



BOARD OF OPTOMETRY
Department of Health Professions
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233
2nd Floor Conference Center, Board Room 3
Friday, November 2, 2018
9:05 a.m.

AGENDA

Call to Order

Dr. Clayton-Jeter, Board President

Public Hearing – Receive public comments on proposed regulations - Periodic Review

Adjournment Public Hearing

Proposed Regulations – Periodic Review

for

Public Hearing

Project 5114 - Proposed

BOARD OF OPTOMETRY

Periodic review

18VAC105-20-5. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active clinical practice" means as an average of 20 hours per week or 640 hours per year of providing patient care.

"Adnexa" is defined as the conjoined, subordinate, or immediately associated anatomic parts of the human eye, including eyelids and eyebrows.

"Board" means the Virginia Board of Optometry.

"NBEO" means the National Board of Examiners in Optometry.

"TMOD" means the treatment and management of ocular disease portion of the NBEO examination.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18VAC105-20-10. ~~Licensure by examination~~ Requirements for licensure.

A. The applicant, in order to be eligible for licensure ~~by examination~~ to practice optometry in the Commonwealth, shall meet the requirements for TPA certification in 18VAC105-20-16 and shall:

1. Be a graduate of a school of optometry accredited by the Accreditation Council on Optometric Education or other accrediting body deemed by the board to be substantially equivalent; have an official transcript verifying graduation sent to the board;
2. Request submission of an official report from the NBEO of a score received on each required part of the NBEO examination or other board-approved examination; and
3. Submit a completed application and the prescribed fee; and
4. Sign a statement attesting that the applicant has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

~~B. Applicants who passed the National Board Examination prior to May 1985 shall apply for licensure by endorsement as provided for in 18VAC105-20-15. The board may waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice for 36 out of the 60 months immediately preceding application for licensure in Virginia.~~

C. Required examinations. ~~4.~~ For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the NBEO examination as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the NBEO examination, including passage of TMOD.

~~2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.~~

~~D. If an applicant has been licensed in another jurisdiction and has not been engaged in active clinical practice for at least 36 out of the last 60 months preceding application, as required for~~

~~licensure by endorsement, he may apply for licensure by examination, and,~~ the following requirements shall also apply:

1. The applicant shall attest that he the applicant is not a respondent in a pending or unresolved malpractice claim; ~~and,~~
2. Each jurisdiction in which the applicant is or has been licensed shall verify that:
 - a. The license is current and unrestricted, or if the license has lapsed, it is eligible for reinstatement;
 - b. All continuing education requirements have been completed, if applicable;
 - c. The applicant is not a respondent in any pending or unresolved board action; and
 - d. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia.

~~E. 3. An applicant who completed all parts of the board approved examination more than five years prior to the date of the board's receipt of his application for licensure may be required to take up to 32 hours of board approved continuing education licensed in another jurisdiction who has not been engaged in active practice within the 12 months immediately preceding application for licensure in Virginia shall be required to complete 20 hours of continuing education as specified in 18VAC105-20-70.~~

~~4. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing.~~

18VAC105-20-15. Licensure by endorsement. (Repealed.)

~~A. An applicant for licensure by endorsement shall meet the requirements for TPA certification in 18VAC105-20-16, pay the fee as prescribed in 18VAC105-20-20, and file a completed application that certifies the following:~~

- ~~1. The applicant has successfully passed the examination required for licensure in optometry in any jurisdiction of the United States at the time of initial licensure.~~
- ~~2. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application.~~
- ~~3. The applicant is not a respondent in a pending or unresolved malpractice claim.~~
- ~~4. The applicant is currently licensed in another jurisdiction of the United States.~~
- ~~5. Each jurisdiction in which the applicant is or has been licensed shall verify that:
 - ~~a. The license is current and unrestricted, or if the license has lapsed, it is eligible for reinstatement;~~
 - ~~b. All continuing education requirements have been completed, if applicable;~~
 - ~~c. The applicant is not a respondent in any pending or unresolved board action;~~
 - ~~d. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia; and~~
 - ~~e. The applicant has graduated from an accredited school or college of optometry.~~~~

~~B. The applicant shall also provide proof of competency in the use of diagnostic pharmaceutical agents (DPAs) that shall consist of a report from the national board of passing scores on all sections of Parts I and II of the NBEO examination taken in May 1985 or thereafter. If the applicant does not qualify through examination, he shall provide other proof of meeting the requirements for the use of DPA as provided in §§ 54.1-3220 and 54.1-3221 of the Code of Virginia.~~

~~C. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.~~

~~D. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing and provide proof of credentialing and quality assurance review to satisfy compliance with applicable requirements of subsection A of this section.~~

~~E. An optometrist previously licensed in Virginia is not eligible for licensure by endorsement but may apply for reinstatement of licensure under 18VAC105-20-60.~~

18VAC105-20-16. Requirements for TPA certification.

A. An applicant for licensure shall meet the following requirements for TPA certification:

1. Complete a full-time, postgraduate or equivalent graduate-level optometric training program that is approved by the board and that shall include a minimum of 20 hours of clinical supervision by an ophthalmologist; and
2. ~~Take and pass~~ Submit a passing score on the TPA certification examination, which shall be ~~Treatment and Management of Ocular Disease (TMOD) of the NBEO TMOD~~ or, if be TPA-certified by a state examination, ~~provide evidence of comparability to the NBEO examination that is~~ an examination satisfactory to the board.

B. A candidate for certification by the board who fails the examination as required in subdivision A 2 of this section, following three attempts, shall complete additional postgraduate training as determined by the board to be eligible for TPA certification.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	\$250
Application for TPA certification	\$200
Annual licensure renewal without TPA certification	\$150
Annual licensure renewal with TPA certification	\$200
Late renewal without TPA certification	\$50
Late renewal with TPA certification	\$65

Returned check	\$35
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after disciplinary action	\$500
Duplicate wall certificate	\$25
Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	\$75
Annual licensure renewal with TPA certification	\$100
Annual professional designation renewal (per location)	\$25

18VAC105-20-40. Standards of conduct.

The board has the authority to ~~deny, refuse to issue or renew a license,~~ suspend, revoke, or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."
2. ~~Disclose to~~ Notify the board of any disciplinary action taken by a regulatory body in another jurisdiction.
3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.

4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC105-20-45.
5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed in compliance with requirements of § 54.1-2405 of the Code of Virginia on the transfer of patient records in conjunction with closure, sale, or relocation of practice.
6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.
7. Provide for continuity of care in the event of an absence from the practice or, in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.
8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.
9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing, or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family to include, ~~but not be limited to,~~ actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement, or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

13. Not practice with an expired or unregistered professional designation.

14. Not violate or cooperate with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) or 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

18VAC105-20-45. Standards of practice.

A. An optometrist shall legibly document in a patient record the following:

1. During a routine or medical eye examination:

- a. An adequate case history, including the patient's chief complaint;
 - b. The performance of appropriate testing;
 - c. The establishment of an assessment or diagnosis; and
 - d. A recommendation for an appropriate treatment or management plan, including any necessary follow up.
2. During an initial contact lens examination:
- a. The requirements of a routine or medical eye examination as prescribed in subdivision 1 of this subsection;
 - b. Assessment of corneal curvature;
 - c. Evaluation of contact lens fitting;
 - d. Acuity through the lens; and
 - e. Directions for the wear, care, and handling of lenses.
3. During a follow-up contact lens examination:
- a. Evaluation of contact lens fitting and anterior segment health;
 - b. Acuity through the lens; and
 - c. Such further instructions as necessary for the individual patient.
4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.
- B. The following information shall appear on a prescription for ophthalmic goods:
1. The printed name of the prescribing optometrist;
 2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;

3. The name of the patient;
4. The signature of the optometrist;
5. The date of the examination ~~and an expiration date, if medically appropriate; and~~
6. If an expiration date is placed on a prescription for ophthalmic goods, the date shall not be less than one year unless the medical reason for a shorter expiration date is documented in the patient record; and
7. Any special instructions.

C. Contact lens.

1. Sufficient information for complete and accurate filling of an established contact lens prescription shall include ~~but not be limited to~~ (i) the power, (ii) the material or manufacturer or both, (iii) the base curve or appropriate designation, (iv) the diameter when appropriate, and (v) medically appropriate expiration date.
2. An optometrist shall provide a patient with a copy of the patient's contact lens prescription at the end of the contact lens fitting, even if the patient does not ask for it. An optometrist may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products.
3. An optometrist shall provide or verify the prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers.
4. An optometrist shall not require patients to buy contact lens lenses, pay additional fees, or sign a waiver or release in exchange for a copy of the contact lens prescription.
5. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.

D. Spectacle lens.

1. A licensed optometrist shall provide a written prescription for spectacle lenses immediately after the eye examination is completed. He may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products.
2. An optometrist shall not require patients to buy ophthalmic goods, pay additional fees, or sign a waiver or release in exchange for a copy of the spectacle prescription.
3. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.

E. Practitioners shall maintain a patient record for a minimum of five six years following the last patient encounter with the following exceptions:

1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or
2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

F. Practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

G. For the purpose of prescribing spectacles, eyeglasses, lenses, or contact lenses to a patient, a licensee shall establish a bona fide provider-patient relationship in accordance with requirements of § 54.1-2400.01:2 of the Code of Virginia.

18VAC105-20-46. Treatment guidelines for TPA-certified optometrists.

A. TPA-certified optometrists may treat diseases and abnormal conditions of the human eye and its adnexa that may be treated with medically appropriate pharmaceutical agents as

referenced in 18VAC105-20-47. ~~The adnexa is defined as conjoined, subordinate or immediately associated anatomic parts of the human eye, including eyelids and eyebrows.~~

B. In addition, the following may be treated:

1. Glaucoma (excluding the treatment of congenital and infantile glaucoma). Treatment of angle closure shall follow the definition and protocol prescribed in subsection C of this section.
2. Ocular-related post-operative care in cooperation with patient's surgeon.
3. Ocular trauma to the above tissues as in subsection A of this section.
4. Uveitis.
5. Anaphylactic shock (limited to the administration of intramuscular epinephrine).

C. The definition and protocol for treatment of angle closure glaucoma shall be as follows:

1. As used in this chapter, angle closure glaucoma shall mean a closed angle in the involved eye with significantly increased intraocular pressure, and corneal microcystic edema;
2. Treatment shall be limited to the initiation of immediate emergency care with appropriate pharmaceutical agents as prescribed by this chapter;
3. Once the diagnosis of angle closure glaucoma has been established by the optometrist, the ophthalmologist to whom the patient is to be referred should be contacted immediately;
4. If there are no medical contraindications, an oral osmotic agent may be administered as well as an oral carbonic anhydrase inhibitor and any other medically accepted, Schedule III, IV or VI, oral antiglaucomic agent as may become available; and
5. Proper topical medications as appropriate may also be administered by the optometrist.

D. An oral Schedule VI immunosuppressive agent shall only be used when (i) the condition fails to appropriately respond to any other treatment regimen; (ii) such agent is prescribed in consultation with a physician; and (iii) treatment with such agent includes monitoring of systemic effects.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedule III, IV and VI narcotic and nonnarcotic agents.
2. Topically administered Schedule VI agents:
 - a. Alpha-adrenergic blocking agents;
 - b. Anesthetic (including esters and amides);
 - c. Anti-allergy (including antihistamines and mast cell stabilizers);
 - d. Anti-fungal;
 - e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);
 - f. Anti-infective (including antibiotics and antivirals);
 - g. Anti-inflammatory;
 - h. Cycloplegics and mydriatics;
 - i. Decongestants; and

j. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

a. Aminocaproic acids (including antifibrinolytic agents);

b. Anti-allergy (including antihistamines and leukotriene inhibitors);

c. Anti-fungal;

d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

e. Anti-infective (including antibiotics and antivirals);

f. Anti-inflammatory (including steroidal and nonsteroidal);

g. Decongestants; and

h. Immunosuppressive agents.

B. Schedule I, II and V drugs and Schedule II drugs with the exception of controlled substances consisting of hydrocodone in combination with acetaminophen are excluded from the list of therapeutic pharmaceutical agents.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed or dispensed.

18VAC105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before December 31 of 2018, submit a completed renewal form and pay the prescribed annual licensure fee. Beginning with calendar year 2020, the renewal of licensure deadline shall be March 31 of each year. For calendar year 2019, no renewal is required.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address of record and the public address, if different from the address of record.

All changes of address or name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address of record given and shall not relieve the licensee of the obligation to comply.

C. The license of every person who does not complete the renewal form and submit the renewal fee each year may be renewed for up to one year by paying the prescribed renewal fee and late fee, provided the requirements of 18VAC105-20-70 have been met. After the renewal deadline, a license that has not been renewed is lapsed. Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action ~~and additional fines by the board.~~

D. An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia shall apply for reinstatement. The executive director may grant reinstatement provided that:

1. The applicant ~~can demonstrate continuing competence~~ has a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice within the 12 months immediately preceding application for reinstatement; or
2. The applicant has satisfied current requirements for continuing education as specified in 18VAC105-20-70 for the period in which the license has been lapsed, not to exceed two years; and
3. The applicant has paid the prescribed reinstatement application fee.

~~E. The board may require an applicant who has allowed his license to expire and who cannot demonstrate continuing competency to pass all or parts of the board approved examinations.~~

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee

who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.
2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.
3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.
4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).
5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension ~~or waiver~~ has been granted by the Continuing Education Committee. A request for an extension ~~or waiver~~ shall be received prior to the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection ~~G~~ H of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 ~~30~~ days of the ~~renewal date~~ audit notification.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection ~~G~~ H of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date ~~on which the post-test was graded~~ as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.

~~H. I.~~ In order to ~~maintain approval~~ receive credit for continuing education courses, ~~providers~~ or sponsors a licensee shall submit a certificate that shows:

1. ~~Provide a certificate of attendance that shows the~~ The date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor

of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. ~~Maintain documentation about the course and attendance for at least three years following its completion. Whether the course was in real-time and interactive, including in-person or electronic presentations.~~

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.