



NEW ENGLAND COLLEGE OF OPTOMETRY

Clifford Scott, OD, MPH
President

June 17, 2015

Michael Hawley, Executive Director
Massachusetts Board of Registration of Optometry
1000 Washington Street, 7th Floor
Boston, Massachusetts 02118

Dear Mr. Hawley:

On behalf of the New England College of Optometry ("NECO"), I am writing to submit comments in connection with the Massachusetts Board of Registration in Optometry's ("the Board's") public outreach meeting relative to potential revisions to 246 CMR 1.00-3.00, the regulations governing the practice of optometry. As this initiative is being guided by Executive Order 562, issued by Governor Baker on March 31, 2015, NECO's recommendations specifically focus on reducing unnecessary regulatory burden. Accordingly, NECO respectfully offers the following comments:

- I. **Rescind unnecessary references to the additional certification programs for Diagnostic Pharmaceutical Agents ("DPAs") and Therapeutic Pharmaceutical Agents ("TPAs") that have become obsolete.** The education of optometrists has evolved over the years so as to fully incorporate courses of study and training in the use of DPAs and TPAs *prior to* initial licensure. DPA and TPA didactics are built into the basic education that optometrists receive while obtaining their Doctor of Optometry degree. The regulations were drafted at a time when DPA and TPA certification was a separate component of licensure. Optometrists who received licensure prior to the statutory changes in 1996 that added the use of DPAs and TPAs to the optometrists' scope of practice were not necessarily trained in the use of DPAs and TPAs prior to licensure. These separate certification programs provided a means by which licensees could obtain the training and certification necessary to use DPAs and TPAs in practice. Now that licensees are trained in the use of DPAs and TPAs during the course of optometry school, neither the Department of Public Health nor the Board separately certifies qualifying courses of study or examinations in the use of DPAs and TPAs. Maintaining these regulations is confusing and unnecessary.

As such, NECO recommends that the Board *rescind* the following obsolete language:

- a. 246 CMR 1.01. In the "Purpose and Authority" section, eliminate the following: "and certification of such optometrists to use diagnostic and Therapeutic Pharmaceutical Agents (TPAs)"; and
- b. 246 CMR 1.02. Definitions of:
 - i. Certificate of Qualification to Use Diagnostic Pharmaceutical Agents (DPAs);
 - ii. Certificate of Qualification to Use TPAs;

- iii. Diagnostic Pharmaceutical Agent ("DPA");
 - iv. Qualifying Course of Study to Use DPAs;
 - v. Qualifying Course of Didactic Therapeutic Pharmaceutical Agent (TPA) Study;
 - vi. Qualifying Examination in the Use of TPAs; and
- c. 246 CMR 2.02(1)(a)-(3); and
 - d. 246 CMR 2.03(1)(a)-(3).

In addition, if the Board determines that it is necessary to clarify and reiterate that the education and testing requirements governing the use of DPAs and TPAs as required by statute still stand, NECO would recommend that the Board *revise* the DPA and TPA Certification sections as follows:

- a. 246 CMR 2.02(1). "Methods of Obtaining a Certificate of Qualification in the Utilization of DPAs". Insert: "Applicants for licensure shall show evidence of the completion of the education and testing required by M.G.L. c. 112, §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 diagnostic authority shall be satisfactory evidence of having met these requirements."
 - b. 246 CMR 2.03(1). "Methods of Obtaining a Certification for Use of TPA". Insert: "Applicants for licensure shall show evidence of the completion of the education and testing required by M.G.L. c. 112, §68B, or the equivalent. Graduation from an approved school or college of optometry after January 1, 1996 or licensure in another U.S. or Canadian jurisdiction granting diagnostic authority shall be satisfactory evidence of having met these requirements."
- II. **Revise references that are no longer accurate in the "Definitions" section.** Organizational entities referenced in the "Definitions" section of the regulations governing the practice of optometry are no longer accurate. Similarly, the standards for use of certain pharmaceutical agents, as written, are inaccurate and redundant. As such, NECO recommends that the Board *revise* the Definitions section as follows:
- a. 246 CMR 1.02. "Optometry School or School of Optometry". "Council on Optometric Education of the American Optometric Association (A.O.A.)" should be changed to the "Accreditation Council of Optometric Education (A.C.O.E.)" to reflect the current name of the accreditation organization for optometry schools; and

- III. **Revise the "Methods of Obtaining a License" for optometrists who are licensed in another state to eliminate overly burdensome requirements and unnecessary competitive disadvantages for educational institutions and providers.** The current regulations do not recognize licensure by endorsement in which the Board would retain the authority to issue a Massachusetts license to an optometrist, who has a license in another state, based on a case-by-case review of the candidate's qualifications. The only way for an experienced optometrist with an out-of-state license to obtain a Massachusetts license is through examination or through a reciprocity agreement, wherein the other state would reciprocally admit a similarly qualified person who has a license in Massachusetts. Unfortunately, because Massachusetts has yet to update the statutory scope of practice for optometrists to include the treatment of glaucoma, the other 49 states have no incentive to enter into reciprocity agreements with Massachusetts. This fact has made license mobility a near impossibility and has proven to have a chilling effect on NECO's ability to recruit top faculty and practitioners nationwide. Until the statutory scope of practice is updated in Massachusetts, licensure based on reciprocity will continue to burden



educational institutions and discourage non-residents to relocate and practice in Massachusetts – without regard to the fact that out-of-state optometrists may meet or exceed the requirements of licensure in the Commonwealth. The limitations imposed by this regulation unduly and adversely impact the ability to recruit top notch educators and health care professionals. To eliminate this unnecessary burden, the Board could simply revise the regulations to provide for a licensure by endorsement option, which would allow the Board to determine on a case-by-case basis whether a particular candidate has qualifications that meet or exceed those requirements for an optometry license in Massachusetts. To that end, NECO recommends that the Board *revise* the regulations as follows:

- a. 246 CMR 2.01(1). “Methods of Obtaining a License”. Insert: “(c) By endorsement based upon the Board’s receipt, review, and approval of evidence satisfactory to the Board, upon a form and in such manner as the Board prescribes, that the person is currently licensed or certified as an optometrist by another state or jurisdiction recognized by the Association of Regulatory Boards of Optometry and that the requirements for such license or certification are the substantial equivalent of the requirements for licensure in the Commonwealth of Massachusetts.”

- IV. **Revise the regulations governing reinstatement of license to remove confusing language, overly burdensome requirements and reflect changes in governing law.** In light of the recent passage of Section 32 of Chapter 236 of the Acts of 2014, the regulations governing reinstatement of an optometry license should reflect that the payment of the lapsed annual License fees is to be capped at two missed cycles. In addition, NECO recommends that the Board consider updating the terminology referring to “Temporary Retirement” to avoid confusion and clarify that this section applies to optometrists who have a license that becomes inactive for one reason or another. Finally, along the same rationale as advanced through Chapter 236 of the Acts of 2014, requiring optometrists to provide evidence of meeting 18 hours of continuing education credit for each year in which the optometrist’s license was inactive is overly burdensome and unnecessary. In order to serve the public safety objective of maintaining continuing education, despite a lapsed license, NECO would recommend that the Board require that optometrists seeking to reactivate their licensure show evidence that he/she completed 18 hours of continuing education in the year preceding the reinstatement. At a minimum, the continuing education requirement for applicants seeking reinstatement of a license should be capped at 36 hours to be consistent with Section 32 of the Chapter 236 of the Acts of 2014. To this end, NECO suggest that the Board *revise* the regulations in this section in the following manner:

- a. 246 CMR 2.01(5)(a)(1) and 246 CMR 2.01(5)(b)(1). Amend the language to insert: “provided that the fee for reinstating a lapsed or expired license shall not be more than the cost of the current renewal fee for two (2) missed renewal cycles;” and
- b. 246 CMR 2.01(5)(a)(3) and 246 CMR 2.01(5)(b)(3). Strike: “for each year the Optometrist has been in temporary retirement” and replace with, “in the year preceding application for reinstatement of license”.

- V. **Rescind provisions of the regulations that are redundant with state or federal statutory requirements.** A number of sections of the optometry regulations redundant or unnecessary because the language is a restatement of the Massachusetts General Laws or is otherwise governed by existing state or federal requirements. Considering that such language is redundant, unnecessary and confusing, NECO recommends that the Board *rescind* and/or *revise* the regulations as follows:



- a. 246 CMR 2.03(6). "Mandatory Referral of Patients to Physicians or Other Qualified Providers". This provision of the regulations is restated in its entirety in M.G.L. c. 112, §66B; the current regulation is unnecessary.
- b. 246 CMR 3.02(2)-(3). "Patient Records; Confidentiality of Records and Patient Access to Records". These regulations are superseded and governed by the federal Health Insurance Portability and Accountability Act of 1996 ("HIPPA"). If these provisions were revised to underscore the application of HIPPA, the patient record requirements would be less confusing; actions required for compliance would be more straightforward.
- c. 246 CMR 3.02(4)(b). "Ophthalmic Lens or Spectacle Eyeglass Prescriptions – Contents". These provisions are unnecessary and duplicative, as the Massachusetts Department of Public Health regulations govern the required contents of a prescription.
- d. 246 CMR 3.02(5)(a)-(c). "Patient Access to Ophthalmic Lens or Spectacle Eyeglass Prescriptions". Federal Ophthalmic Practice Rules govern patient access to such prescriptions, rendering these provisions of the regulations unnecessary. It would suffice to rescind the regulations and state the following in place thereof, "An Optometrist shall furnish a copy of a patient's prescription for ophthalmic lenses or spectacle eyeglasses as required by 16 C.F.R. §456; "Ophthalmic Practice Rules (Eye Glass Rule)".
- e. 246 CMR 3.02(6)(a)-(c). "Contact Lens Prescriptions – Content". These provisions are unnecessary and duplicative, as the Massachusetts Department of Public Health regulations govern the required contents of a prescription.
- f. 246 CMR 3.02(7)(a)-(d). "Access to Contact Lens Prescription Information". The federal Fairness to Contact Lens Consumer Act governs patient access to contact lens prescription information. It would suffice to rescind the regulations and state the following in place thereof, "An Optometrist shall furnish a copy of or verify a patient's prescription for contact lenses as required by 16 C.F.R. §315; Contact Lens Rule".

VI. **Rescind the provisions that detail minimum procedures for practice and patient records, as this level of detail is not necessary to ensure public safety and is inconsistent with care coordination.** The provisions in the optometry regulations that outline the minimum procedures required for vision analysis, for instance, are superfluous. Notably, other areas of medicine and health care do not set specific procedures in regulation to establish a threshold for disciplinary action (i.e. Board of Registration in Medicine and Board of Registration in Podiatry). Further, additional documentation guidelines are set by the Centers for Medicare and Medicaid Services. The activities required to deliver adequate care to a patient are continually evolving as technology, training and education change. Such flexibility is necessary for the profession to be able to adapt to new standards of care delivery in the field. The elements outlined in the regulations do not take into consideration the needs of the patient or the setting in which care is delivered. As such, NECO respectfully recommends that the Board *rescind* the following:

- a. 246 CMR 3.01(1)-(2).
- b. 246 CMR 3.02(1). "Patient Records; Required Contents"

VII. **Revise language that is inconsistent with ethical professional responsibility.** The regulations that govern Employment or Practice Settings aim to prevent "kickbacks" and other financial or compensatory transactions in connection with referral of a patient, but the provision as written, does not appear to prohibit "kickbacks" between licensed optometrists. This language is counterintuitive and inconsistent with ethical standards of practice. As such, NECO recommends that the Board *rescind* certain terminology as follows:



- a. 246 CMR 3.03(4). Remove the reference "who is not duly licensed to practice Optometry" to clarify that this practice is not permissible and add language clarifying that the sale of an optometric practice is not prohibited.

VIII. **Rescind language that is confusing and unnecessary in light of the current practice of optometry.** Over time, the practice of optometry has evolved from the more traditional standalone clinical office setting into a more mobile profession with optometrists working in a variety of health care settings, including community health centers, hospitals, and clinics. Similarly, the equipment required for an optometrist to provide eye care twenty years ago is completely different from the technologies that are available today. Not only are more services available to patients, practice settings have morphed to allow for greater efficiencies in the care delivery system. That being said, the regulations regarding the Principal Office and Branch Offices are no longer necessary. Similarly, the Required Equipment to be maintained in an optometrists' office is severely outdated, leaving these provisions of the regulations unnecessary. Knowing today's health care technology and models of practice, may very well become obsolete in the future, it is more prudent for the regulations to be silent on matters that could become overly burdensome for new and future licensees, as the current regulations have become for licensed optometrists today. As such, NECO recommends that the Board *rescind* and *revise* the provisions as follows:

- a. 246 CMR 3.04(1)(b). Rescind this subsection as unnecessary, confusing and overly burdensome.
- b. 246 CMR 3.04(3)(a)-(d). Rescind these subsections as unnecessary, confusing and overly burdensome.
- c. 246 CMR 3.05(1). Rescind this subsection and the list of equipment and revise as follows, "Each office maintained for the practice of Optometry shall have all of the necessary equipment for services rendered."
- d. 246 CMR 3.12(2)(b). Rescind this subsection as unnecessary, confusing and overly burdensome.

As a final note, I respectfully urge the Board to be mindful that advancing technology increases the potential for telemedicine or other remote practice models that may include certain optometric services which are not being overseen by a qualified, licensed optometrist. With this issue on the horizon, our profession must consider how it will act to protect the public from such operations claiming to provide optometric services. Executive Order 562 provides an ideal opportunity to ensure that the regulations governing the practice of optometry in the Commonwealth are clear, concise and current. However, we must be prepared to address these changes in the practice of optometry today and tomorrow.

On behalf of NECO, our students and faculty, I appreciate your consideration of the aforementioned recommendations. If you have any questions at all, please do not hesitate to contact me.

Sincerely,



Clifford Scott, OD, MPH

