

DEPARTMENT OF REGULATORY AGENCIES

State Board of Optometry

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

4 CCR 728-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1.1 AUTHORITY

This regulation is adopted pursuant to the authority in sections 12-20-204 and 12-275-108(1)(b), C.R.S., and is intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 et seq. (the "APA"), C.R.S., and the Optometry Practice Act, sections 12-275-101 et seq., C.R.S.

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1.2 SCOPE AND PURPOSE

This regulation shall govern the process to become an optometrist and the practice of optometry in Colorado.

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1.3 APPLICABILITY

The provisions of this section shall be applicable to the practice of optometry in Colorado.

1.4 RENTAL OF SPACE:

This Rule is promulgated pursuant to sections 12-20-204, 12-275-104, and 12-275-108(1)(b), C.R.S.

If an optometrist rents space in which to practice optometry, the following requirements must be met:

- A. The practice must be owned by the optometrist and all clinical decisions must be under his/her exclusive control.
- B. The prescription files and all patient records must be the sole property of the optometrist and free from any involvement with any unlicensed person.
- C. The leased space must be clearly defined and separate from space occupied by other occupants of the premises, and devoted exclusively to the practice of optometry while the optometrist is on the premises and also during the posted working hours of the optometrist. This provision does not apply to the sharing of space with another licensed healthcare professional so long as all optometric clinical decisions are made solely by the optometrist.
- D. No phase of the optometrist's practice shall be conducted as a department, branch or concession of any commercial or mercantile establishment, and there shall be no legend or signs such as "Optical Department," "Optometry Department," or others of similar import, displayed on any part of the premises or in any advertisement.

- E. The optometrist shall not permit his/her name or his/her practice to be directly or indirectly used by the commercial or mercantile establishment in any advertising, displays, signs, or in any other manner.
- F. All credit accounts for patients shall be established initially with the optometrist and not the credit department of the commercial or mercantile establishment, but this shall not preclude the assigning or discounting of accounts receivable.
- G. Listings in telephone directories and telephone service and number shall be in the name of the licensed optometrist or in the name under which he/she practices and not under the name of any lessor, or any commercial or mercantile establishment.

1.52 EXAMINATION.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-112, and 12-275-108(1)(b), C.R.S.

Colorado requires the national exam and any other area of contemporary optometry the Board believes appropriate to ensure public protection.

1.63 DISPLAY OF LICENSE.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-117, and 12-275-108(1)(b), C.R.S.

For the purpose of section 12-275-117, C.R.S., "office" shall be any area where the license is conspicuously displayed and where the license can be readily observed by the patient.

The reason for this regulation is to provide that the certificate be displayed in a portion of the office where optometry is actually practiced.

1.74 DISPLAY OF TITLE.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-106, and 12-275-108(1)(b), C.R.S.

Only optometrists licensed and practicing optometry in Colorado may display their name and title on the entrance to the office where they practice.

1.85 USE OF TITLE.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-106, and 12-275-108(1)(b), C.R.S.

An optometrist may use the title "Doctor," or "Dr.," before his/her name, but only if his/her name is followed by the word, "Optometrist," or the letters, "OD".

1.96 ADVERTISING.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-120(1)(w)(l), and 12-275-108(1)(b), C.R.S.

An optometrist shall not use, participate in, or permit the use of any form of public communications having reference, directly or indirectly, to his or her professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to:

- A. Contains a misrepresentation of fact; or

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- B. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
- C. Represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will, in fact, be charged; or
- D. Contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

~~1.107 ASSUMPTION OF PRACTICE OF A RETIRED OR DECEASED OPTOMETRIST (REPEALED)~~

~~1.118 RENEWALS, REINSTATEMENTS AND REACTIVATIONS.~~

~~This Rule is promulgated pursuant to sections 12-20-202, 12-20-203, 12-20-204, and 12-275-108(1)(b), C.R.S.~~

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A. RENEWALS.

1. The Board may prescribe renewal requirements, including compliance with the required continuing education.
2. Pursuant to section 12-20-202(1)(e), C.R.S., a licensee shall have a sixty-day grace period after the expiration of his or her license to renew such license without the imposition of a disciplinary sanction for practicing on an expired license.
3. Pursuant to section 24-79.5-102(3), C.R.S., a delinquency fee shall be charged for late renewals.
4. A licensee who does not renew his or her license within the sixty-day grace period shall be treated as having an expired license and shall be ineligible to practice until such license is reinstated. If the licensee practiced with an expired license the Board may impose disciplinary sanctions for such unlicensed practice.
5. Each optometrist applying for renewal, unless he or she qualifies for an exemption, is required to fulfill the substance use prevention training requirements set forth in Rule 1.22.

B. REINSTATEMENT/REACTIVATION REQUIREMENTS FOR EXPIRED OR INACTIVE LICENSES.

1. In order to reinstate or reactivate a license back into active status, each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he or she:
 - a. Accurately and completely listed any acts that would be grounds for disciplinary action under the Optometry Practice Law and/or Board Rule and provided a written explanation of the circumstances of such act, including supporting documentation, if required, since last renewing his or her license to an active or inactive status in this state.
 - b. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed since last renewing his or her license to an active or inactive status in this state.

2. If the license has been expired or inactive for less than two years, then the applicant is required to submit proof of fulfilling the requirements of Rule 1.21 for the two-year period in which his or her license was last active.
3. If the license has been expired or inactive for two years or longer:
 - a. The applicant is required to submit proof of fulfilling the requirements of Rule 1.21 for the two-year period in which the license was expired or inactive immediately preceding the date of application; and
 - b. The applicant shall demonstrate to the Board that he or she is competent to practice as an optometrist. The Board shall require the following as a demonstration of competency to practice:
 - (1) Documentation of active practice in another state for the two years immediately preceding the filing of the reinstatement application; or
 - (2) Successful completions of courses approved by the Board; or
 - (3) Any other professional standard or measure of continued competency as determined by the Board, which may include successful completion of the national exam.
4. An applicant may petition the Board for reinstatement/reactivation with a waiver of the competency requirements in this Rule, upon demonstration of hardship. The Board, at its discretion, may grant such waiver and reinstatement so long as the public is protected.
5. Each optometrist applying for reinstatement or reactivation, unless he or she qualifies for an exemption, is required to fulfill the substance use prevention training requirements set forth in Rule 1.22.

1.129 RECORDS: RETENTION, MAINTENANCE, DISPOSITION, AND RELEASE

This Rule is promulgated pursuant to sections 12-20-204, -12-275-108(1)(b), ~~(Sections and~~ 12-275-119, C.R.S. & 12-275-108(1)(b), C.R.S.)

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- A. General.
 1. Except as provided in subsection (F) of this Rule, every licensed optometrist shall create and shall maintain records on their patient(s).
 2. Every optometrist shall retain and maintain a patient record as defined in subsection (C) of this Rule, on the patient(s) for a period of seven years, commencing on the termination of optometric services or on the date of last contact with the patient(s), whichever is later. Records for minor patient(s) shall be kept for a minimum of seven years after the patient reaches the age of majority (age eighteen).
 3. Every licensed optometrist shall retain and maintain a prescription drug log as defined in subsection (D) of this Rule.
- B. Upon Conclusion of an Eye Exam Where A Valid Prescription Has Been Determined and/or Finalized. Regardless of whether the patient requests it or not, it is required that the optometrist immediately provide a(n):
 1. Eyeglass prescription.

2. Contact lens prescription, as defined in subsection (C)(11) of this Rule, at the conclusion of a lens fitting.
- C. Patient Record. Every licensed optometrist shall create and shall maintain, as applicable to the optometric services rendered, a record for the patient(s) containing the following information:
1. Name of treating optometrist;
 2. Patient's identifying data to include name, address, telephone number, gender, date of birth, and, if applicable, the name of their legal guardian (guardian) or designated legal representative (representative).
 3. Dates of service including, but not limited to the date of each contact with patient, the date on which services began, and the date of last contact with patient;
 4. When the licensed optometrist prescribes, dispenses, and/or administers any prescription drug, the following shall be recorded on the patient's record:
 - a. Patient name;
 - b. Name of authorized practitioner-dispensing, prescribing, and /or administering drug(s);
 - c. Diagnosis being treated or services performed;
 - d. Date dispensed, prescribed, and/or administered;
 - e. Name and strength of drug dispensed, prescribed, and/or administered;
 - f. Quantity dispensed, prescribed, and/or administered;
 - g. Directions for use;
 - h. Number of refills authorized;
 5. When the licensed optometrist prescribes any prescription drug, the following shall be recorded on the prescription.
 - a. All prescriptions shall bear:
 - (1) The full name, date of birth, and address of the patient;
 - (2) The drug name, strength, dosage form, and quantity prescribed,
 - (3) Directions for use; and
 - (4) Number of refills authorized, if any.
 - (5) Be dated as of, and signed on, the day when issued all prescriptions must comply with the requirements mandated by the Drug Enforcement Agency.
 - b. All prescriptions for controlled substances shall additionally:

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- (1) Bear the name, address, Drug Enforcement Administration registration number, and signature of the licensed optometrist.

A practitioner may sign a prescription in the same manner as she/he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewritten and shall be manually signed by the practitioner. The prescriptions may be prepared by the office staff or agent for the signature of the licensed optometrist, but the prescribing optometrist is responsible in case the prescription does not conform in all essential respects to the law and regulations. The use of a rubber-stamped, pre-printed, or pre-signed signature on prescription pads is not acceptable.

6. Fees;
7. Any release of information;
8. The records must be prepared in a manner that allows any subsequent provider or any authorized regulatory body to yield a comprehensive conclusion as to what occurred;
9. Name of any test administered, each date on which the test was administered, and, if applicable, the name(s) of the person(s) administering the test;
10. Eyeglass prescription (if applicable);
 - a. An electronic signature on an eyeglass prescription shall be considered to have the same force and effect as an original signature.
11. Contact lens prescription (if applicable);
 - a. A valid, written contact lens prescription is an order by an optometrist to supply contact lens medical devices to a patient. It shall contain all of the following information;
 - (1) The patient's full name;
 - (2) The date of the examination/lens fitting;
 - (3) All usual and customary specifications, and manufacturer's name and manufacturer's trade or brand name necessary for an exact replacement contact lens;
 - (4) The optometrist's signature, name, license number, address and phone number;
 - (5) A reasonable limit on refills; and
 - (6) An expiration date of one year from the issue date of the prescription, unless a shorter expiration date is warranted based on the medical judgment of the prescribing optometrist with respect to the ocular health of the patient.
 - b. An electronic signature on a contact lens prescription shall be considered to have the same force and effect as an original signature.
12. Items such as photographs, digital images, corneal topographies, etc.

13. Information on each referral made to and each consultation with another optometrist or other health care provider. This information shall include the date of referral or consultation, the name of the person to whom the patient was referred, the name of the person with whom consultation was sought; the outcome (if known) of the referral, and the outcome (if known) of the consultation;
14. Records of exams, notes, correspondence, audio or visual recordings, electronic data storage, and other documents considered professional information for use in optometry;
15. If applicable, any original patient records from a previous optometrist(s); and
16. A final closing statement (if services have been discontinued), if applicable.

If changes, corrections, deletions, or other modifications are made to any portion of a patient record, the person must note in the record date, nature, reason, correction, deletion, or other modification, and her/his name.

D. Prescription Drug Log. Every licensed optometrist shall keep a complete and accurate inventory of all stocks of controlled substances on hand in her/his office as may be required by these Rules or any other state or federal law or rule pertaining to such drugs. Such records shall be maintained on a current basis and shall be complete and accurate for all drugs which the licensed optometrist receives, dispenses, distributes, prescribes or otherwise disposes of in any other manner.

1. Records and inventories of controlled substances shall be deemed to be "complete" only if each individual record and inventory contains all required information regarding each specific transaction, and if the set of records and inventories contains all information and documents required to be kept by state and federal laws and rules.
2. A record or inventory shall be deemed to be "accurate" only if it is a complete, true and factual statement regarding or reflecting each specific transaction. A set of records or inventories shall be deemed to be "accurate" only if they are complete, and, when considered as a whole, they demonstrate that the controlled substances and/or the records and inventories pertaining there to have been handled in compliance with all applicable laws or rules and that all such controlled substances are properly accounted for.
3. For the purposes of these Rules, records and inventories shall be "readily retrievable" if they meet the following requirements:
 - a. The following records shall be maintained on the premises at all times and shall be made available for inspection by the Board immediately upon request.
 - (1) All DEA-222 forms executed during the two years preceding the request;
 - (2) All inventories of controlled substances required to be taken during the two years preceding the request;
 - (3) All records of dispensing, receipt (invoices for drugs received and drugs credited), distribution, loss, surrender, or disposal in any other manner of prescription drugs and controlled substances during the two years preceding the request;
 - b. The following records shall be made available within forty-eight hours or two business days, whichever is longer, on request by the Board:

- (1) All unexecuted DEA-222 forms.
- c. In the case of a request by the Board for specific records:
 - (1) Records shall be maintained in such a manner as to permit the Board to retrieve specific records immediately.
 - (2) If the Board determines the records are not maintained in the manner specified in (1) above, the Board may give the licensed optometrist or their staff a list of the items to be retrieved. The requested records shall be made available to the Board within forty-eight hours of the request.
4. Inventories of controlled substances. Any inventory of controlled substances shall comply with the following:
 - a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken. The inventory shall be maintained in written, typewritten or printed form on the premises. The inventory for schedule II drugs shall be separated from the inventory of schedule III, IV, and V drugs. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the optometrist. However, the inventory shall exclude any drug that has been dispensed pursuant to a lawful order but which has not yet been delivered or picked up.
 - b. The licensed optometrist shall maintain a record of any controlled substance(s) lost, destroyed, or stolen, and the record shall include the schedule, name, strength and quantity of such controlled substance(s) and the date of such loss, destruction or theft. In addition, the licensed optometrist must report such loss or theft to the Drug Enforcement Administration District Office within one business day of discovery of such loss or theft.
 - c. The inventory shall be taken either as of opening of business or as of the close of business on the inventory date and this shall be recorded on the inventory.
 - d. After the initial inventory is taken, the licensed optometrist shall take a new inventory of all stocks of controlled substances on hand at least quarterly (every three months).
 - e. On the effective date of a law or rule on which a previously non-scheduled drug is added to any schedule of controlled substances, every optometry office or optometrist that possesses that drug shall take an inventory of all stocks of the drug on hand. Thereafter, that drug shall be included in each inventory made by the optometry office or optometrist.
 - f. The following information shall be recorded on the inventory:
 - (1) The name of the drug;
 - (2) Each finished form of the drug (strength and dosage form);
 - (3) The number of units or volume of each finished form; and
 - (4) All outdated controlled substances.

- g. In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the licensed optometrist shall do as follows:
- (1) If the drug is a schedule II drug, an exact count of the contents shall be made.
 - (2) If the substance is listed in schedule III, IV, or V, an estimated count of the measure of the contents may be made, unless the container holds more than 1000 tablets or capsules, in which case an exact count of the contents must be made.
 - (3) All controlled substance inventories shall be retained at the office, by the licensed optometrist, for at least two years from the date of such inventory.
- h. At minimum, dispensing records, maintained separate of the individual patient record, must include the following information for every transaction:
- (1) Patient name;
 - (2) Prescriber;
 - (3) Date dispensed/administered;
 - (4) Name and strength of drug dispensed/administered;
 - (5) Quantity dispensed/administered;
 - (6) Whether the transaction is a new or refill transaction;
 - (7) If refill transaction, the date of the initial order;
 - (8) Number of refills authorized;
 - (9) Number of refills dispensed to date;
 - (10) Identification of individual responsible for dispensing/administering;
 - (11) If a controlled substance, the Drug Enforcement Administration registration number of the prescriber/dispenser;
- E. Record Storage. Every optometrist shall keep and store patient records in a secure place and in a manner that both assures that only authorized persons have access to the records and protects the confidentiality of the records and of the information contained in the records.
- F. Transfer of Records. Whenever a Licensee deems it necessary to transfer her/his records to another licensee or other health care provider, the Licensee making the transfer shall obtain the client's consent to transfer (when possible).
- G. Release of Records.
1. Every patient's record in the custody of a licensed optometrist shall be available to a patient, their guardian, or representative at reasonable times and upon reasonable notice.

2. Duplication of the record may not be withheld for past due fees relating to treatment; for patient's failure to follow treatment instructions, or the patient's failure to return for subsequent care, etc.
 3. Duplication of Record Request
 - a. The optometrist may charge a reasonable fee for copying of records and may require payment in advance, prior to beginning the duplication process. Actual postage costs may also be charged.
 - b. It is customary when a patient is transferring care for optometrists to provide copies of records to another optometrist's or physician's office free of charge.
 - c. The optometrist shall make the duplicated record available within a reasonable time from the date of the signed request, and, if required, pre-payment of duplication cost, whichever is later, normally not to exceed fifteen days, excluding weekends and holidays.
 - d. If the patient, guardian or representative so approves, the custodian may supply a written interpretation by the attending provider or representative of patient records, such as photographs, digital images, corneal topographies, or non-written records which cannot be reproduced without special equipment. If the requestor prefers to obtain a copy of such patient records, the patient must pay the actual cost of such reproduction.
 - e. The optometrist may request the patient, guardian or representative identify which parts of the record they would like to have duplicated.
 - f. Nothing prevents the patient, guardian or representative from requesting certain parts of their record.
 4. Eyeglass or Contact Lens Prescription Requests.
 - a. A patient, guardian or representative may obtain a copy of her/his prescription after submitting a signed and dated request to the custodian of the patient record.
 5. Nothing in this Rule shall be construed to waive the responsibility of a custodian of records to maintain confidentiality of those records under the care of the custodian.
- H. Disposition of Records. At the time a licensed optometrist discontinues her/his practice, or if the licensed optometrist is not available to handle her/his own records, the licensed optometrist and/or his/her estate shall designate an appropriate person to handle the disposition of records. A plan for the disposition of records shall be in place for all licensed optometrists who are in the following circumstances:
1. Disability, illness, retirement, or death of the licensed optometrist;
 2. Termination of the licensed optometrist's practice;
 3. Sale or transfer of practice.

In any event the optometrist or designee shall make a reasonable effort to notify the patient(s) of the transfer and provide instructions to submit a written authorization/release if they wish their

records to be transferred to another optometrist or physician. Records should be retained after discontinuation of practice using the guidelines as defined in subsection (A) of this Rule.

- I. Record Destruction. Every licensed optometrist shall dispose of a patient(s) records in a manner or by a process that destroys or obliterates all patient identifying data. However, records cannot be destroyed until after a period of seven years commencing on the termination of optometric services or on the date of last contact with the patient(s), whichever is later and records for minor patient(s) shall be kept for a minimum of seven years after the patient reaches the age of majority (age eighteen) or as otherwise provided in these Rules or any other applicable statutes.
 1. In the case of litigation, Board investigation or other investigation, all relevant records must be retained until resolution of the matter.
 2. Records may not be withheld for past due fees relating to treatment.
- J. Record Keeping in Agency/Institutional Settings. A licensed optometrist need not create and maintain separate patient records if the licensed optometrist practices in an agency or institutional setting and:
 1. The licensed optometrist sees the patient in the usual course of that practice; and
 2. The licensed optometrist keeps client records as required by the agency or institution; and
 3. The agency or institution maintains the client records.

1.130 LICENSURE BY EXAMINATION.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), 12-275-110, and 12-275-112, C.R.S.

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- A. Colorado requires expanded scope of practice certification by all optometrists seeking licensure. This includes all of the following:
 1. Diagnostic certification;
 2. Therapeutic certification; and
 3. Advanced ocular training for the treatment of glaucoma and anterior uveitis.

These certifications must be gained either through completing a course of study in a graduate degree program in optometry, or by additional educational training to meet advanced therapeutic certification standards.
- B. Applicants with optometry degrees granted in 1993, or more recently, are considered to have satisfied the education requirements for expanded scope of practice certification in the course of their optometric degree programs.
- C. The education for such certification shall be completed through or by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the Council on Postsecondary Education or by the United States Department of Education for the Diagnostic Certification Requirements and are as follows:
 1. Fifty-five classroom hours of study in general ocular and clinical pharmacology.

2. 120 hours:
 - a. Sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics and anterior segment disease; and
 - b. Sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages..
3. Sixty hours of Board approved glaucoma and anterior uveitis education, which shall include forty-four didactic and sixteen clinical hours consisting of the treatment of glaucoma and anterior uveitis, including pharmacological, systemic and laser management of these conditions.*
4. If requirement (C)(2) is completed within the twenty-four months immediately preceding application for licensure, only an additional sixteen hours of Board-approved glaucoma and anterior uveitis education is required.
5. In addition, the applicant for licensure must have successfully completed a course in cardiopulmonary resuscitation preceding the date of submitting their application for licensure.
6. The applicant must meet all other requirements of section 12-275-110, C.R.S.

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D. Therapeutic Certification

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* Note — Colorado optometrists: 1.

Colorado optometrists who currently hold therapeutic certification must provide the Board with proof of the coursework as set forth in subsection (C)(3) in order to receive the advanced therapeutic certification. Successful completion of the advanced ocular treatment course offered in April of 1994 by the Colorado Optometric Association satisfies forty-four hours of the requirement; an additional sixteen hours of glaucoma and anterior uveitis course curriculum is still required to meet the requirements.

2. Colorado optometrists who do not hold therapeutic certification must meet the requirements in subsections (C)(1) and (2) above, and must provide evidence of successful completion of sixteen additional hours of glaucoma and anterior uveitis course curriculum to the Board prior to certification.

1.141 LICENSURE BY ENDORSEMENT.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-110, C.R.S.

A licensed optometrist may endorse his/her license into Colorado when meeting the following requirements:

- A. She/he has an active license to practice optometry in another state or jurisdiction that is in good standing; and
- B. She/he has paid an application fee as prescribed by the Board; and
- C. She/he possesses credentials and qualifications that are substantially equivalent to requirements for licensure by examination including requirements for advanced therapeutic treatment as set

forth in Board Rule 1.10, either through an educational degree program or other course of study considered by the Board as substantially equivalent; and

- D. She/he has been actively engaged in the practice of optometry for twenty-four months immediately preceding the application for licensure by endorsement; or
- E. She/he has demonstrated competency as an optometrist in a manner approved by the Board.

1.152 NATIONAL BOARD SCORES AND RETENTION: (REPEALED)

1.163 EXPANDED SCOPE OF PRACTICE CERTIFICATION: (REPEALED)

1.174 REPORTING MALPRACTICE JUDGMENTS, CONVICTIONS, DISCIPLINARY ACTIONS, SETTLEMENTS OR ARBITRATION AWARDS:

~~This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), 12-275-120(1)(p), (r) and (bb), and 12-275-129, C.R.S. The purpose of this Rule is to clarify the procedures for reporting, in writing, any malpractice judgments, convictions, disciplinary actions, settlements or arbitration awards pursuant to sections 12-275-120(1)(p), (r) and (bb), and 12-275-129, C.R.S.~~

- A. A licensee shall report to the Board within thirty days, any final judgment or settlement against him/her for malpractice, pursuant to section 12-275-120(1)(p), C.R.S.
- B. A licensee shall report to the Board, in writing, within ~~thirty~~**forty-five** days:
 - 1. A conviction of a felony or the acceptance of a plea of guilty or nolo contendere, or a plea resulting in a deferred sentence to a felony, pursuant to section 12-275-120(1)(r), C.R.S.
 - a. For purposes of this Rule, a felony conviction includes: a guilty verdict; an entry of a plea of guilty or a plea of nolo contendere (no contest) accepted by the court; or a plea resulting in a deferred sentence to a felony.
 - 2. Any disciplinary action imposed upon the licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of the Optometry Practice Law and/or Board Rule, pursuant to section 12-275-120(1)(bb), C.R.S.
- C. The written report to the Board, as set forth in subsection (B), shall include, but not be limited to, the following information:
 - 1. If the event is an action by a governmental agency:
 - a. The name of the agency,
 - b. The jurisdiction or state where the incident(s) occurred,
 - c. The case name(s),
 - d. The docket, proceeding, or case number by which the event is designated,
 - e. A copy of the consent decree, order, or decision,
 - f. The patient(s) name(s) and date(s) of birth,

- d. Complete patient records associated with the action, and
 - e. Any other information relevant to the reported action.
2. If the event is a felony conviction as described above in (B)(1)(a):
- a. The name of the court,
 - b. The jurisdiction where the incident(s) occurred,
 - c. The case name,
 - d. The case number,
 - e. A description of the matter or a copy of the indictment or charges,
 - f. Any plea or verdict accepted or entered by the court,
 - g. A copy of the imposition of sentence related to the conviction and the completion of all terms of the sentence,
 - h. Confirmation of the status or confirmation of the completion of the terms of the sentence, and
 - i. Any other information relevant to the reported action.
3. If the event concerns a civil action or arbitration proceeding:
- a. The name of the court or arbitrator,
 - b. The jurisdiction where the incident(s) occurred,
 - c. The case name,
 - d. The case number,
 - e. A description of the matter or a copy of the complaint or demand for arbitration,
 - f. A copy of the verdict, the court decision or arbitration award, or, if settled, the settlement agreement and court's order of dismissal, and
 - g. Any other information relevant to the reported action.

1.185 BOARD REVIEW OF INITIAL DECISIONS. (REPEALED)

1.196 VOLUNTEER LICENSES.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-109. C.R.S.

An optometrist may apply for a volunteer license by filing a volunteer optometrist application.

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- A. An optometrist with a volunteer license shall provide optometry services only on a limited basis for no fee or other compensation. An applicant for a volunteer license shall:
1. Either hold an active and unrestricted license to practice optometry in the state of Colorado and be in active practice in Colorado or have been on inactive status for no more than two years;
 2. Attest that, after a specified date, he or she will no longer earn income as an optometrist;
 3. Comply with the same requirements for continuing education and liability insurance as optometrists with active licenses, and any other requirement set forth in statute; and,
 4. Be subject to the same disciplinary standards as an optometrist with full licensure status.

An optometrist with a volunteer license may apply for a return to active licensure by filing an application in the form and manner designated by the Board.

1.2017 NOTIFICATION TO BOARD OF PHYSICAL OR MENTAL ILLNESS.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), 12-275-120(1)(k), and 12-275-121, C.R.S.

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- A. An optometrist with a physical or mental illness or condition that renders him or her unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under their care as an optometrist shall report the illness or condition to the Board, in writing, within thirty calendar days of diagnosis or change of diagnosis. The notification shall include:
1. The diagnosis and a description of the illness or condition; and,
 2. A letter and any other relevant documentation from the current treating health care provider confirming the diagnosis, date of onset, treatment plan, and any modifications, limitations or restrictions to the optometrist's practice that have been made or should be made as a result of the illness or condition.
- B. The optometrist shall notify the Board of any significant change in the illness or condition that impacts his or her ability to perform optometry with reasonable skill or safety or that may endanger the health and safety of persons under his or her care. Notification shall occur within thirty days of the change of condition. The notification shall include:
1. The date of the change of condition; and,
 2. Documentation from the current treatment provider confirming the change of condition, the date that the condition changed, the nature of the change of condition, and the current treatment plan; and,
 3. A description of the licensee's practice and any modifications, limitations or restrictions to that practice that have been made or should be made as a result of the change of condition.
- C. Failure to comply with this Rule may constitute unprofessional conduct and could result in disciplinary action by the Board.

1.2148 FINING SCHEDULE FOR VIOLATIONS OF THE OPTOMETRIC PRACTICE ACT AND BOARD RULES.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-122(1)(a)(III), C.R.S.

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- A. Fines: Non-Exclusive Sanction. The Board, in its discretion, may impose a fine or fines in lieu of, or in addition to, any other disciplinary sanction. The term optometrist as contemplated under section 12-275-122(1)(a)(III), C.R.S., and this Rule shall include any person who has been licensed at any time under the Optometric Practice Act to practice optometry.
- B. Fine for Each Violation. Section 12-275-122(1)(a)(III), C.R.S., provides authority for the Board to impose an administrative fine against an optometrist for a violation of an administrative requirement. The Board, in its discretion, may impose a separate fine for each violation and shall consider the nature and seriousness of the violation prior to imposing any fine.
- ~~C. Fines: Schedule of Fines. The Board may so impose a fine or fines consistent with the following Schedule; however, nothing in this Schedule precludes the Board from considering the nature and seriousness of the violation prior to determining a fine amount:~~
- ~~1. For a Licensee's first violation, a fine of no more than one thousand dollars (\$1,000.00).~~
 - ~~2. For a Licensee's second violation, a fine of no more than two thousand five hundred dollars (\$2,500.00).~~
 - ~~3. For a Licensee's third and any additional or subsequent violations, a fine of no more than five thousand dollars (\$5,000.00).~~

~~In a Disciplinary Proceeding, in which fines are sought to be imposed, the Board in determining the number of violations for purposes of application of the above schedule may count as a violation, each prior violation adjudicated against the Licensee in a prior Disciplinary Proceeding.~~

CD. Payment of Fines.

1. Fine Amount: When Due. A total fine amount of five hundred dollars (\$500.00) or less imposed by the Board must be paid in full, including the applicable surcharge, at the time the Final Agency Order is entered or a Stipulation is reached between the parties. A total fine amount greater than five hundred dollars (\$500.00) imposed by the Board must be paid in full, including the applicable surcharge, in accordance with the time frame set forth in the Final Agency Order or Stipulation.
2. Delinquent Payment Consequences. An optometrist who fails to pay a fine imposed under this Rule as defined above pursuant to a Final Agency Order or Stipulation may be subject to further discipline, including suspension or revocation of his or her license to practice. Section 12-275-120(1)(f), C.R.S., provides that violation of an Order of the Board is Unprofessional Conduct.

DE. Compliance with Law. Payment of a fine does not exempt the optometrist from continuing compliance with the Optometric Practice Act or any orders of the Board.

1.2249 ARMED SERVICES EXPERIENCE.

This Rule is promulgated pursuant to sections 12-20-202 and 12-275-108(1)(b), C.R.S.

Education, training, or service gained in military services outlined in section 12-20-202(4), C.R.S., to be accepted and applied towards receiving a license, must be substantially equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of receipt of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a case by case basis.

1.230 DECLARATORY ORDERS.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b). Created and adopted in accordance with the requirements of and section 24-4-105(11), C.R.S.

- A. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.
- B. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such action.
- C. In determining whether to rule upon a petition filed pursuant to this Rule, the Board will consider the following matters, among others:
 - 1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or rule or order of the Board.
 - 2. Whether the petition involves any subject, question or issue which is the focus of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.
 - 3. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - 4. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
- D. Any petition filed pursuant to this Rule shall set forth the following:
 - 1. The name and address of the petitioner and whether the petitioner is licensed pursuant to the provisions of section 12-275-101, C.R.S. *et seq.*, as amended.
 - 2. The statute, rule or order to which the petition relates.
 - 3. A concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
- E. If the Board determines that it will rule on the petition, the following procedures apply:
 - 1. The Board may rule upon the petition solely upon the facts presented in the petition. In such a case, any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

2. The Board may order the petitioner to file a written brief, memorandum or statement of position.
 3. The Board may set the petition, upon due notice to the petitioner, for a non-evidentiary hearing.
 4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.
 5. The Board may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition. The Board may take administrative notice of the facts pursuant to the Administrative Procedure Act (section 24-4-105(8), C.R.S.) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
 6. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.
 7. The Board may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition.
 8. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire.
 9. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Board to consider.
- F. The parties to any proceeding pursuant to this Rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as required by section (D) of this Rule. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Board.

1.241 CONTINUING EDUCATION REQUIREMENTS.

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-115, C.R.S.

- A. Each licensed optometrist having an active license in Colorado is required to attend twenty-four hours of educational study per renewal period as set forth in section 12-275-115(3), C.R.S. Continuing Education ("CE") hours may only be applied to one renewal period.
- B. If a renewal date occurs during the year of original Colorado licensure, continuing education will not be required for the first renewal. If the renewal date occurs the year after original licensure, the licensee shall obtain twelve hours of continuing education prior to the biennial renewal. CE completed to fulfill requirements to satisfy discipline, as required by the Board, will not count toward CE for the renewal period.
- C. For CE to count toward renewal requirements all CE must be clinically-based.
- D. CE may be obtained the following ways:

1. Conferences and Lectures
 2. Internet Based CE or CE Offered by Professional/Association Journals (a maximum of eight (8) hours may be applied per renewal period)
 3. Clinical Observations/Clinical Examinations (a maximum of four (4) hours may be applied per renewal period)
- E. Subject to the final approval of the Board, a designated Board member may rule in regard to the approval of other meetings, programs, and/or courses.

1.252 SUBSTANCE USE PREVENTION TRAINING FOR LICENSE RENEWAL, REACTIVATION, OR REINSTATEMENT.

This Rule is promulgated pursuant to sections 12-20-204, 12-30-114, and 12-275-108(1)(b), C.R.S.

- A. Pursuant to section 12-30-114, C.R.S., every optometrist, except those exempted under section (C), is required to complete at least one hour of training per renewal period in order to demonstrate competency regarding the topics/areas specified in section 12-30-114(1)(a), C.R.S.
- B. Training, for the purposes of this section includes, but is not limited to, relevant continuing education courses; peer review proceedings that involve opioid prescribing; relevant volunteer service; or teaching a relevant class/course. All such training must cover or be related to the topics specified in section 12-30-114(1)(a), C.R.S.
- C. The Board shall exempt an optometrist from the requirements of this section who qualifies for either exemption set forth in section 12-30-114(1)(b), C.R.S.
- D. This Rule 1.22 shall apply to any applicant for reinstatement or reactivation of an expired or inactive license pursuant to Rule 1.8(B).
- E. Applicants for license renewal, reactivation, or reinstatement shall attest during the application process to either their compliance with this substance use training requirement or their qualifying for an exemption, as specified in section (C).
- F. The Board may audit compliance with this section. Optometrists should be prepared to submit documentation of their compliance with this substance use training requirement or their qualification for an exemption, upon request by the Board.
- G. Subject to the approval of the Board, completed substance use prevention training hours that also meet the requirements for continuing education, as specified in Rule 1.21, may be applied towards the minimum continuing education hours required in Rule 1.21.

1.26 ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

- A. Effective on or after July 1, 2021, and pursuant to section 12-30-111(1)(a), C.R.S., and effective on and after July 1, 2023, a prescriber shall prescribe a controlled substance as set forth in section 12-30-111(1)(a), C.R.S., only by electronic prescription transmitted to a pharmacy unless an exception in section 12-30-111(1)(a), C.R.S., applies.
- B. A "temporary technological failure," for purposes of section 12-30-111(1)(a)(I), C.R.S., is when:
 1. A necessary prescribing software program is inaccessible or otherwise not operational;
 2. Required technology fails to start; or

3. During a period when a virus or cyber security breach is actively putting patient data and transmission at risk.

C. A "temporary electrical failure," for purposes of section 12-30-111(1)(a)(I), C.R.S., is a short-term loss of electrical power at the place of business that lasts no more than forty-eight hours or two consecutive business days.

D. An "economic hardship," for purposes of section 12-30-111(1)(a)(XI), C.R.S., is a measurement of relative need taking into consideration the individual gross receipts and net profits, cost of compliance, and type of software upgrade required. In order for a prescriber to demonstrate economic hardship, the prescriber must submit to the Board for a final determination:

1. A written statement explaining the economic hardship, including supporting documentation to demonstrate economic hardship. Supporting documentation may include the most recent tax return or other business records that show gross receipts and net profits. The Board reserves the right to request additional documentation to support the request, if necessary. The request must also include the requested duration of the economic hardship.

2. If the Board determines there should be an economic hardship exception for the prescriber, then the Board will determine the duration of the economic hardship exception, which shall not exceed one year from the date the exception was granted.

3. In order to renew a request for an economic hardship exception, the prescriber must submit a request to renew the exception in writing to the Board no less than two months prior to the expiration of the economic hardship exception. The prescriber must provide a written statement explaining the need to renew the economic hardship, including supporting documentation.

Commented [MD4]: Should the time requirement be removed?

Commented [MD5]: Do pharmacies allow you to send a prescription electronically without EHR?

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Editor's Notes

History