

246 CMR 3.00: PRACTICE OF OPTOMETRY; DISCIPLINARY ACTIONS

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3.01: Minimum Procedures for Comprehensive Eye Examination and Contact Lens Evaluation

(1) Minimum Procedures for Comprehensive Eye Examination. Except when sound professional judgement dictates otherwise, a comprehensive eye examination shall include the following minimum procedures, the findings of which shall be clearly and legibly recorded in the patient's case record:

- (a) an adequate medical and ocular history;
- (b) measurement of the visual acuity for each eye, for both distance and close range;
- (c) an examination for the health of the external ocular adnexa, utilizing at least magnification or microscopy;
- (d) an examination of the health of the internal ocular media, utilizing at least ophthalmoscopy and microscopy or magnification;
- (e) an objective refractive measurement of each eye;
- (f) an evaluation of the extraocular muscle function, including motility studies and binocular status;
- (g) an examination of the peripheral fields;
- (h) measurements of intraocular pressure; and
- (i) any other tests and procedures that may be indicated by the patient's medical or ocular history or objective signs or symptoms discovered during the examination.

(2) Minimum Procedures for Contact Lens Evaluations.

(a) Initial Evaluations. In the initial diagnosis, treatment and management of a contact lens patient, except when sound professional judgment dictates otherwise, the following minimum procedures shall be performed, the findings of which shall be clearly and legibly recorded in the patient's case record:

- 1. all minimum procedures for comprehensive eye examinations as set forth in 246 CMR 3.01(1);
- 2. a biomicroscopic examination of the cornea, the palpebral and bulbar conjunctiva, the tear film and related external adnexa;
- 3. measurements of the curvature of the cornea;
- 4. administration of adjuvants, including diagnostic stains if indicated;
- 5. an evaluation of the visual acuity obtained in each eye with the contact lenses, at

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- distance and, when appropriate, at intermediate and at near range;
6. an evaluation of the fit of the lenses; and
 7. establishment of a date for a subsequent evaluation for the purpose of finalizing the prescription, unless such examination is contraindicated.
- (b) Subsequent Evaluations. In a subsequent evaluation of a contact lens patient, the following minimum procedures shall be performed, the findings of which shall be clearly and legibly recorded on the patient's case record:

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1. A biomicroscopic examination of the cornea, the palpebral and bulbar conjunctiva, the tear film and related external adnexa;
2. An evaluation of the visual acuity obtained in each eye with the contact lenses, at distance and, when appropriate, at intermediate and at near range;
3. An evaluation of the fit of the lenses; and
4. Establishment of a date for the next examination.

3.02: Patient Records

(1) Required Contents. An Optometrist shall establish and maintain an adequate, legible, and accurate written or electronic case record for each patient. Such case records shall be maintained for a period of not less than seven years from the date of the patient's last visit. Provided, however, that in the case of minor patients, the case records shall be maintained for a period of not less than seven years from the date of the patient's last visit or until the minor patient reaches 18 years of age, whichever is longer. Each case record shall, at a minimum, contain all of the following information:

- (a) The name, address, telephone number, and date of birth of the patient to whom the record pertains;
- (b) The date of each examination or patient procedure, and the results of all procedures performed at each such examination or patient procedure;
- (c) The date of each contact lens evaluation performed, and the results of all procedures performed at each such contact lens evaluation, including but not limited to all procedures required by 246 CMR 3.01(2);
- (d) Written documentation of the name and strength of any and all DPAs or TPAs administered to the patient's eye(s) during the course of any vision analysis, contact lens evaluation or other examination;
- (e) Any and all information concerning prescriptions written for the patient; and
- (f) Diagnosis, treatment, and recommended management.

(2) Confidentiality of Records.

- (a) An Optometrist shall keep in confidence whatever the Optometrist may learn about a patient during the course of the patient's diagnosis, evaluation, treatment, and care.
- (b) Information provided to the Optometrist shall be divulged only when such disclosure is authorized in writing by the patient or his/her authorized representative, or is otherwise required by applicable state or federal laws and/or regulations.

(3) Patient Access to Records.

- (a) An Optometrist shall permit inspection of a patient's case record by the patient to whom that record pertains, or by said patient's authorized representative, during his or her regular business hours within a reasonable time not exceeding seven business days.
- (b) An Optometrist shall not require a patient to sign any waiver or release from liability as a condition for allowing such inspection.
- (c) An Optometrist shall furnish a copy of a patient's case record to the patient to whom that record pertains, or to the patient's authorized representative, upon request within 30 days.
- (d) An Optometrist may charge a patient a reasonable fee for the reproduction of said case record.
- (e) The original copy of the case record shall, in all events, remain the property of the Optometrist.

(4) Ophthalmic Lens or Spectacle Eyeglass Prescriptions - Contents.

- (a) For purposes of 246 CMR 3.02, a "prescription for ophthalmic lenses or spectacle

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eyeglasses" is defined as a written order bearing the original handwritten or electronic signature of an Optometrist, or an oral order issued directly by an Optometrist, authorizing the provision of specified ophthalmic lenses or spectacle eyeglasses.

- (b) Said prescriptions shall, at a minimum, contain all of the following information:
1. The name, office address, office telephone number, and registration number of the Optometrist issuing said prescription;
 2. The name of the patient to whom or for whom the prescription is issued;

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3. The date on which the prescription is issued and the date on which said prescription shall expire;
4. The sphere power, cylinder power and axis, prism power, and position of the base for the ophthalmic lenses or spectacle eyeglasses to be furnished, if applicable;
5. The lens material, if clinically significant;
6. The interpupillary measurement for distance and/or near as it pertains to the prescription;
7. The near add power, if applicable;
8. The segment type and size, if applicable;
9. The tint or coating, if applicable; and
10. Any and all appropriate notations as to when the lenses or spectacle eyeglasses are to be worn.

(5) Patient Access to Ophthalmic Lens or Spectacle Eyeglass Prescriptions. An Optometrist shall furnish a copy of a patient's prescription for ophthalmic lenses or spectacle eyeglasses as required by 16 CFR 456; *Ophthalmic Practice Rules*.

(6) Contact Lens Prescriptions - Content. For the purpose of 246 CMR 3.02, a "prescription for contact lenses" is defined as a written order bearing the original handwritten or electronic signature of an Optometrist, or an oral order issued directly by an Optometrist, which authorizes the provision of specified rigid or soft contact lenses to a patient.

(a) A prescription for rigid contact lenses shall, at a minimum, contain all of the following information:

1. The name, office address, telephone number and License number of the Optometrist issuing said prescription;
2. The name of the patient for whom the prescription is being issued;
3. The date on which the patient was examined, the date of issuance of the prescription (if different), and the date on which the prescription shall expire;
4. The lens power of the lenses to be provided;
5. The overall diameter of the lens;
6. The optic zone diameter of the lens, if applicable;
7. The inside base curve radius of the lens;
8. The center thickness of the lens, if applicable;
9. The lens manufacturer and lens material, if applicable;
10. The tint and/or any other special design features, if applicable; and
11. Any applicable notations as to when the lenses are to be worn.

(b) A prescription for soft contact lenses shall, at a minimum, contain all of the following information:

1. The name, office address, telephone number and License number of the Optometrist issuing said prescription;
2. The name of the patient for whom the prescription is being issued;
3. The date on which the patient was examined, the name, the date of issuance of the prescription (if different), and the date on which the prescription shall expire;
4. The lens power of the lenses to be provided;
5. The overall diameter of the lens;
6. The base curve radius of the lens, if applicable;
7. The lens manufacturer and lens material, or trade name;
8. The series of the lens to be provided, if applicable;
9. The tint, water content, and/or any other special design features which may be applicable; and
10. Any applicable notations as to when the lenses are to be worn.

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(c) A "prescription for contact lenses" shall not be considered complete until such time as the Optometrist caring for the patient in question, in the reasonable exercise of his or her sound professional judgment, determines that the power, fit, and other characteristics of the lenses are properly tailored to the documented clinical needs of the patient.

(7) Access to Contact Lens Prescription Information. An optometrist shall furnish a copy of, or verify, a patient's prescription for contact lenses in accordance with 15 U.S.C., Chapter 102, QQ 7601 through 7610: the Fairness to Contact Lense Consumer Act.

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(8) Effect of Cessation of Practice. Upon cessation of his or her practice, an Optometrist shall transfer all case records, including all prescription information, which are less than seven years old to a location where such records may be inspected and copied by patients. An Optometrist, upon such cessation of practice, shall immediately notify the Board in writing of the location of such records.

3.03: Employment or Practice Settings

- (1) An Optometrist may only practice in one or more of the following settings:
 - (a) in his or her own private office;
 - (b) in the office of another Optometrist;
 - (c) in the practice of an ophthalmologist;
 - (d) in a Health Maintenance Organization (HMO);
 - (e) in a group medical practice;
 - (f) in a school, college or university;
 - (g) in a hospital or long term care facility;
 - (h) in a non-profit clinic approved by the Board; or
 - (i) in an industrial establishment not open to the public which provides optometric services to its employees and their families.
- (2) An Optometrist may not be an employee of an Optician or of any mercantile establishment.
- (3) An Optometrist may not practice under any lease, contract or other arrangement which would subject him or her to the direction or control of any Person not duly licensed to practice Optometry or medicine with respect to the following matters:
 - (a) The exercise of professional optometric judgment;
 - (b) The Optometrist's scheduling of patients; or
 - (c) The fees charged by an Optometrist or the financial arrangements between an Optometrist and his or her patients.
- (4) An Optometrist may not offer, give, agree to give, solicit, receive or agree to receive any fee or other compensation to or from any business entity or Person, including a licensed Optometrist, in exchange for the referral of a patient, provided however that 246 CMR 3.03(4) shall not prohibit the sale of an optometric practice to an Optometrist.
- (5) An Optometrist may not use any undue influence or force upon a patient to purchase optical goods from himself or herself nor attempt to influence or force any patient to another provider of optical goods. Nothing in 246 CMR 3.00 shall be construed to prohibit any Optometrist from making a normal proper referral for any goods or services.

3.04: Establishment of Offices

- (1) Principal Office.
 - (a) Prior to engaging or re-engaging in the practice of Optometry, each Optometrist shall notify the Board, in writing, of the address of his or her "principal office".
 - (b) The principal office shall be:
 1. The office at which he or she conducts the majority of his or her professional practice; or
 2. For an Optometrist whose practice consists exclusively of visits to hospitals, nursing homes, and/or private residences for the examination and treatment of patients at such locations, the principal office shall be the address at which said Optometrist maintains

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his or her equipment and case records. Said Optometrist shall, upon request of the Board, provide satisfactory proof of his or her ability to provide adequate professional care and the availability of appropriate equipment.

(c) Said principal office shall be subject to inspection by a duly-authorized representative of the Board, in accordance with 246 CMR 3.05.

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(3) Branch Offices.

(a) An Optometrist may establish one or more "branch offices" in addition to his or her principal office.

(b) Branch Certificate Required.

1. Prior to the establishment of any such branch office, the Optometrist shall submit an office location form and payment to the Board.

2. The Optometrist may provisionally begin treating patients at the branch office after the Optometrist receives confirmation from the Board of its receipt of the office location form and payment. Such provisional permission is subject to subsequently passing inspection pursuant to 246 CMR 3.04(3)(b)3.

3. A duly-authorized representative of the Board will inspect the branch office, pursuant to 246 CMR 3.05, after the form and payment are received by the Board.

4. After determining by inspection that the branch office meets regulatory requirements, the Board shall issue a branch office certificate for the location in question. Said certificate shall not be transferable and shall be conspicuously displayed at the location.

3.05: Required Equipment; Office Inspections

(1) Each office maintained for the practice of Optometry, whether classified as a principal office or as a branch office, shall have, at a minimum, all of the equipment for all of the services rendered at that location to meet the standard of care required by those services. The equipment shall be in proper working order and shall include but not be limited to:

- (a) a business telephone number;
- (b) a refractor, or its equivalent;
- (c) an instrument suitable for measuring the radius of curvature of the cornea;
- (d) an instrument suitable for evaluating the internal eye;
- (e) an instrument suitable for evaluating the objective measurement of the refractive error;
- (f) a lensometer, or other suitable instrument for measuring the power of ophthalmic and contact lenses;
- (g) a distance or direct reading chart;
- (h) a near reading chart;
- (i) a tonometer or other suitable instrument for measuring intraocular pressure;
- (j) a slit lamp biomicroscope or other suitable equivalent instrument for magnified inspection of the anterior segment of the human eye;
- (k) a visual field testing device which will measure a minimum of 30° of central field;
- (l) a suitable stereo vision testing device;
- (m) a color vision testing device; and
- (q) a sink with hot and cold running water in or immediately adjacent to the main examining room, and in or immediately adjacent to any additional room where contact lenses are handled. Any deviation from this arrangement must be approved by the Board in writing.

(2) A duly authorized representative of the Board may inspect any principal or branch office at any time during regular business hours, and without prior notice, for the purpose of verifying that the office is clean and sanitary, that the office has all of the equipment required by 246 CMR 3.05(1), and that patient records are being maintained as required by 246 CMR 3.02.

3.06: Sharing of Fees

(1) An Optometrist shall not practice Optometry under any lease, contract or other arrangement whereby any Person or establishment not duly authorized to practice Optometry shares directly in any fees received in connection with said practice of Optometry.

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(2) An Optometrist shall not receive remuneration in any form of monies, preferential leases, equipment or supplies from any Person or corporation active in the optical industry except in an industrial practice not open to the general public. A preferential lease is one which deviates from other leases in the same area or market place, and is granted with an obligation on the part of the Optometrist to share directly or indirectly with the lessor any fees from his or her professional practice of Optometry.

3.07: Use of Name and Degree

- (1) An Optometrist shall practice under his or her name as shown on the certificate of registration, whether or not practicing under a corporate or group name. He or she shall utilize the designation of "optometrist" or his or her professional degree when engaging in the practice of Optometry. Such name shall be legible and visible to those entering the office.
- (2) By way of example only, the Board considers the following titles to be lawful:
 - (a) John Doe, O.D.
 - (b) John Doe, Optometrist
 - (c) Dr. John Doe, Optometrist
 - (d) Doctor John Doe, Optometrist

3.08: Succession in Practice

- (1) An Optometrist may use the office identification and telephone listing of another Optometrist who is retired, deceased, or has otherwise discontinued the practice of Optometry.
- (2) The Optometrist taking over a former practice shall notify all patients of the former practice in writing that he or she is succeeding the Optometrist who is retired, deceased or has otherwise discontinued the practice of Optometry.

3.09: Verification and Quality of Dispensed Materials

- (1) An Optometrist shall not use or dispense any ophthalmic lenses or materials which are not first quality, as defined by the American National Standards Institute in Sections Z80.1 and Z80.2.
- (2) An Optometrist shall take necessary measures to ensure all prescription materials are verified by the Optometrist, or a Person over whom he or she has direct supervision, prior to his or her dispensing.
- (3) Prior to the initial dispensing of contact lenses when first fitting the patient, and at all such times as sound professional judgement otherwise requires, the patient shall be instructed as to lens handling, including insertion and removal, lens care, and hygiene.

3.10: Proper Identification

- (1) No Optometrist shall represent himself to the public as someone other than an Optometrist. No designation shall be used which would confuse the nature of the Optometrist's licensed practice.
- (2) Required Postings.
 - (a) Display of License. Every Optometrist shall at all times keep a copy of his or her current License conspicuously displayed at all sites where he or she regularly practices.
 - (b) Display of Optometrist's Name. The Optometrist shall cause to be placed or kept in a conspicuous place at each location where the Optometrist renders services, the name of all Optometrists providing services at that location.
- (3) No Optometrist shall utilize, or represent to the public that he or she is qualified to utilize, DPAs or TPAs unless he or she has been issued a certificate of qualification by the Board.

3.11: Advertising

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- (1) An Optometrist shall not engage in:
 - (a) Advertising which is false, deceptive or misleading;
 - (b) Advertising which offers gratuitous services, in violation of M.G.L. c. 112, § 73A; or
 - (c) Advertising which is not in accordance with applicable law, including, but not limited to, M.G.L. c. 112, § 73A; M.G.L. c. 266, §§ 91, 91A, 91B; M.G.L. c. 93, § 1 *et seq.*; and the Attorney General's regulations at 940 CMR 3.00: *General Regulations* and 6.00: *Retail Advertising*.

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- (2) Every advertisement for merchandise, service or anything regarding the practice of Optometry shall, in accordance with 246 CMR 3.07, clearly state the following:
 - (a) the name and degree of the Optometrist(s) whose merchandise or services are being advertised; and
 - (b) the principal and/or branch office addresses of said Optometrist(s).
- (3) Electronic Media.
 - (a) A Optometrist may advertise in electronic media, including television radio, and the internet, provided that the Optometrist maintains a complete, accurate, and reproducible tape or copy of the audio and visual contents of that advertisement for a period of three years.
 - (b) The Optometrist must furnish the complete copy of this advertising to the Board upon request. The cost of maintaining and providing this advertising copy shall be borne by the Optometrist.
- (4) Advertised Prices.
 - (a) An Optometrist may advertise the sale price or a stated range of prices for contact lenses, eyeglasses, or eyeglass frames, provided such advertisement clearly states whether said prices include lenses, and, if so, the type of lenses and strength thereof.
 - (b) Any advertisement offering contact lenses, eyeglasses or eyeglass frames at a fixed price shall include a statement that said price does not include professional services, as required by M.G.L. c. 112, § 73A.
 - (c) An Optometrist may advertise fixed prices or a stated range of prices for specified routine professional services, provided such advertisement clearly states whether additional charges may be incurred for related services, as required by M.G.L. c. 112, § 73A.
- (5) Trade or Service Names.
 - (a) Optometrists may practice and advertise under a trade or service name; provided, however, that the name(s) of the Optometrist(s) are prominently displayed at all locations where they practice, in all advertisements that identify the location or locations where they provide optometric services, and in each Optometrist's examining room(s).
 - (b) The name of the Optometrist actually responsible for the provision of such optometric services shall be included in the same type as the address of the location.
 - (c) The name of the Optometrist who actually wrote the prescription shall also be printed on the prescription form. If the name of the Optometrist is not typewritten on the prescription form, the name of the Optometrist may be handwritten so long as it is legible.

3.12: Inspections

- (1) Optometrists are subject to inspections performed by the Board or its duly authorized agent and must cooperate with such inspections.
- (2) Such inspections may be performed by the Board or its duly authorized agent:
 - (a) To confirm that such offices have proper sanitary facilities and are maintained in a clean and sanitary manner;
 - (b) To confirm that all equipment required by 246 CMR 3.05 is properly maintained at each such office;
 - (c) To confirm that the name and title of the Optometrist and his or her licensed associates or licensed employees are properly displayed as required by 246 CMR 3.07(1);
 - (d) To confirm that the Optometrist is practicing Optometry in accordance with applicable statutes and 246 CMR.

3.13: Responsibility for Acts and Omissions of Employees

An Optometrists shall be responsible for all Optometry services provided to Persons being served by him or her, or by any of his or her agents or employees, and shall be responsible for any and all acts or omissions of such agents or employees.

3.14: Board Notification of Change in Name or Address

The Optometrist shall notify the Board of any change in his or her name, home address, or change in his or her business address. In addition, the Optometrist shall notify the Board of all of the locations at which he or she is currently working, including if he or she works at multiple offices, clinics, or settings. Such notification shall be in writing and shall be submitted within 30 days of the change in name or address.

3.15: Grounds for Disciplinary Action

(1) The Board may, by majority vote after a hearing conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*, take disciplinary action against any Optometrist who holds a License issued by the Board pursuant to 246 CMR 2.00: *Examination and Licensure; Certification for Use of Diagnostic and Therapeutic Pharmaceutical Agents*. Grounds for such disciplinary action shall include, but shall not be limited to:

- (a) Engaging in, authorizing, or aiding or abetting fraud, deceit, misrepresentation of material facts, the provision of false or forged evidence, or bribery in connection with any application for any License or certification which may be issued by the Board or in connection with any application for reinstatement of a License or certification issued by the Board;
- (b) Violating any state, federal, or local statute or law relating to the practice of Optometry, or any rule or regulation adopted thereunder;
- (c) Engaging in practice which is fraudulent or beyond the authorized scope of practice for an Optometrist;
- (d) Incompetence, negligence, or malpractice, where such incompetence, negligence, or malpractice results in injury to a patient or creates an unreasonable risk that a patient may be harmed. The use of nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;
- (e) Practicing Optometry while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (f) Being habitually intoxicated by, or engaging in the current unlawful use of, alcohol, narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
- (g) Knowingly permitting, aiding or abetting an unlicensed Person to perform activities requiring a License for purposes of fraud, deception or personal gain, excluding activities permissible under any provision of the laws of the Commonwealth relative to the training of optometric providers in authorized health care institutions and facilities;
- (h) Having been convicted of any criminal offense which reasonably calls into question his or her fitness or ability to practice Optometry;
- (i) Continuing to practice while his or her registration is lapsed, suspended, or revoked;
- (j) Failing to report suspected child abuse or neglect as required by M.G.L. c. 119, § 51A;
- (k) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;
- (l) Failure to cooperate with the Board by not responding to subpoenas issued by the Board or its agent, whether or not the recipient of the subpoena is the accused in the proceeding;
- (m) Failure to comply with an order issued by the Board or a consent agreement entered into with Board;
- (n) Misrepresentation or fraud in any aspect of the conduct of the business or practice of Optometry;
- (o) Engaging in the practice of Optometry involving contact with the public while suffering

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from a contagious or infectious disease involving serious risk to public health;
(p) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

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(q) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the Board or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(r) Abuse of a client or patient.

(2) For purposes of 246 CMR 3.16, the term "disciplinary action" shall include, but shall not be limited to:

(a) denial, revocation or suspension of any License or certification which may lawfully be issued by the Board;

(b) refusal to renew any such License or certification; issuance of a letter of censure;

(c) issuance of a written reprimand;

(d) placement of an Optometrist on probation; or

(e) other such sanctions as provided for under M.G.L. c.112, §§ 66 through 73B or M.G.L. c. 112, § 61.

3.16: Review of Regulations

The Board shall regularly review its regulations.

REGULATORY AUTHORITY

246 CMR 3.00: M.G.L. c. 112, § 67.