

August 5, 2022
Board Room 3
12:00 p.m.

Agenda
Virginia Board of Optometry
Regulatory Advisory Panel Meeting

Call to Order – Devon Cabot, Chair

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- Welcome
 - Emergency Egress Procedures
 - Introductions
 - Mission Statement
-
-

Ordering of Agenda – Ms. Cabot

Public Comment – Ms. Cabot

The Board will receive all public comment related to agenda items at this time.
The Board will not receive comment on any regulatory process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Discussion – Ms. Cabot/Erin Barrett/Leslie Knachel

Pages 2-16

- Review of the regulatory promulgation process (page 2)
 - Review of legislation (pages 3 – 10)
 - Review of draft regulations for laser surgery certification process (pages 11-13)
-
-

Next Steps – Ms. Cabot/Ms. Knachel

Meeting Adjournment – Ms. Cabot

This information is in **DRAFT** form and is subject to change.

MISSION STATEMENT

Our mission is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public.



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- Standard Three Stage Process
- Emergency Regulations
- Fast-Track Process
- Exempt Actions

Regulatory Actions and Stages

Jump down to

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- [Exempt Actions](#)

Standard Three Stage Process

1. Notice of Intended Regulatory Action (NOIRA): The public receives notification that a regulatory change is being considered, along with a description of the changes being considered. Once this stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is at least a 30-day period during which the agency receives comments from the public. The agency reviews these comments as it develops the proposed regulation.

2. Proposed: The public is provided with the full text of the regulation, a statement explaining the substance of the regulatory action, and an Economic Impact Analysis (EIA) prepared by the Department of Planning and Budget. Once the proposed stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is at least a 60-day public comment period. Based on the comments received, the agency may modify the proposed text of the regulation. The agency also provides a summary of comments that have been received during the NOIRA period, and the agency's response.

3. Final: The public is provided with the full text of the regulation, this time with an explanation of any changes made to the text of the regulation since the proposed stage. Once the final stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is a 30-day final adoption period.

[More details](#) about the standard three stage process

See a [chart](#) of the standard stage process

See section 2.2-4007 to 4017 of the *Administrative Process act*.

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 17

An Act to amend and reenact §§ 54.1-2400.01:1, 54.1-3200, and 54.1-3201 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 32 of Title 54.1 an article numbered 6, consisting of a section numbered 54.1-3225, relating to optometrists; laser surgery.

[H 213]

Approved March 9, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400.01:1, 54.1-3200, and 54.1-3201 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 32 of Title 54.1 an article numbered 6, consisting of a section numbered 54.1-3225, as follows:

§ 54.1-2400.01:1. Surgery defined; who may perform surgery.

A. For the purposes of this subtitle, except as used in Chapter 38 (§ 54.1-3800 et seq.) related to veterinary medicine, "surgery" means the structural alteration of the human body by the incision or cutting into of tissue for the purpose of diagnostic or therapeutic treatment of conditions or disease processes by any instrument causing localized alteration or transposition of live human tissue, but does not include the following: procedures for the removal of superficial foreign bodies from the human body, punctures, injections, dry needling, acupuncture, or removal of dead tissue. For the purposes of this section, incision shall not mean the scraping or brushing of live tissue.

B. No person shall perform surgery unless he is (i) licensed by the Board of Medicine as a doctor of medicine, osteopathy, or podiatry; (ii) licensed by the Board of Dentistry as a doctor of dentistry; (iii) jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner; (iv) a physician assistant acting under the supervision of a doctor of medicine, osteopathy, or podiatry; (v) a licensed midwife in the performance of episiotomies during childbirth; ~~or~~ (vi) licensed by the Board of Optometry as an optometrist and certified to perform laser surgery pursuant to § 54.1-3225; or (vii) acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

C. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of practice in effect on January 1, 2012, of any profession licensed by any of the health regulatory boards within the Department of Health Professions.

§ 54.1-3200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Optometry.

"Optometrist" means any person practicing the profession of optometry as defined in this chapter and the regulations of the Board.

"Practice of optometry" means the examination of the human eye to ascertain the presence of defects or abnormal conditions which may be corrected or relieved by the use of lenses, prisms or ocular exercises, visual training or orthoptics; the employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye; the use of testing appliances for the purpose of the measurement of the powers of vision; the examination, diagnosis, and optometric treatment in accordance with this chapter, of conditions and visual or muscular anomalies of the human eye; the use of diagnostic pharmaceutical agents set forth in § 54.1-3221; and the prescribing or adapting of lenses, prisms or ocular exercises, visual training or orthoptics for the correction, relief, remediation or prevention of such conditions. An optometrist may treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents only as permitted under this chapter. The practice of optometry also includes the evaluation, examination, diagnosis, and treatment of abnormal or diseased conditions of the human eye and its adnexa by the use of medically recognized and appropriate devices, procedures, or technologies. However, the practice of optometry does not include treatment through surgery, including laser surgery, other invasive modalities, or the use of injections, including venipuncture and intravenous injections, except as provided in § 54.1-3222 or for the treatment of emergency cases of anaphylactic shock with intramuscular epinephrine practice in accordance with the provisions of § 54.1-3201.

"TPA-certified optometrist" means an optometrist who is licensed under this chapter and who has successfully completed the requirements for TPA certification established by the Board pursuant to Article 5 (§ 54.1-3222 et seq.). Such certification shall enable an optometrist to prescribe and administer Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III through VI controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) to treat diseases, including abnormal conditions, of the human eye and its adnexa, as determined by the Board. Such certification shall not, however, permit treatment through surgery,

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including, but not limited to, laser surgery, other invasive modalities, or the use of injections, including venipuncture and intravenous injections, except as provided in ~~§ 54.1-3222~~ or for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.

The foregoing shall not restrict the authority of any optometrist licensed or certified under this chapter for the removal of superficial foreign bodies from the human eye and its adnexa or from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by optometrists, if such activities or functions are authorized by and performed for such optometrists and responsibility for such activities or functions is assumed by such optometrists.

§ 54.1-3201. What constitutes practice of optometry.

A. *The practice of optometry includes:*

1. *Examination of the human eye to ascertain the presence of defects or abnormal conditions that may be corrected or relieved by the use of lenses, prisms or ocular exercises, or visual training or orthoptics and the prescribing or adapting of lenses, prisms or ocular exercises, or visual training or orthoptics for the correction, relief, remediation, or prevention of such conditions;*

2. *Employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye;*

3. *Use of testing appliances for the purpose of the measurement of the powers of vision;*

4. *Examination, diagnosis, and optometric treatment in accordance with this chapter of conditions and visual or muscular anomalies of the human eye;*

5. *Evaluation, examination, diagnosis, and treatment of abnormal or diseased conditions of the human eye and its adnexa by the use of medically recognized and appropriate devices, procedures, or technologies;*

6. *Preoperative and postoperative care related to the human eye and adnexa; and*

7. *Use of diagnostic pharmaceutical agents set forth in § 54.1-3221.*

B. *Except as provided in §§ 54.1-3222 and 54.1-3225, the practice of optometry does not include treatment through:*

1. *Surgery, including:*

a. *Retina laser procedures; laser procedures into the vitreous chamber of the eye to treat vitreous, retinal, or macular disease; laser in situ keratomileusis and photorefractive keratectomy eye surgery; or other laser surgery;*

b. *Penetrating keratoplasty and corneal transplants;*

c. *Surgery (i) related to removal of the eye; (ii) requiring a full-thickness incision or excision of the cornea or sclera; (iii) requiring physical incision of the iris and ciliary body, including the diathermy, and cryotherapy; (iv) requiring incision of the vitreous humor or retina; (v) requiring full-thickness conjunctivoplasty with a graft or flap; (vi) of the eyelid for incisional cosmetic or functional repair, or blepharochalasis, ptosis, or tarsorrhaphy treatment; (vii) of the bony orbit, including orbital implants; (viii) requiring surgical extraction of the crystalline lens; or (ix) requiring surgical anterior or posterior chamber intraocular implants; or*

d. *Incisional or excisional surgery of the (i) extraocular muscles; (ii) lacrimal system, other than probing or related procedures; or (iii) pterygium surgery;*

2. *Cryotherapy of the ciliary body;*

3. *Iodizing radiation;*

4. *The use of injections, including venipuncture and intravenous injections;*

5. *Administration of or surgery using general anesthesia; or*

6. *Other invasive modalities.*

C. *An optometrist may (i) treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents as permitted under this chapter and (ii) administer intramuscular epinephrine for the treatment of emergency cases of anaphylactic shock.*

D. *Any person who in any way advertises himself as an optometrist or uses the title of doctor of optometry (O.D.) or any other letters or title in connection with his name which in any way conveys the impression that he is engaged in the practice of optometry shall be deemed to be practicing optometry within the meaning of this chapter.*

Article 6.

Certification to Perform of Laser Surgery.

§ 54.1-3225. Certification to perform laser surgery.

A. *The Board shall certify an optometrist to perform laser surgery consisting of peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy for the medically appropriate and recognized treatment of the human eye through revision, destruction, or other structural alteration of the tissue of the eye using laser technology upon submission by the optometrist of evidence satisfactory to the Board that he:*

1. *Is certified by the Board to prescribe for and treat diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents pursuant to § 54.1-3222; and*

2. *Has satisfactorily completed such didactic and clinical training programs provided by an accredited school or college of optometry that includes training in the use of lasers for the medically appropriate and recognized treatment of the human eye as the Board may require.*

B. The Board shall indicate on any license issued pursuant to this chapter to an optometrist certified to perform laser surgery pursuant to this section that the optometrist is so certified.

2. That the Board of Optometry shall promulgate regulations establishing criteria for certification of an optometrist to perform certain procedures limited to peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy for the medically appropriate and recognized treatment of the human eye through revision, destruction, or other structural alteration of the tissue of the eye using approved laser technology. The regulations shall include provisions for: (i) promotion of patient safety; (ii) identification and categorization of procedures for the purpose of issuing certificates; (iii) establishment of an application process for certification to perform such procedures; (iv) establishment of minimum education, training, and experience requirements for certification to perform such procedures; (v) development of protocols for proctoring and criteria for requiring such proctoring; and (vi) implementation of a quality assurance review process for such procedures performed by certificate holders.

3. That the Board of Optometry (the Board) shall promulgate regulations requiring optometrists to annually register with the Board and to report certain information as deemed appropriate by the Board. The regulations shall include required reporting for: (i) any disciplinary action taken against a person licensed by the Board in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation; (ii) any malpractice judgment against a person licensed by the Board; (iii) any settlement of a malpractice claim against a person licensed by the Board; and (iv) any evidence that indicates a reasonable belief that a person licensed by the Board is or may be professionally incompetent, has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, has or may have engaged in unprofessional conduct, or may be mentally or physically unable to engage safely in the practice of his profession.

4. That an optometrist certified to perform laser surgery pursuant to § 54.1-3225 of the Code of Virginia, as created by this act, shall report quarterly to the Board of Optometry (the Board) the following information: (i) the number and type of laser surgeries performed by the optometrist, (ii) the conditions treated for each laser surgery performed, and (iii) any adverse treatment outcomes associated with such procedures that required a referral to an ophthalmologist for treatment. The Board shall report annually to the Governor and the Secretary of Health and Human Resources regarding the performance of laser surgery by optometrists during the previous 12-month period and shall make such report available on the Board's website. The provisions of this enactment shall expire on July 1, 2025.

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations Regulated by Boards within the Department of Health Professions

Chapter 24. General Provisions

§ 54.1-2400.01:1. Surgery defined; who may perform surgery

A. For the purposes of this subtitle, except as used in Chapter 38 (§ 54.1-3800 et seq.) related to veterinary medicine, "surgery" means the structural alteration of the human body by the incision or cutting into of tissue for the purpose of diagnostic or therapeutic treatment of conditions or disease processes by any instrument causing localized alteration or transposition of live human tissue, but does not include the following: procedures for the removal of superficial foreign bodies from the human body, punctures, injections, dry needling, acupuncture, or removal of dead tissue. For the purposes of this section, incision shall not mean the scraping or brushing of live tissue.

B. No person shall perform surgery unless he is (i) licensed by the Board of Medicine as a doctor of medicine, osteopathy, or podiatry; (ii) licensed by the Board of Dentistry as a doctor of dentistry; (iii) jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner; (iv) a physician assistant acting under the supervision of a doctor of medicine, osteopathy, or podiatry; (v) a licensed midwife in the performance of episiotomies during childbirth; (vi) licensed by the Board of Optometry as an optometrist and certified to perform laser surgery pursuant to § 54.1-3225; or (vii) acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

C. Nothing in this section shall be construed to restrict, limit, change, or expand the scope of practice in effect on January 1, 2012, of any profession licensed by any of the health regulatory boards within the Department of Health Professions.

2012, cc. 15, 124; 2022, cc. 16, 17.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations Regulated by Boards within the Department of Health Professions

Chapter 32. Optometry

Article 1. General Provisions

§ 54.1-3200. Definitions

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Optometry.

"Optometrist" means any person practicing the profession of optometry as defined in this chapter and the regulations of the Board.

"Practice of optometry" means practice in accordance with the provisions of § 54.1-3201.

"TPA-certified optometrist" means an optometrist who is licensed under this chapter and who has successfully completed the requirements for TPA certification established by the Board pursuant to Article 5 (§ 54.1-3222 et seq.).

The foregoing shall not restrict the authority of any optometrist licensed or certified under this chapter for the removal of superficial foreign bodies from the human eye and its adnexa or from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by optometrists, if such activities or functions are authorized by and performed for such optometrists and responsibility for such activities or functions is assumed by such optometrists.

Code 1950, § 54-368; 1988, cc. 243, 737, 765; 1991, c. 290; 1996, cc. 152, 158, 365, 436; 2004, c. 744; 2015, c. 355; 2018, c. 280; 2022, cc. 16, 17.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations Regulated by Boards within the Department of Health Professions

Chapter 32. Optometry

Article 1. General Provisions

§ 54.1-3201. What constitutes practice of optometry

A. The practice of optometry includes:

1. Examination of the human eye to ascertain the presence of defects or abnormal conditions that may be corrected or relieved by the use of lenses, prisms or ocular exercises, or visual training or orthoptics and the prescribing or adapting of lenses, prisms or ocular exercises, or visual training or orthoptics for the correction, relief, remediation, or prevention of such conditions;
2. Employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye;
3. Use of testing appliances for the purpose of the measurement of the powers of vision;
4. Examination, diagnosis, and optometric treatment in accordance with this chapter of conditions and visual or muscular anomalies of the human eye;
5. Evaluation, examination, diagnosis, and treatment of abnormal or diseased conditions of the human eye and its adnexa by the use of medically recognized and appropriate devices, procedures, or technologies;
6. Preoperative and postoperative care related to the human eye and adnexa; and
7. Use of diagnostic pharmaceutical agents set forth in § 54.1-3221.

B. Except as provided in §§ 54.1-3222 and 54.1-3225, the practice of optometry does not include treatment through:

1. Surgery, including:

- a. Retina laser procedures; laser procedures into the vitreous chamber of the eye to treat vitreous, retinal, or macular disease; laser in situ keratomileusis and photorefractive keratectomy eye surgery; or other laser surgery;
- b. Penetrating keratoplasty and corneal transplants;
- c. Surgery (i) related to removal of the eye; (ii) requiring a full-thickness incision or excision of the cornea or sclera; (iii) requiring physical incision of the iris and ciliary body, including the diathermy, and cryotherapy; (iv) requiring incision of the vitreous humor or retina; (v) requiring full-thickness conjunctivoplasty with a graft or flap; (vi) of the eyelid for incisional cosmetic or functional repair, or blepharochalasis, ptosis, or tarsorrhaphy treatment; (vii) of the bony orbit, including orbital implants; (viii) requiring surgical extraction of the crystalline lens; or (ix) requiring surgical anterior or posterior chamber intraocular implants; or
- d. Incisional or excisional surgery of the (i) extraocular muscles; (ii) lacrimal system, other than

probing or related procedures; or (iii) pterygium surgery;

2. Cryotherapy of the ciliary body;

3. Iodizing radiation;

4. The use of injections, including venipuncture and intravenous injections;

5. Administration of or surgery using general anesthesia; or

6. Other invasive modalities.

C. An optometrist may (i) treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents as permitted under this chapter and (ii) administer intramuscular epinephrine for the treatment of emergency cases of anaphylactic shock.

D. Any person who in any way advertises himself as an optometrist or uses the title of doctor of optometry (O.D.) or any other letters or title in connection with his name which in any way conveys the impression that he is engaged in the practice of optometry shall be deemed to be practicing optometry within the meaning of this chapter.

Code 1950, § 54-368; 1988, cc. 243, 737, 765; 2022, cc. [16](#), [17](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations Regulated by Boards within the Department of Health Professions

Chapter 32. Optometry

Article 6. Certification to Perform of Laser Surgery

§ 54.1-3225. Certification to perform laser surgery

A. The Board shall certify an optometrist to perform laser surgery consisting of peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy for the medically appropriate and recognized treatment of the human eye through revision, destruction, or other structural alteration of the tissue of the eye using laser technology upon submission by the optometrist of evidence satisfactory to the Board that he:

1. Is certified by the Board to prescribe for and treat diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents pursuant to § 54.1-3222; and
2. Has satisfactorily completed such didactic and clinical training programs provided by an accredited school or college of optometry that includes training in the use of lasers for the medically appropriate and recognized treatment of the human eye as the Board may require.

B. The Board shall indicate on any license issued pursuant to this chapter to an optometrist certified to perform laser surgery pursuant to this section that the optometrist is so certified.

2022, cc. 16, 17.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

18VAC105-20-5. Definitions.

“Laser surgery certification” means a certification issued by the board to a Virginia licensed TPA-Certified Optometrist who has demonstrated compliance with the board’s criteria for performance of peripheral iridotomy, selective laser trabeculoplasty, and YAG capsulotomy.

“LSPE” means the Laser and Surgical Procedures Examination administered by the NBEO.

“Proctored session” means any surgery on a live patient or procedure performed on a model eye which is observed and evaluated by a proctor for the purpose of obtaining laser surgery certification pursuant to 18VAC105-20-80(A)(4)(b) or maintaining competence in laser procedures as required by 18VAC105-20-80(B).

“Proctoring” means an objective evaluation of an optometrist’s clinical competence to perform laser surgery pursuant to § 54.1-3225 of the Code of Virginia.

18VAC105-20-80. Requirements for laser surgery certification.

A. An applicant for laser surgery certification shall submit to the board:

1. A completed application for laser surgery certification;
2. The prescribed fee;
3. An educational attestation from a dean or designee of a school of optometry or an instructor of a laser surgery certification course approved by the board which verifies that the applicant received didactic and clinical laser surgery training in the following subjects:
 - (a) Laser physics, hazards, and safety;
 - (b) Biophysics of laser;
 - (c) Laser application in clinical optometry;
 - (d) Laser tissue interactions;
 - (e) Laser indications, contraindications, and potential complications;
 - (f) Gonioscopy;
 - (g) Laser therapy for open angle glaucoma;
 - (h) Posterior capsulotomy;
 - (i) Common complications, lids, lashes, and lacrimal;
 - (j) Medicolegal aspects of anterior segment procedures;
 - (k) Peripheral iridotomy; and
 - (l) Laser trabeculoplasty.

The required attestation from the dean or designee of a school of optometry or an instructor of a laser surgery certification course approved by the board shall be submitted on a form prescribed by the board; and

4. Evidence of one of the following:
 - (a) Passage of the Laser Section of the LSPE by requesting submission of an official report from the NBEO of a score received on the required part of the NBEO examination; or
 - (b) [redacted] proctored sessions in compliance with 18VAC105-20-90.

B. In the event a licensee does not perform a specific laser procedure for which the licensee is certified within a [2] year period, the licensee shall satisfactorily complete [number] of proctored sessions of that laser procedure as specified in 18VAC105-20-90 before resuming performance of that laser surgery procedure.

18VAC105-20-90. Requirements for proctoring.

A. Applicants for certification to perform laser surgery who have not provided the board with a passing score on the Laser Section of the LSPE administered by NBEO must submit evidence on a form provided by the board of a total of [redacted] proctored sessions which meet the requirements in this section. Of those proctored sessions:

1. [redacted] shall be peripheral iridotomy;
2. [redacted] shall be selective laser trabeculoplasty; and
3. [redacted] shall be YAG capsulotomy.

B. Proctors.

1. Pursuant to § 54.1-2400.01:1(B), a proctored session performed within the Commonwealth to qualify a TPA-Certified Optometrist for new laser surgery certification which consists of surgery on a live patient must be proctored by a licensed doctor of medicine or osteopathy who specializes in ophthalmology.

2. A proctored session performed within the Commonwealth [pursuant to provision about not performing in X years] which consists of surgery may be proctored by any licensee in the Commonwealth authorized or certified to perform laser surgery and who does so as part of a regular course of practice.

3. The proctor must be in attendance in the room while the proctored session is performed, regardless of the jurisdiction in which the proctoring occurs.

4. Evidence of all proctored sessions shall include a report by the proctor on a form provided by the board which:

- (a) Evaluates the clinical competency of the individual being proctored;
- (b) Describes the number and type of case(s) proctored; and
- (c) Includes the proctor's name, license type, license number, and state of licensure.

18VAC105-20-100. Reporting requirements.

A. An optometrist certified to perform laser surgery by the board shall report the following to the board quarterly:

1. The number and type of laser surgeries performed by the optometrist;
2. The conditions treated for each laser surgery performed; and
3. Any adverse treatment outcomes associated with such procedures that required a referral to an ophthalmologist for treatment.

B. The requirements of A shall expire on July 1, 2025.

18VAC105-20-110. Quality assurance review process.

[Effective July 1, 2025, an optometrist certified to perform laser surgery by the board shall report the following to the board quarterly:

1. The number and type of laser surgeries performed by the optometrist;
2. The conditions treated for each laser surgery performed; and
3. Any adverse treatment outcomes associated with such procedures that required a referral to an ophthalmologist for treatment.]

[RAP considers above language suggestion; potential continuing education; peer review; other options for quality assurance review]



June 9, 2022

Lisa Wallace-Davis, O.D.
President
Board of Optometry
9960 Mayland Drive, Suite 300
Henrico Virginia 23233

Re: Inquiry Concerning Potential Conflicts in HB 213 and SB 375

Dear Ms. Wallace-Davis,

With the 2022 General Assembly session concluded, the Medical Society of Virginia (MSV) and the Virginia Society of Eye Physicians and Surgeons (VSEPS) wanted to inquire about some potential conflicts we identified in HB 213 and SB 375 as we were conducting our post-session legislative review.

The second enactment clause of the legislation states “That the Board of Optometry shall promulgate regulations establishing criteria for certification of an optometrist to perform certain procedures limited to...” The language then establishes the criteria to perform the enumerated surgical procedures. Bullet (iii) highlights that such regulations shall include “an application process for certification to perform such procedures.”

Examining the changes in 54.1-2400.01:1 presents a potential conflict with this enactment clause. In this section, surgery, and requirements to perform surgery, are defined. The newly passed legislation includes that a “licensee of the Board of Optometry as an optometrist and certified to perform laser surgery pursuant to 54.1-3225,” can now perform surgery. Further, existing statute in this section allows persons “acting pursuant to the orders and under the appropriate supervision of a licensed doctor of medicine, osteopathy, podiatry or dentistry” to perform surgery.

As written in the statute, an optometrist cannot perform the enumerated surgical procedures without getting certified. One would assume an optometrist would not be able to be certified without first performing the procedures. The standard in medical education has long been “see one, do one, get signed off on.” As written, the new code conflicts with that standard.

Thus, when read together, a logical interpretation from the MSV and VSEPS is that for an optometrist to become certified to perform the new surgeries, that he or she would have to be “under the appropriate supervision of a licensed doctor of medicine” and thereby proctored or signed off on by a physician. This is necessary as the optometrist is not able to perform surgery on their own until certified.

We would appreciate the Board’s interpretation of these points. If you have any questions, please contact Clark Barrineau at cbarrineau@msv.org or 704.609.4948.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Clark Barrineau". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

M. Clark Barrineau
Assistant Vice President of Government Affairs and Policy
The Medical Society of Virginia

CC:
Scott Johnson, Esquire/Hancock, Daniel & Johnson, General Counsel/MSV
Scott Castro, Director of Policy/MSV
Cal Whitehead, CSG
Tyler S. Cox, Government Affairs Manager/Hancock, Daniel & Johnson
Ben H. Traynham, Esquire/Hancock, Daniel & Johnson

Sunday, May 23, 2021

- 12:00-1:00 p.m. Registration
- 1:00-2:00 p.m. Laser Physics, Hazards & Safety
Doug Penisten, O.D.,
Ph.D.
- 2:00-3:00 p.m. Laser Tissue Interactions
Nate Lighthizer, O.D.
- 3:00-5:00 p.m. Clinical Workshops: Intro to Therapeutic Lasers
Dr.'s Castillo, Lighthizer,
Miller & Penisten

Monday, May 24, 2021

- 7:30-8:30 a.m. Gonioscopy: How to Interpret What You Are Seeing
Doug Penisten, O.D.,
Ph.D.
- 11:00-12:00 p.m. Laser Therapy in Narrow Angle/Angle Closure: LPI & ALPI
Jeff Miller, O.D.
- 1:30-3:30 p.m. Laser Therapy for the Open Angle Glaucomas: ALT & SLT
Nathan Lighthizer, O.D.
- 3:30-4:30 p.m. YAG Capsulotomy
Nate Lighthizer, O.D.
- 4:30-5:30 p.m. Managing Potential Laser Complications
Richard Castillo, O.D.,
D.O.

Tuesday, May 25, 2021

- 7:30-8:30 a.m. Medicolegal Aspects of Anterior Segment Laser Procedures: Panel Discussion
Dr.'s Castillo, Lighthizer,
Miller & Penisten
- 8:30-12:30 p.m. Lab Rotations
- YAG Capsulotomy
Dr. Castillo
- Laser Peripheral Iridotomy
Dr. Miller
- Gonioscopy & Laser Lenses
Dr. Penisten
- Laser Trabeculoplasty: ALT & SLT
Dr. Lighthizer
- 12:30-2:00 p.m. Review & Final Exam
Nathan Lighthizer