



Massachusetts Society of Optometrists

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May 21, 2014

Dr. Bruce Rakusin, Chairman
State Board of Registration in Optometry
1000 Washington Street
Boston, MA 02118-6100

Dear Dr. Rakusin:

Enclosed with this letter are the MSO proposed amendments, shown in red, for consideration by the State Board in its review of the optometry regulations specifically 246 CMR 1.00 - 3.00.

In October 2013 the MSO met with Dr. Wayne Zahka to review and discuss our comments.

We appreciate your consideration of our proposed amendments on this important matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Richard T. Lawless
Executive Director

246 CMR 1.00: Purpose, Authority and Definitions

1.01: Purpose and Authority

246 CMR 1.00 *et seq.* is intended to establish standards and procedures for the licensure of optometrists and certification of such optometrists to use diagnostic and Therapeutic Pharmaceutical pharmaceutical Agents (TPAs); set standards of professional practice and conduct for optometrists; and govern disciplinary actions taken against Optometrists or License Applicants. 246 CMR 1.00 *et seq.* is adopted pursuant to the Board's authority under M.G.L. c. 112, § 67.

1.02: Definitions

For the purposes of 246 CMR 1.00 through 3.00, the following terms will have the following meanings.

Board - means the Massachusetts Board of Registration in Optometry, established pursuant to M.G.L. c. 112, § 67.

Certificate of Qualification to Use Diagnostic Pharmaceutical Agents (DPAs) - means a certificate issued by the Board to an Optometrist who has met the requirements of 246 CMR 2.02, certifying that that Optometrist is properly qualified to use DPAs for the purpose of conducting an examination of the eye.

Certificate of Qualification to Use TPAs - means a certificate issued by the Board to an Optometrist who has met the requirements of 246 CMR 2.03, certifying that that Optometrist is properly qualified to use TPAs in the diagnosis, prevention, correction, management and/or treatment of abnormal ocular conditions or diseases, except glaucoma.

Continuing Education Course. The completion of a formal learning program with specific learning objectives relevant to the science or practice of Optometry.

Continuing Education Entity. An entity authorized by the Board that may offer continuing education courses or programs for continuing education credit, without obtaining prior approval from the Board for each course or program offered.

Continuing Education Hour. The unit of measurement for a Continuing Education Course lasting 50 consecutive minutes.

Diagnostic Pharmaceutical Agent ("DPA") - means any topical anesthetic, mydriatic, or cycloplegic drug, except atropine and phenylephrine hydrochloride in 10% concentration, suitable for ocular examination procedures.

License - means a certificate of registration issued by the Board pursuant to 246 CMR 2.00 *et seq.* which authorizes a Person to engage in the practice of Optometry.

License Applicant - means an individual who has applied for licensure to practice Optometry in the Commonwealth of Massachusetts pursuant to 246 CMR 2.01, but who has not yet been granted such licensure.

Optician means any Person who satisfies the definition of "dispensing optician" as set out at M.G.L. c. 112, § 73C and 235 CMR 2.02(2).

Optometry means the practice of optometry as defined by M.G.L. c. 112, § 66.

Optometry School or School of Optometry means a legally chartered school of optometry approved by the Board and accredited by the Council on Optometric Education of the American Optometric Association (A.O.A.).

Optometrist means a Person who has obtained a License from the Board and is therefore duly authorized to practice Optometry pursuant to M.G.L. c. 112, §§ 66 through 73B and 246 CMR 1.00 *et seq.*

Person means an individual and does not mean an association of individuals or a legal entity.

Qualifying Course of Study to Use DPAs - means a course of study in the use of DPAs which is taken by an Optometrist after he or she has completed the educational requirements for licensure as an Optometrist set forth in M.G.L. c. 112, § 68; which meets the requirements of 246 CMR 2.02(2), including the requirements that the course is administered by a duly-accredited School of Optometry or school of medicine and has been approved by the Board.

Qualifying Course of Didactic Therapeutic Pharmaceutical Agent (TPA) Study - means a course of classroom instruction and study in the use of TPAs for the diagnosis, prevention, correction, management and/or treatment of abnormal ocular conditions or diseases, which is taken by an Optometrist after he or she has completed the educational requirements for licensure as an Optometrist set forth in M.G.L. c. 112, § 68; which meets the requirements of 246 CMR 2.03(2), including the requirements that the course is administered by a duly-accredited School of Optometry or school of medicine and has been approved by the Board.

Qualifying Examination in the Use of TPAs - means an examination, approved by the Board, which is given to an applicant for certification in the use of TPAs after completion of a Qualifying Course of Didactic TPA study for the purpose of evaluating that applicant's knowledge and skill in the proper use of TPAs. Said examinations may include, but shall not be limited to, any applicable portion of any examination administered by the National Board of Examiners in Optometry.

Respondent - means an Optometrist or License Applicant against whom a formal written complaint has been filed with the Board.

Supervised Course of Clinical TPA Practice - means a course of supervised clinical practice in the use of TPAs which meets the requirements of 246 CMR 2.03(3), including the requirements that the course has been administered by a duly-accredited School of Optometry or school of medicine and has been approved by the Board.

Therapeutic Pharmaceutical Agent ("TPA") - means those topical Schedule VI and non-legend pharmaceutical agents which are required or used for the diagnosis, prevention, correction, management or treatment of abnormal ocular conditions or diseases, except glaucoma, as defined in M.G.L. c. 112, §§ 66 and 66B.

246 CMR 2.00: Examination and Licensure; Certification for Use of Diagnostic and Therapeutic Pharmaceutical Agents

2.01: Licensure Provisions

(1) Methods of Obtaining a License.

(1) Methods of Obtaining a License. A Person may obtain a License to practice Optometry by either of the following methods: (a) By clinical and written examination; or

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(b) By reciprocity based upon a certified copy or certificate of registration or license which was issued to him, where the requirements for registration are in the opinion of the board equivalent to those of this commonwealth; provided, that the applicant has not previously failed to pass the examination required in this commonwealth, and that he has been engaged in the reputable practice of optometry continuously for not less than three years immediately preceding his application, and that he intends to reside and practice optometry in this commonwealth.

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A Person may obtain a License to practice Optometry by either of the following methods:

(a) By clinical and written examination; or

(b) By reciprocity based upon a license issued by another state or jurisdiction recognized by the Association of Regulatory Boards of Optometry, provided that the other jurisdiction would reciprocally admit a similarly qualified Person who has a License in Massachusetts.

(2) Procedure for Issuing a License. The procedure for issuing a License shall be as follows:

(a) A License Applicant shall submit to the Board a completed application form and fee.

(b) A License Applicant's completed application form and fee shall be accompanied by written proof satisfactory to the Board that:

1. The License Applicant is at least 18 years of age and of good moral character as the term is defined in 246 CMR 2.01(3); and
2. The License Applicant has graduated from a duly-accredited School of Optometry which meets the requirements of M.G.L. c. 112, § 68.

(c) As a prerequisite to the Board granting a License by examination, the License Applicant must have successfully completed the written and clinical examinations in theoretic and practical Optometry utilized by the Board, and a written examination on the statutes, rules and regulations governing the practice of Optometry in Massachusetts.

1. The requirement of completion of a written examination in theoretic and practical Optometry shall be satisfied by evidence of having successfully passed the examinations given by the National Board of Examiners in Optometry. The passing grade shall be set by the National Board of Examiners for that examination.
2. The requirement of completion of a practical examination in theoretic and practical Optometry shall be satisfied by the License Applicant demonstrating familiarity with optometric instrumentation, proficiency in optometric techniques and patient handling, pathology recognition, infection control techniques, and other areas that may be deemed appropriate from time to time by the Board.
3. The requirement of completion of a written examination on the statutes, rules and regulations governing the practice of Optometry in Massachusetts shall be satisfied by evidence that the License Applicant has successfully passed the examination on this subject.

(d) A License Applicant who fails to pass the clinical exam or the examination on the statutes, rules and regulations shall be entitled to take any subsequent regularly scheduled administration of that examination by proper re-application.

(3) Good Moral Character Requirement.

(a) An application to practice as a Optometrist, whether by examination pursuant to 246 CMR 2.01(1)(a) or by reciprocity pursuant to 246 CMR 2.01(1)(b), shall be accompanied by such written documentation as the Board may reasonably require in order to determine whether the License Applicant is of "good moral character".

(b) If the Board receives information about a License Applicant for registration which reasonably raises a question about whether that License Applicant is of "good moral character", the Board shall conduct a further inquiry into the relevant facts and circumstances before making a final decision on the application.

1. Determinations about whether a License Applicant for registration possesses the "good moral character" required for registration shall be made on an individualized basis.
2. If the Board determines, in its discretion, that such steps are reasonably necessary, the Board may require the License Applicant to appear personally before the Board, and/or furnish additional written information to the extent permitted by applicable state or federal law.

(c) Conduct which reasonably raises a question about whether a License Applicant possesses the "good moral character" required for registration includes, but is not necessarily limited to, any of the following:

1. Conviction of a felony or misdemeanors, except a routine traffic violation;
2. Discipline taken against any professional license, registration or certification held by the License Applicant by the applicable governmental authority of any state, territory or political subdivision of the United States or Canada; or
3. Conduct which is not within the meaning of 246 CMR 2.01(3)(c)1. or 246 CMR 2.01(3)(c)2., but which nevertheless involves any of the following:
 - a. Failure to exercise proper regard for the License Applicant's own health, welfare or safety;
 - b. Failure to exercise proper regard for the health, welfare, safety or legal rights of another Person; or
 - c. Fraud, deception or lack of honesty or truthfulness.

(d) For purposes of 246 CMR 2.01(3)(c)1., the term "conviction" means any of the following:

1. A final judgment entered after a jury verdict of guilty or a judicial finding of guilty;
2. A plea of guilty;
3. A plea of *nolo contendere* (no contest); or
4. Any other plea or finding which is treated by the court as a plea or finding of guilty.

246 CMR 2.01(3)(d)1. through 4. shall apply regardless of the law of the jurisdiction in which the disposition occurred.

(e) For purposes of 246 CMR 2.01(3)(c)2., the term "discipline" means any of the following:

1. Denial of or refusal to issue a license, registration or certification for any reason other than failure to meet the educational, experiential or examination requirements established by applicable law or regulation for that license, registration or certification;
2. Revocation or suspension of a license, registration or certification;
3. Placement of a license, registration or certification on probation;
4. Issuance of a letter of censure;

5. Issuance of a written reprimand; or
6. Any other adverse action against the License Applicant's license, registration or certification which constitutes "discipline" under the applicable laws and/or regulations of the jurisdiction in which that adverse action was taken.

(f) In determining whether an application for license should be denied because the License Applicant has been convicted of a criminal offense, within the meaning of 246 CMR 2.01(3)(c)1., or the License Applicant has been the subject of a discipline by the applicable governmental authority of another jurisdiction, within the meaning of 246 CMR 2.01(3)(c)2., the Board shall consider all of the relevant facts and circumstances, including but not limited to the following:

1. The nature of the criminal offense(s) or conduct which gave rise to the discipline;
2. The date of the criminal conviction(s) or date of the discipline;
3. The age of the License Applicant at the time of the criminal conviction(s) or age and level of professional experience at the time of the conduct which gave rise to the discipline;
4. The number of criminal conviction(s) or number of disciplines taken against the License Applicant;
5. The nature and severity of the sentence or sanction imposed for each criminal conviction or nature and severity of the disciplinary sanction(s) imposed;
6. Whether the conduct which gave rise to the criminal conviction or discipline demonstrates an intentional or deliberate disregard for the life, health, safety or welfare of others;
7. Whether the conduct which gave rise to the criminal conviction or discipline involved the commission of acts of physical or sexual violence or coercion against another Person;
8. Whether the conduct which gave rise to the criminal conviction or discipline otherwise poses a continued or continuing risk to the health, safety or welfare of the public;
9. Whether the conduct which gave rise to the criminal conviction or discipline involved trafficking in, or illegally manufacturing, controlled substances as defined by applicable state or federal law;
10. Whether the conduct which gave rise to the criminal conviction or discipline involves fraud, deception, a lack of honesty, a lack of truthfulness or veracity, or a lack of personal integrity or trustworthiness;
11. Whether there is a significant relationship between the conduct which gave rise to the criminal conviction or discipline and the nature of the activities which the License Applicant will be authorized to perform if the registration is granted;
12. Whether there is a significant relationship between the conduct which gave rise to the criminal conviction or discipline and the ability of the License Applicant to practice the profession with a reasonable degree of skill and safety;

13. Whether there is a significant relationship between the conduct which gave rise to the criminal conviction or discipline and the ability of the License Applicant to practice the profession in accordance with generally accepted standards of sound professional practice;
14. Evidence of rehabilitation of the License Applicant, including but not limited to successful completion of parole or court-ordered probation; the making of restitution; satisfactory completion of court-ordered community service; evidence that the License Applicant has subsequently taken actions to mitigate the consequences of his or her criminal conduct; evidence of remorse;
15. Evidence of satisfactory compliance with any terms or conditions of probation or other remedial measures included in the disciplinary sanction imposed; and,
16. Evidence that the License Applicant has subsequently taken other actions to mitigate the harmful consequences of the conduct which gave rise to the discipline and/or to prevent a recurrence of that conduct.

(g) In determining whether a License Applicant should be denied because he or she engaged in conduct which did not result in either a criminal conviction or a discipline, but which is within the meaning of 246 CMR 2.01(3)(c)3., the Board shall consider all of the relevant facts and circumstances, including but not limited to the following:

1. The nature of the conduct in question;
2. The date(s) of the conduct in question;
3. The age of the License Applicant at the time of the conduct in question;
4. Whether the conduct demonstrates an intentional or deliberate disregard for the life, health, safety or welfare of others;
5. Whether the conduct involved the commission of acts of physical or sexual violence or coercion against another Person;
6. Whether the conduct otherwise poses a continued or continuing risk to the health, safety or welfare of the public;
7. Whether the conduct involved trafficking in, or illegally manufacturing, controlled substances;
8. Whether the conduct demonstrates fraud, deception, lack of honesty, a lack of truthfulness or veracity, or a lack of personal integrity or trustworthiness;
9. Whether there is a significant relationship between the conduct and the nature of the activities which the License Applicant will be authorized to perform if the License is granted;
10. Whether there is a significant relationship between the conduct and the ability of the License Applicant to practice the profession with a reasonable degree of skill and safety;
11. Whether there is a significant relationship between the conduct and the ability of the License Applicant to practice the profession in accordance with generally accepted standards of sound professional practice;
12. Evidence as to whether the License Applicant has engaged in remedial action which mitigates the consequences of the conduct in question; and

13. Evidence as to whether the conduct in question is characteristic of or representative of the License Applicant's conduct generally.

(4) Continuing Education Requirements.

(a) As a condition for maintaining licensure in Massachusetts, each Optometrist shall be required to maintain his or her professional competency by completing annually no less than 18 Continuing Education Hours related to Optometry where the Continuing Education Course has been approved by the Board or a Continuing Education Entity, of which:

1. No more than six Continuing Education Hours will be credited for any combination of Continuing Education Courses taken in the following subject areas:
 - a. Cardiopulmonary resuscitation;
 - b. Child abuse recognition;
 - c. Infection control;
 - d. Practice management;
 - e. Office procedures;
 - f. Record keeping;
 - g. Legislation; or
 - h. Optometric statutes and regulations.
2. No more than four Continuing Education Hours per renewal period will be credited for distance based learning Continuing Education Courses.

(b) Timely Completion.

1. Credit toward renewal of an Optometrist's License in a particular renewal period shall be given only for Continuing Education Hours which were completed during the 12 months immediately preceding January 1st of the licensure year for which renewal of that License is sought.
2. The Board may extend the deadline for completion of such Continuing Education Hours for an Optometrist who submits written proof satisfactory to the Board that he or she was prevented from completing the required Continuing Education Hours on time due to illness or other unforeseeable emergency, extreme hardship, or other good and sufficient reason deemed adequate by the Board.

(c) Criteria for Approval of Course or Program.

1. In determining whether to approve a Continuing Education Course, the Board shall consider only whether the proposed program or course contributes to the improvement, advancement and extension of an Optometrist's professional skill and knowledge to the benefit of the patients he or she serves.
2. The Board has approved the following programs or courses.
 - a. Courses or programs approved by the Council on Optometric Practitioner Education (C.O.P.E).
 - b. Those programs or courses that have been specifically approved by the Board under 246 CMR 2.01(4)(d) or those courses or programs offered by a Continuing Education Entity 246 CMR 2.01(4)(e).

(d) Procedure for Approval of a Course or Program:

2. To be considered, a course or program provided must submit an application for approval of a Continuing Education Course. The application must be:

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- received by the Board at least 60 days prior to the date of the course;
 - made in writing;
 - include the following information:
 - the name of the sponsor;
 - a detailed outline of at least one page in length which describes the course content;
 - the speaker's curriculum vitae;
 - the time and location of the course; and
 - provisions for adequate monitoring of attendance, and satisfactory assurances that the course is generally available to all Optometrists.
 - verify that the course is:
 - less than or equal to four hours in length;
 - to be conducted in person; and
 - to be conducted within the state of Massachusetts.
15. The Board may request such other information as it deems appropriate before rendering its decision.

(cc) Approval as an Continuing Education Entity.

1. An entity may seek approval from the Board to become a Continuing Education Entity. No approval is required by the Board to receive continuing education credit for a course or program offered by an Continuing Education Entity if the Continuing Education Entity itself has approved the course or program for continuing education credit.
2. To become a Continuing Education Entity, the entity must submit the following:
 - a. evidence that it is a duly accredited school or college of medicine or optometry;
 - b. a signed agreement that the entity will adhere to 246 CMR and the Board's guidelines for course submissions; and
 - c. information pertaining to the course or program that the entity has approved for continuing education credit including:
 - i. name;
 - ii. sponsor or the course or program;
 - iii. hours of credit;
 - iv. course objective;
 - v. course outline;
 - vi. course format, such as lecture, workshop, panel, rapid fire, or grand rounds;
 - vii. instructor's biography which specifically identifies the speaker's qualifications to speak on the topic;
 - viii. date, time, and course or program location;
 - ix. the provisions used for adequate monitoring of attendance;
 - x. an assurance that the course is available to all Optometrists; and
 - xi. external support that will be used to underwrite the costs of the program or course.
3. A Continuing Education Entity must ensure that any external support used to underwrite the cost of the activity is disclosed in materials distributed to attendees.
4. The Continuing Education Entity must forward a written copy of the approved course to the Board within one month after the entity approves the course or program for continuing education credit.
5. The Board will maintain a list of Continuing Education Entities.

(f) Subsequent Review. All continuing education programs or courses and approved entities may be regularly reviewed by the Board to ensure that the programs or courses adequately and reliably contribute to the professional competency of the Optometrist.

(5) Temporary Retirement. An Optometrist may temporarily retire from practice upon first notifying the Board in writing of such retirement.

(a) **Retirement of Five Years or Less.** When the Optometrist is ready to return to optometric practice, provided the period of retirement is five years or less, he or she may submit a request to the Board for reinstatement. The request for reinstatement shall include:

1. Payment of the lapsed annual License fees;
2. An affidavit as to the facts of his or her temporary retirement from practice;
3. Evidence satisfactory to the Board of having completed 18 hours of continuing education credit in courses or programs approved by the Board or an entity approved by the Board for each year the Optometrist has been in temporary retirement; and
4. Any other information or documentation as requested by the Board.

(b) **Retirement of More Than Five Years.** Where the period of temporary retirement exceeds five years, the Optometrist may submit a request to the Board for reinstatement. The request for reinstatement shall include:

1. Payment of past annual licensing fees;
2. An affidavit as to the facts of the temporary retirement from practice;
3. Evidence satisfactory to the Board of having completed 18 hours of continuing education credit in courses or programs approved by the Board or an entity approved by the Board for each year the Optometrist has been in temporary retirement;
4. Evidence of having successfully sat for a clinical proficiency examination, or satisfactory written proof to the Board that he or she has been licensed in good standing and actively practicing Optometry continuously in another another U.S. or Canadian jurisdiction recognized by the Association of Regulatory Boards of Optometry; and
5. Any other information or documentation as requested by the Board.

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2.02: Certification for Use of Diagnostic Pharmaceutical Agents (DPAs)

(1) Methods of Obtaining a Certificate of Qualification in the Utilization of DPAs. Licensees or applicants for licensure shall show evidence of the completion of the education and testing required by M.G.L.c. 112, s. 68A, or the equivalent. Graduation from an approved school or college of optometry after January 1, 1984 or licensure in another U.S. or Canadian jurisdiction granting them diagnostic authority also meets these requirements.

(a) Optometrists Licensed Since January 1, 1984. Any Optometrist qualified for licensure by examination under M.G.L.c. 112, § 68 and 246 CMR 2.01 subsequent to January 1, 1984, or qualified by meeting the requirements for

licensure by reciprocity under M.G.L. c. 112, § 68 and 246 CMR 2.01 and having originally qualified for licensure in another state subsequent to January 1, 1984, shall be issued a certificate of qualification by the Board upon providing the Board with proof of the date on which the Optometrist was originally qualified for licensure by examination.

(b) Optometrists Licensed Prior to January 1, 1984.

1. Any Optometrist qualified for licensure by examination under M.G.L. c. 112, § 68 and 246 CMR 2.01 prior to January 1, 1984, or qualified for licensure by reciprocity under M.G.L. c. 112, § 68 and 246 CMR 2.01 and having originally qualified for licensure in another state prior to January 1, 1984, shall obtain a certificate of qualification as follows:

Such applicant shall:

- a. Present proof to the Board of completion of the 97 hours of course work prescribed by M.G.L. c. 112, § 68A; and
- b. Pass the examination pursuant to M.G.L. c. 112, § 68A.
2. Applicants who have met the requirements for licensure by reciprocity under M.G.L. c. 112, § 68 who were originally qualified for licensure before January 1, 1984, and have been certified to use DPAs in another state, may obtain DPA certification in the Commonwealth by presenting to the Board:
 - a. Proof of successful completion of the 97 hours of course work prescribed by M.G.L. c. 112, § 68A or its equivalent;
 - b. Official documentation that the applicant has been certified to use DPAs in another state; and
 - c. Proof of passing the examination pursuant to M.G.L. c. 112, § 68A.

In determining equivalency as provided for in 246 CMR 2.02(1)(b)2.a., the Board will take into consideration the clinical experience the applicant has had in the use of DPAs in the state of certification.

(c) The responsibility for all documentation under 246 CMR 2.02 shall be upon the applicant for certification in the use of DPAs.

Proof to the Board of completion of the required course work shall be:

1. In the form of a descriptive curriculum of the required courses from the institution or organization giving the courses; and
2. Accompanied by a transcript indicating the number of hours devoted to each topic and an indication of a passing grade or score.

(2) Requirements for Qualifying Course of Study to Use DPAs. A Qualifying Course of Study to Use DPAs shall be:

(a) Administered by a duly accredited school of Optometry or school of medicine; and

(b) Consist of at least 97 hours of study relating to the topical application to the eye of DPAs. The following areas shall be included:

1. General Pharmacology:

- a. Four hours in biochemistry;
- b. Eight hours in general physiology, two of which shall be in pediatric physiology;
- c. Eight hours in pharmacology, three of which shall be in pediatric pharmacology; and
- d. Ten hours in indications and ocular effects of commonly prescribed drugs, two of which shall be in indications of effects in pediatric situations;

2. Ocular Pharmacology:

- a. Eight hours in ocular pharmacology; and
- b. Eight hours in study of particular topically applied agents, including but not limited to, anesthetics, dyes, mydriatics, cycloplegics, and contact lens solutions;

3. Interpretation and Patient Management:

- a. Six hours each in the study of anterior and posterior segment;
- b. Two hours in pediatric eye diseases;
- c. Two hours in glaucoma; and
- d. One hour in ocular emergency;

4. Cardiopulmonary Resuscitation: four hours, including treatment of anaphylaxis; and

5. Supervised Clinical Practice: 30 hours, including six hours in pediatric practice.

(32) Reporting and Referral.

(a) Any Optometrist certified by the Board to use DPAs who observes a patient's adverse reaction to a DPA shall report said observation and comment thereon to the Board as required by M.G.L. c. 112, s. 66A.

(b) If, during the course of examining a patient, an Optometrist certified by the Board to use DPAs determines the existence of:

- 1. ocular pressure greater than 24 mmHg;
- 2. any unexplained loss of visual field;

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3. _____ a failure on the part of the individual being examined to achieve 20/40 or better corrected vision in each eye; or

4. _____ signs of disease;

the Optometrist shall refer the patient to a licensed physician, unless such condition has been previously evaluated by a physician or unless the Optometrist reports in writing that such referral is not warranted and documents the reasons therefore on the records of such patient.

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2.03: Certification for Use of Therapeutic Pharmaceutical Agents (TPAs)

(1) Methods of Obtaining Certification for Use of TPA. Licensees or applicants for licensure shall show evidence of the completion of the education and testing required by M.G.L. c. 112, s. 68B, or the equivalent. Graduation from an approved school or college of optometry after January 1, 1994 or licensure in another U.S. or Canadian jurisdiction granting therapeutic authority also meets these requirements.

(a) Optometrists Originally Licensed by Examination in Massachusetts after January 1, 1994. Any Optometrist whose first License to practice Optometry was obtained in Massachusetts by examination pursuant to M.G.L. c. 112, § 68 and 246 CMR 2.01(1)(a) after January 1, 1994 shall be issued a certificate of qualification to use TPAs if he or she submits to the Board satisfactory written proof of the date on which he or she received his or her original licensure to practice Optometry in Massachusetts.

(b) Optometrists Originally Licensed in Other States by Examination after January 1, 1994 and Licensed in Massachusetts by Reciprocity. Any Optometrist whose first license to practice Optometry was obtained by examination in a state other than Massachusetts after January 1, 1994, and who subsequently obtained a License in Massachusetts by reciprocity pursuant to M.G.L. c. 112, § 68 and 246 CMR 2.01(1)(b), shall be issued a certificate of qualification to use TPAs if he or she submits to the Board satisfactory written proof of the date on which he or she was issued his or her first license to practice by that other state.

(c) Optometrists Originally Licensed in Massachusetts by Examination Prior to January 1, 1994 And Who Do Not Possess TPA Certification in Any State. Any Optometrist whose first License to practice Optometry was obtained in Massachusetts by examination pursuant to M.G.L. c. 112, § 68 and 246 CMR 2.01(1)(a) prior to January 1, 1994, and who has not yet obtained authorization to use TPAs in any state, shall be issued a certificate of qualification to use TPAs in Massachusetts if he or she submits to the Board all of the following:

1. _____ Satisfactory written proof that he or she is currently certified by the Board for the use of TPAs in Massachusetts; and

2. Satisfactory written proof that he or she has:

- a. Completed a Qualifying Course of Didactic TPA study which meets the requirements of 246 CMR 2.03(2), which includes the requirements that the course be 90 hours or more and has been approved by the Board;
- b. Passed a Qualifying Examination in the Use of TPAs which has been approved by the Board; and
- c. Completed a supervised course of clinical TPA practice which meets the requirements of 246 CMR 2.03(3), which includes the requirements that the course be 30 hours or more and has been approved by the Board.

Proof of an applicant's completion of the required qualifying course of didactic TPA study and the required supervised course of clinical TPA practice shall be in the form of a transcript, affidavit or certificate issued by the school of Optometry or school of medicine administering the course indicating the number of hours of instruction devoted to each topic and an indication that the applicant received a passing grade or score.

(d) Optometrists Originally Licensed in Massachusetts by Examination Prior to January 1, 1994 and Who Possess TPA Certification Issued by Another State. Any Optometrist whose first License to practice Optometry was obtained in Massachusetts by examination pursuant to M.G.L. c. 112, § 68 and 246 CMR 2.01(1)(a) prior to January 1, 1994, and who has subsequently obtained authorization to use TPAs in another state, shall be issued a certificate of qualification to use TPAs in Massachusetts if he or she submits to the Board all of the following:

- 1. Satisfactory written proof that he or she is currently certified by the Board for the use of DPAs in Massachusetts; and
- 2. Satisfactory written proof that he or she possesses a current, valid certificate of qualification to use TPAs issued by another state where the requirements for that certificate of qualification are equivalent to, or exceed, the requirements of 246 CMR 2.03(1)(c)2. Where the applicant holds a current, valid certificate of qualification to use TPAs issued by another state, but the requirements for issuance of that TPA certification are not equivalent to the requirements of 246 CMR 2.03(1)(c)2, the applicant shall also submit satisfactory written proof that he or she has completed additional didactic instruction in the use of TPAs, completed additional supervised clinical TPA practice, and/or passed a qualifying examination approved by the Board, in the manner and to the extent necessary to meet the requirements of 246 CMR 2.03(1)(c)2.

(e) Optometrists Originally Licensed in Other States by Examination Prior to January 1, 1994, Subsequently Licensed in Massachusetts, and Who Are Not Authorized to Use TPAs in Any State. Any Optometrist whose first license to practice Optometry was obtained by examination in a state other than Massachusetts prior to January 1, 1994, who was subsequently obtained a License in Massachusetts pursuant to M.G.L. c. 112, § 68 and 246 CMR 2.01(1)(b), and who has not yet obtained authorization to use TPAs in any state, shall be issued a certificate of

qualification to use TPAs in Massachusetts if he or she submits to the Board evidence that he or she has met the requirements under 246 CMR 2.03(1)(c):

(f) Optometrists Originally Licensed in Other States by Examination Prior to January 1, 1994, Subsequently Licensed in Massachusetts, and Who Possess TPA Certification Issued by Another State. Any Optometrist whose first license to practice Optometry was obtained by examination in a state other than Massachusetts prior to January 1, 1994, and who was subsequently obtained a License in Massachusetts pursuant to M.G.L. c. 112, § 68 and 246 CMR 2.01(f)(b), and who holds a certificate of qualification to use TPAs issued by another state, shall be issued a certificate of qualification to use TPAs in Massachusetts if he or she submits to the Board evidence that he or she has met the requirements of 246 CMR 2.03(1)(d).

(2) Requirements for Approval of a Qualifying Course of Didactic TPA Study. A Qualifying Course of Didactic TPA study shall be approved by the Board only if it meets all of the following requirements:

(a) The course is administered by a duly accredited School of Optometry or school of medicine;

(b) The course consists of at least 90 hours of classroom instruction in the appropriate use of TPAs for the diagnosis, prevention, correction, management and/or treatment of abnormal ocular conditions or diseases, including:

1. Not less than 24 hours of classroom instruction in physiology and pharmacology;

2. Not less than 24 hours of classroom instruction in diagnosis, correction, prevention, management and/or treatment of anterior segment diseases or conditions; and

3. Not less than 24 hours of classroom instruction in diagnosis, correction, prevention, management and/or treatment of posterior segment diseases or conditions.

(3) Requirements for Approval of a Supervised Course of Clinical TPA Practice. A supervised course of clinical TPA practice shall be approved by the Board only if it meets the requirements in 246 CMR 2.03(3)(a) and

(b):

(a) The course includes 30 hours of supervised clinical practice in the use of TPAs, wherein six hours are in pediatric practice; and

(b) The course is administered by a duly accredited School of Optometry or school of medicine.

(4) Other Requirements for the use of TPA. Optometrists who are certified by the Board in the use of TPA agents must comply with the statutes and the Massachusetts Department of Public Health regulations governing the distribution of controlled substances, including the registration, written prescription, and documentation requirements under 105 CMR 700.00: *Implementation of M.G.L. c. 94C.*

(5) Restrictions on Use of TPAs. Nothing in M.G.L. c. 112, §§ 66 through 73B or 246 CMR 1.00 *et seq.* shall be construed as authorizing any Optometrist to:

(a) Use any TPA which is listed, pursuant to Title 21, section 812 of the United States Code or M.G.L. c. 94C, as a controlled substance in Schedules II through V;

(b) Use any pharmaceutical agent which is administered by means of subdermal injection, intramuscular injection, intravenous injection, subcutaneous injection or retrobulbar injection;

(c) Use any pharmaceutical agent for the specific treatment of systemic disease; or

(d) Perform any invasive surgical procedure.

(6) Mandatory Referral of Patients to Physicians or Other Qualified Providers. If, during the course of examining or treating a patient with the aid of a diagnostic or TPA, an Optometrist, in the reasonable exercise of his or her professional judgment, determines the existence of signs of previously unevaluated disease which would require treatment which is not within the scope of optometric practice as defined in M.G.L. c. 112, § 66, that Optometrist shall refer the patient to a licensed physician or other qualified health care practitioner for appropriate evaluation and/or treatment.

246 CMR 3.00: Practice of Optometry; Disciplinary Actions

3.01: Minimum Procedures for Vision Analysis and Contact Lens Evaluation

(1) Minimum Procedures for Vision Analysis. Except when sound professional judgment dictates otherwise, an examination for vision analysis 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) Measurements of the curvature of the cornea;

(f) An objective refractive measurement of each eye;

(g) An evaluation of the extraocular muscle function, including motility studies and binocular status;

(h) An examination of the peripheral fields;

(i) Measurements of intraocular pressure; and

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(j) 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;

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(2) Minimum Procedures for Contact Lens Evaluations:

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(a) Initial Evaluations. In the initial diagnosis, treatment and management of a contact lens patient 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 vision analysis, as set forth in 246 CMR 3.01(1);

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2. A biomicroscopic examination of the cornea, the palpebral and bulbar conjunctiva, the tear film and related external adnexa;

3. Administration of adjuncts, including diagnostic stains if indicated; and

4. 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;

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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 ranges;

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 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. 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 office visit, and the results of all procedures performed at each such examination or patient procedure office visit, including but not limited to all procedures required by 246 CMR 3.01(1);

(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 diagnostic or TPAs administered to the patient's eye(s) during the course of any patient encounter vision analysis, contact lens evaluation or other examination;

(e) Any and all ophthalmic lens and/or contact lens prescriptions written or developed for the patient;

(f) Any and all information concerning prescriptions for TPAs written for the patient; and

(g) 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, at a reasonable time during his or her regular business hours.

(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.

(d) An Optometrist may charge a patient a reasonable fee for the reproduction of said case record but such fees shall not exceed the actual costs of reproducing the record in question.

(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 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;
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;
5. The lens material, if clinically significant;
6. The interpupillary measurement for distance and/or near, if applicable;
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.

(a) An Optometrist shall furnish a copy of a patient's prescription for ophthalmic lenses or spectacle eyeglasses as required by C.F.R., Title 16, Part 456, Ophthalmic Practice Rules to the patient to whom that prescription pertains, or to said patient's authorized representative, upon request, provided that said prescription has not expired.

(b) An Optometrist shall not require a patient to sign any waiver or release from liability as a condition for obtaining a copy of said prescription.

(c) An Optometrist shall not impose any fee or charge for the reproduction or release of said prescription in excess of the actual costs of reproducing said prescription. However, an Optometrist may properly charge a reasonable fee for verifying whether a prescription furnished by another ophthalmic provider has been filled properly.

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(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.

(en) 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~~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.

(a) ~~An Optometrist shall furnish a copy of or verify a patient's prescription for contact lenses as required by U.S.C., Title 15, Chapter 102, §§7601-7610; the Fairness to Contact Lens Consumer Act Complete Prescription Request.~~ Upon the request of a patient, or the patient's authorized representative, an Optometrist shall furnish a copy of the prescription for contact lenses, which includes the information documented pursuant to 246 CMR 3.02(6) and which has been prepared for that patient, provided that said prescription has not expired.

(b) Incomplete Prescription Request.

1. In the event that a patient, or the patient's authorized representative, requests a copy of a prescription for contact lenses for that patient before said prescription is complete under 246 CMR 3.02(6)(e), the Optometrist shall furnish a copy of any and all information specified in 246 CMR 3.02(6)(a) or 246 CMR 3.02(6)(b), whichever applies, which has been obtained as of the date of the patient's request.

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2. In such event, the Optometrist shall note, in writing, that the development of a prescription for contact lenses for the patient in question is not yet complete.

3. Any failure or refusal to furnish all of the information required by 246 CMR 3.02(7)(b)1. or 246 CMR 3.02(7)(b)2. shall be supported by a properly documented and sufficient clinical rationale.

(c) Waiver Prohibited. An Optometrist shall not require a patient to sign any release or waiver of liability as a condition for obtaining any of the information specified in 246 CMR 3.02(6)(a) or 246 CMR 3.02(6)(b).

(d) Fees for Response. An Optometrist shall not impose any fee or charge for the reproduction or release of any information specified in 246 CMR 3.02(6)(a) or 246 CMR 3.02(6)(b) which is in excess of the actual costs of reproducing said information. However, an Optometrist may properly charge a reasonable fee for verifying whether a prescription for contact lenses furnished by another ophthalmic provider has been filled properly.

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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.

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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 practices;

(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 Person who is not duly licensed to practice Optometry in exchange for the referral of a patient.

(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 "cap and steer" 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.

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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 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.

(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.

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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 all of the necessary equipment for services rendered, at a minimum, all of the following equipment, which shall be in proper working order:

(a) A business telephone number;

(b) A refractor, or its equivalent;

(c) A trial frame and lens set;

(d) A keratometer or ophthalmometer, or other suitable instrument for measuring the radius of curvature of the cornea;

(e) An ophthalmoscope;

(f) A retinoscope;

(g) A lensometer, or other suitable instrument for measuring the power of ophthalmic and contact lenses;

(h) A lens clock or other suitable instrument for measuring the curvature of the surface of ophthalmic lenses;

(i) Long callipers or other suitable instruments for measuring the thickness of ophthalmic lenses;

(j) Projected distance or direct reading chart(s);

(k) A near-reading chart;

(l) A tonometer or other suitable instrument for measuring intraocular pressure;

(m) A slit lamp biomicroscope or other suitable equivalent instrument for magnified inspection of the anterior segment of the human eye;

(n) A visual field testing device which will measure a minimum of 30° of central field;

(o) A suitable stereo vision testing device;

(p) A color vision testing device of Ishihara type or equivalent type; 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 with reasonable notice without prior notice, for the purpose of verifying that the office is

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clean and sanitary, that the office has all of the equipment required by CMR 3.05(1), and that patient records are being maintained as required by 246 CMR 3.02.

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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.

(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.

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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

(e) John Doe, Optometric Physician

(f) Doctor John Doe, Optometric Physician

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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 use the term "succeeding" or "successor to" in connection with the name of the Optometrist whom he or she is succeeding, and shall also include a term qualifying the status of the former Optometrist, such as "retired", "deceased", or "the former practice of".
- (3) The terms "succeeding" or "successor to" and any qualifying terms shall be clearly visible wherever such terms are used. A sign indicating that the patient records of the former Optometrist are available at the successor's office shall include a term qualifying the status of the former Optometrist as set forth in 246 CMR 3.08(2).

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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 verify all prescription materials prior to their dispensing.~~
- (3) Prior to the dispensing of contact lenses, the patient shall be instructed as to lens handling, including insertion and removal, lens care, and hygiene.

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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.

(c) Display of Optometric Practice. The Optometrist shall cause to be placed or kept in a conspicuous place at each location where the Optometrist renders services, words of proper abbreviation or intelligible lettering clearly denoting that the Optometrist is engaged in the practice of Optometry.

(3) No Optometrist shall utilize, or represent to the public that he or she is qualified to utilize, diagnostic or TPAs unless he or she has been issued a certificate of qualification by the Board.

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3.11: Advertising

(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 940 CMR 6.00: *Retail Advertising*.

(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) An 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 an eye examination or other 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 print 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.

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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.

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3.13: Investigations Request for Response

If the Board or its duly authorized agent determines that a formal written complaint has merit, the Board or its duly authorized agent may request that the Respondent who is the subject of the complaint provide a response to the complaint. A Respondent may respond to a request for response either personally or through an attorney. A response must address the substantive allegations set forth in the complaint or request for response and be provided in writing and in a timely manner in accordance with such request.

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3.14: Responsibility for Acts and Omissions of Employees

An Optometrist may delegate to employed ancillary support staff functions that do not require independent medical judgment. An Optometrist 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.

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3.15: Board Notification of Change in Name or Address

The Optometrist shall notify the Board of any change in his/her name, home address, or business address for principal and branch locations. Such notification shall be in writing and shall be submitted within 30 days of the change in name or address.

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3.16: Grounds for Disciplinary Action

(I) The Board may, by majority vote after a hearing conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00, *et seq.*, take disciplinary action against any Optometrist who holds a License issued by the Board pursuant to 246 CMR 2.00 *et seq.* 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 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;

(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 3.13, 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.