



Association of Regulatory Boards of Optometry, Inc.

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Ms. Christi LeMay
Executive Director
Kentucky Board of Optometric Examiners
100 Consumer Lane
Frankfort, KY 40601

Re: Comments on Kentucky Emergency Administrative Regulation 201 KAR 5:021E

The Association of Regulatory Boards of Optometry (ARBO) is a not-for-profit, 501(c)(3), membership organization whose mission is to represent and assist member licensing agencies in regulating the practice of optometry for the public welfare. ARBO's members consist of the governmentally created boards in the United States, Canada, Australia and New Zealand, that regulate the profession of optometry.

ARBO submits this letter to provide comments on the Kentucky Emergency Administrative Regulation 201 KAR 5:021E. As noted in the public notice, Kentucky statutes authorize the Board of Optometric Examiners (Kentucky Board) to promulgate administrative regulations for the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists. ARBO recognizes the importance of statutory compliance and respects the legislative processes and content of the statutes and regulations designed to regulate the profession in the interest of public protection.

The Emergency Regulation provides a mechanism for a limited number of licensees who were licensed during 2020-2023 without compliance with the statutory requirements, to meet such criteria as part of the license renewal process and imposes restrictions on specific laser procedures until the licensing requirements are met. The Emergency Regulation identifies the examinations that must be passed to qualify for optometric licensure renewal. ARBO has several comments and regulatory concerns regarding the Emergency Regulation.

1. The Use of Alternative Examinations

Section 1, subpart (3) identifies the American Board of Optometry (ABO) Board Certification Examination as one of the acceptable examinations that must be passed to renew their improperly issued licenses. The introduction of the ABO examination provides an option to the National Board of Examiners in Optometry (NBEO) Part III Patient Encounters and Performance Skills (PEPS) Examination. ARBO suggests that multiple issues are at stake and offers the following comments.

- Licensure Validity and Defensibility: The NBEO three-part licensure examination is designed and validated for optometrists to demonstrate the minimum competence to practice optometry in a manner consistent with

industry testing standards. The ABO Exam is a voluntary exam for Board Certification of optometrists and has not been psychometrically validated for use as a high-stakes licensure exam.

- **Consistency of Licensure Standards:** By allowing this limited use of the ABO Examination, the Kentucky Board ignores the decades' long use of the NBEO examination program in Kentucky and across the US and allows select candidates to be licensed without demonstrating the same skills as other Kentucky licensed optometrists. All other optometrists in Kentucky were required to pass the NBEO Part III Exam, yet now the introduction of the ABO treats specific renewal candidates in a manner inconsistent with other licensed optometrists. This disparate treatment likely raises legal concerns that should be addressed via the Kentucky Board's legal counsel.
- **Interjurisdictional Mobility:** The use of alternative examinations by the Kentucky Board destroys the uniformity of the licensure process. Uniformity in testing using licensure examinations that are validated nationwide promotes mobility and portability while respecting states' rights to govern. Uniform competence examinations are ubiquitous in the health professions in promoting mobility and portability. This lack of uniformity may undermine the legal defensibility of the Kentucky Board's standards if challenged by future applicants or licensees.
- **Concerns and Confusion:** Many of ARBO's members have expressed concerns about the Kentucky Board's decision to allow alternate examinations in addition to the NBEO Exam universally utilized in the US States, Territories, and the District of Columbia. These decisions will create unnecessary confusion among licensure candidates and add significant barriers for licensees who may seek licensure in another state. Deviation from the nationally recognized licensure examination requirement also places an undue burden on other State Regulatory Boards to determine equivalency where none may exist.

2. **Clarity on Noncompliance Consequences for 2027 Renewal**

To ensure due process and administrative clarity, ARBO recommends that the regulation explicitly define the status of a license should a practitioner fail to meet these requirements by the 2027 deadline. At a minimum, the communication should include:

- The process by which examination results will be reviewed and verified;
- The specific actions that will be taken for non-compliance; and
- The timeline for the restoration of full privileges (including laser procedures).

ARBO recognizes the complexities involved in addressing the directives of OAG 25-13. However, public protection is best served when regulatory requirements are uniform and validated. ARBO submits these comments in good faith and with respect for the legislative process in Kentucky. ARBO is available for consultation and clarification of this submission. Please reach out to Lisa Fennell, ARBO Chief Executive Officer, at LFennell@arbo.org with any questions.

Best Regards,



Lisa Fennell, ARBO Chief Executive Officer

On behalf of the ARBO Board of Directors:

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