
NBEO® Response to Kentucky Optometric Board Emergency Regulation

Summary

The Kentucky Board of Optometric Examiners (KBOE) granted at least 21 optometry licenses to graduates who had not passed all required parts of the National Board of Examiners in Optometry (NBEO®) licensing exam, both during and after the expiration of the COVID-19 pandemic state of emergency (2020–2023). In October 2025, the Kentucky Attorney General found that the KBOE did not have the legal authority to waive its regulations and that these waivers were "null, void, and unenforceable" (OAG 25-13). The KBOE then issued an emergency regulation (201 KAR 5:020E) on December 31, 2025, purporting to address this problem by the end of 2026—but NBEO has identified multiple grave deficiencies with the emergency regulation.

Four Critical Deficiencies

1. Violation of Open Meetings Act

- The regulation was invalidly adopted without public notice, discussion, or transparency.
- The KBOE met in closed session to discuss "proposed litigation" but included no agenda item about the emergency regulation.
- No public meeting included discussion of the regulation's development.
- This violates Kentucky's statutory requirements for public agencies.

2. Misuse of Emergency Regulations

- Kentucky law prohibits using emergency regulations to correct a prior failure by the agency to follow the normal notice and comment rulemaking process.
- The KBOE failed to follow proper procedures when originally granting waivers.
- Fixing this failure requires standard rulemaking, not emergency regulations.
- The KBOE cannot use an emergency declaration to avoid the process it should have followed initially.

3. Failure to Protect Public Health

- The regulation permits invalidly licensed and potentially unqualified optometrists to continue practicing until December 31, 2026.

- Kentucky optometrists have the broadest scope of practice in the U.S.—they perform surgeries and prescribe controlled medications.
- Patients have no way to know which optometrists received waivers and may lack basic competency.
- The regulation does not require these individuals to ever pass the NBEO Part III Patient Encounters and Performance Skills (“PEPS”) exam entirely, that every other licensed optometrist in Kentucky must pass.
- Instead, these individuals – and only these individuals – could pass a non-existent “Kentucky Clinical Competency Test” with a \$1,000 development budget—compared to NBEO’s \$9.5 Million exam development and administration costs in 2024, 200+ subject matter experts (including some from Kentucky) and staff including a Ph.D. psychometrician, 15 clinical examinations staff, and approximately 80 standardized patients.

4. Regulation Expires Before Taking Effect

- The emergency regulation expires 270 days after filing (September 8, 2026), but compliance is not required until December 31, 2026.
- The regulation creates requirements for "license renewal for 2027," but the Attorney General found these licenses "null, void, and unenforceable"—meaning practitioners have no valid license to renew.

NBEO's Position

- NBEO will ask the Administrative Regulation Review Subcommittee to find the regulation deficient and will request the KBOE withdraw it.
- NBEO will participate in the KBOE's scheduled February 27, 2026 public hearing to oppose adoption.

Bottom Line: The emergency regulation fails to protect Kentucky patients and instead tries to legitimize potentially unqualified practitioners through procedural shortcuts and a hastily designed, non-existent exam, with no transparency.

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