEO II; and NBEO III or a not-yet-developed Kentucky clinical competency examination. In February 2026, this regulation was withdrawn, and the current emergency regulation was filed, which replaces the Kentucky clinical competency test with the American Board of Optometry (ABO) Certification Examination and prohibits the licensees from performing laser procedures until they comply. The ABO examination is not for assessing initial licensure, but it is an advanced clinical competency examination for licensed optometrists. After public comments, KBOE amended the regulation to remove the OBEC examination as an option going forward. Ms. Morris stated the board's highest priority is public protection, and this regulation is a thoughtful and measured response to an unusual and complex situation.

In response to Chair Lewis, Christina Nguyen Kemp, Optometrist, KSB, provided examples of children who did not receive a clear diagnosis or proper follow-up care from alternatively-licensed optometrists. Dr. Kemp explained questionable care has been noticed over the past few years. When serious eye diseases are missed or improperly diagnosed, there can be lifetime consequences for the patient. All licensure candidates should have to pass NBEO minimum examination standards.

In response to Chair Lewis, Patrick O'Neill, Board Member, ARBO, stated all licensees outside the 2020-2023 group are required to pass the NBEO III test, but the Covid-era group is allowed by the regulation to renew a license by substituting the ABO examination for NBEO III. The OAG opinion declared these licenses were improperly granted, and the ABO examination does not provide testing for competency. A Louisville

television station reported a lawsuit against an alternatively licensed optometrist for allegedly causing permanent eye damage to a patient during laser surgery. The optometrist has not passed any part of the NBEO series. Dr. O'Neill requested a deficiency finding because the regulation does not adequately redress the imminent threat to public health and safety, does not provide a sufficient cost analysis, and exceeds KBOE's authority by establishing a renewal option for optometrists practicing under an invalid license.

In response to Chair Lewis, James Campbell, President, NBEO, stated the NBEO I, II, and III is a nationally-accepted, standardized examination series. The NBEO has never interfered with a state board, but it is compelled to speak up for patient protection. Crucial public safety decisions appear to have been made by KBOE without public input. KBOE disclosed to OAG only a fraction of the secret votes taken to waive examination requirements, and the board failed to post meeting minutes. The NBEO examination series is essential for initial licensure. Substituting one examination part with an unrelated examination is unprecedented, indiscriminate, and dangerous, violating professional licensing testing standards. Dr. Campbell expressed concern about the regulation allowing alternatively-licensed optometrists to practice independently until March 2027, without passing the NBEO series. NBEO III was developed by national experts to simulate live patient interactions, ensuring the candidate can accurately diagnose conditions and perform procedures physically and safely on real patients. The substitute ABO test is a computerized, multiple choice examination designed for licensed, practicing doctors; does not have live interaction; and is not intended to test skills for initial licensing. Allowing the ABO test as a substitute is similar to granting a driver's license to someone who passed the written test, but not the road test. Optometry does not have residency, so passing NBEO III is the last step to ensure competency.

In response to Co-Chair West, Dr. O'Neill explained the ABO test is currently taken by licensed individuals who want to pursue continuing education credits. Jill Bryant, Executive Director, NBEO, stated NBEO III is administered at its National Center for Clinical Testing in Charlotte, North Carolina.

In response to Co-Chair West, Dr. Bryant explained all states, except Oklahoma, use all three parts of the NBEO examination. Oklahoma administers its own hands-on, practical examination instead of NBEO III. A Kentucky-equivalent examination does not exist. Dr. Bryant stated the ABO examination is not used by any other state for licensure.

In response to Representative Gordon, Dr. Bryant explained KBOE previously used optometry schools to administer NBEO III, but there was too much variability. The Charlotte testing center provides a standardized, controlled environment, which ensures fairness and defensibility of the examination. More than one location is cost-prohibitive. The examination fee is \$1,490.

In response to Chair Lewis, Dr. O'Neill explained ARBO represents an organization of regulatory boards in the United States, Canada, Puerto Rico, Australia, and New Zealand. ARBO works to establish best regulatory practices and educate board members

about their duty to protect the public, not the profession. ARBO created the NBEO examination series to standardize testing and improve license portability between states.

In response to Chair Lewis, Dr. Bryant stated ARBO is co-owner of the NBEO examination.

In response to Chair Lewis, Ms. Morris stated the ABO test goes beyond minimal competency. KBEO is tasked by OAG with reviewing these practicing licensees and believes the ABO test is an acceptable pathway to license renewal for this group.

Chair Lewis conveyed his appreciation for KBEO's willingness to have dialogue with legislators on this issue.

In response to Co-Chair West, Ms. Morris stated new candidates for licensure are required to pass NBEO I, II, and III under 201 KAR 5:010E. The ABO examination is an option only for evaluating Covid-era licensees before license renewal. The computer-based ABO test is offered multiple times per year, while NBEO III requires travel to Charlotte, North Carolina, and is only offered a few times.

In response to Co-Chair West, Christopher Thacker, General Counsel, OAG, stated the board has statutory authority to determine which tests are suitable. The OAG opinion does not comment on the licenses granted during COVID. Instead, it declares the board's action of approving waivers by resolution to be null, void, and unenforceable, because it did not act through the regulatory process. It is not appropriate for OAG to dictate a specific cure for this procedural KRS Chapter 13A problem. Mr. Thacker explained even though KBOE did not follow legal procedures, it still gave licenses under the alternative methods. These licensees relied upon the granted licenses to go back to communities, open businesses, and practice for the last five or six years. Due process issues may arise if there is an attempt to invalidate the licenses, so there has to be a reasonable process to cure the procedural defect.

In response to Representative Marzian, Ms. Morris stated she cannot give a definitive number of licensees affected because the board is still in the review process.

In response to Representative Bridges, Ms. Morris confirmed these licensees did what the board told them to do to obtain a license, and the regulation grants additional time to correct a problem the licensees did not create.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 001:114. Peer-to-peer services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements

of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Department of Education: Office of District Support Services

702 KAR 007:065. Designation of agent to manage middle and high school interscholastic athletics.

Office of Learning Programs Development

704 KAR 003:305. Minimum requirements for high school graduation.

Department of Workforce Development: Office of Vocational Rehabilitation

781 KAR 001:001. Definitions.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

781 KAR 001:010. Office of Vocational Rehabilitation appeal procedures.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

781 KAR 001:020. General provisions for operation of the Office of Vocational Rehabilitation.

In response to Representative Gordon, Cora McNabb, Executive Director, OVR, ELC, stated priority categories are based on functional limitations, such as self-mobility, communication, and work tolerance, and financial participation is applied consistently across the board. Both Medicaid and vocational rehabilitation are payors of first resort. Ms. McNabb stated OVR received additional federal money this year. Susie Edwards, Deputy Executive Director, OVR, ELC, stated the office considers all comparable benefits, such as insurance, Medicaid, and financial participation.

In response to Senator Wilson, Ms. McNabb stated OVR determines eligibility and then assigns a priority category. Some applicants are placed on a waiting list for services.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4, 6 through 9, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

781 KAR 001:030. Order of selection.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

781 KAR 001:040. Provision of Vocational Rehabilitation Services.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, 11, 13, 15, 16, 21, 22, 30, and 31 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement from the agency, the amendments were approved.

Department of Insurance: Division of Health, Life, Managed Care

806 KAR 017:595. Dental Benefits Assignment.

The following administrative regulations were DEFERRED OR REMOVED from the May 12, 2026, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Optometric Examiners

201 KAR 005:021. Licensure Compliance Review.

Board of Ophthalmic Dispensers

201 KAR 013:010. Board; powers, duties, meetings.

201 KAR 013:040. Licensing.

201 KAR 013:050. Apprentices.

201 KAR 013:055. Continuing education requirements.

201 KAR 013:065. Complaint Management.

201 KAR 013:071. Repeal of 201 KAR 013:070.

201 KAR 013:075. Administrative hearings.

Board of Veterinary Examiners

201 KAR 016:767. Registered veterinary facilities – Duties of registered responsible parties and veterinarian managers.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing

601 KAR 012:130. Third-party issuance of identity documents.

EDUCATION AND LABOR CABINET: Department of Education: Pupil Transportation

702 KAR 005:130. Non-school bus passenger vehicles.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Public Health Protection and Safety

902 KAR 001:400. Administrative conference.

WIC Program

902 KAR 018:011. Definitions for 902 KAR Chapter 18.

902 KAR 018:021. Eligibility, certification periods, and time frames for processing applicants.

902 KAR 018:031. Participant violations.

902 KAR 018:040. Fair hearing procedures for participants.

902 KAR 018:050. Vendor authorization criteria.

902 KAR 018:061. Vendor violations and sanctions.

902 KAR 018:071. Participant access determination and civil money penalty.

902 KAR 018:081. Local agency fair hearing and vendor administrative review process.

902 KAR 018:090. High risk criteria.

Office of Inspector General: Health Services and Facilities

902 KAR 020:150. Freestanding Birthing Centers.

Department for Medicaid Services: Division of Long-Term Services and Supports

907 KAR 002:720. 1915(c) Kentucky's Community Health for Improved Lives and Development (CHILD) Waiver Program Requirements.

907 KAR 002:725. 1915(c) Kentucky's Community Health for Improved Lives and Development (CHILD) Waiver Reimbursement.

Department for Public Health: Office for Children with Special Health Care Needs

911 KAR 001:091. Application for Clinical Programs.

911 KAR 001:085. Early Hearing Detection and Intervention Program.

911 KAR 001:090. Repeal of 911 KAR 001:090.

The subcommittee adjourned at 2:05 PM. The next meeting of this subcommittee is tentatively scheduled for June 9, 2026, at 1 PM in Room 149 of the Annex.