Florida Jurisprudence

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NSU NOVA SOUTHEASTERN UNIVERSITY College of Optometry

Disclosure Statement:
Nothing to disclose

Disclaimer

- Every attempt has been made to present actual and factual information
- Information presented here is based on opinion, knowledge and experience
- The presenter is not an attorney and one should seek professional legal advice and/or representation for final clarification

Florida Optometric Association

- The objectives of this Association are to advance, improve, and enhance the vision care of the public
- To unite optometrists to encourage and assist in the improvement of the art and science of Optometry
- To elevate the standards and ethics of the profession of Optometry

Florida Optometric Association

- To protect and defend the inalienable right of every person to freedom of choice of practitioner
- To restrict the practice of Optometry and any part of it to those who have been trained, qualified, and licensed to practice the profession
- To maintain an active affiliation with the AOA, and the Southern Council of Optometrists.

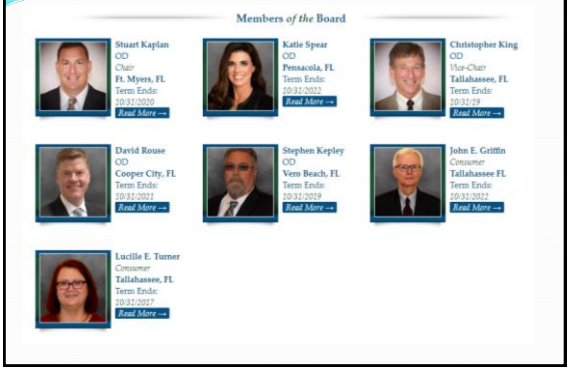
FLORIDA | Board of Optometry

- **Mission:** To protect, promote & improve the health of all people in Florida through integrated state, county, & community efforts.
- **Vision:** To be the **Healthiest State** in the Nation

Florida Board of Optometry

- **Purpose:** To protect the public and make Florida the healthiest state in the nation through health care licensure, enforcement, and information.
- **Focus:** To be the nation's leader in quality health care regulation.
- **Values:** I CARE (Innovation, Collaboration, Accountability, Responsiveness, Excellence)

- The **Florida Board *of* Optometry** is composed of seven members appointed by the Governor and confirmed by the Senate.
- Five members of the board must be licensed practitioners actively practicing in this state.
- The remaining two members must be citizens of the state who are not, and have never been, licensed practitioners.
- Additionally, the consumer members may not be connected with the practice of optometry or with any other vision-related profession or business.
- At least one member of the board must be 60 years of age or older.



- **Went into effect July 1, 2013**
- **Deleted ~~Topical~~ and added Ocular**
- **Defines Ocular Pharmaceutical Agent**
- **Defines Surgery**

HB 239

Defines Ocular Pharmaceutical Agent

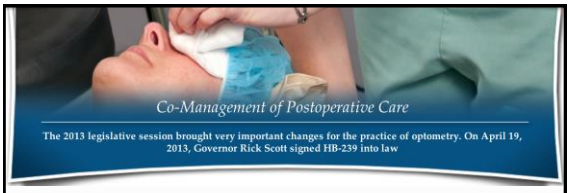
"Ocular pharmaceutical agent" means a pharmaceutical agent that is administered topically or orally for the diagnosis or treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.

HB 239

Defines what is not Surgery

Surgery of any kind~~, including the use of lasers~~, is expressly prohibited. Certified optometrists may remove superficial foreign bodies. For the purposes of this subsection, the term "superficial foreign bodies" means any foreign matter that is embedded in the conjunctiva or cornea but that which has not penetrated the globe

- Notwithstanding the definition of surgery as provided in s. 463.002(6), a certified optometrist is not prohibited from providing any optometric care within the practice of optometry as defined in s. 463.002(7),
  - such as removing an eyelash by epilation,
  - probing an uninflamed tear duct in a patient 18 years of age or older,
  - blocking the puncta by plug,
  - or superficial scraping for the purpose of removing damaged epithelial tissue or superficial foreign bodies or taking a culture of the surface of the cornea or conjunctiva.



Defines Co-Management

- Co-management of postoperative care shall be conducted pursuant to the requirements of this section and a patient-specific transfer of care letter that governs the relationship between the physician who performed the surgery and the licensed practitioner
- The patient must be fully informed of, and consent in writing to, the co-management relationship for his or her care

HB 239

Defines Co-Management

- The transfer of care letter shall confirm that it is not medically necessary for the physician who performed the surgery to provide such postoperative care to the patient and that it is clinically appropriate for the licensed practitioner to provide such postoperative care. The patient must be fully informed of, and consent in writing to, the co-management relationship for his or her care

HB 239

Defines Co-Management

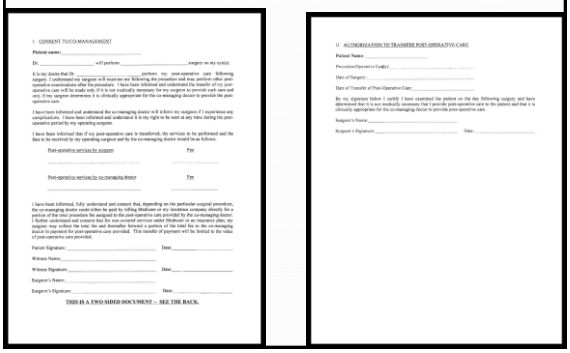
- Before co-management of postoperative care commences, the patient shall be informed in writing that he or she has the right to be seen during the entire postoperative period by the physician who performed the surgery

HB 239

Defines Co-Management

- The patient must be informed of the fees, if any, to be charged by the licensed practitioner and the physician performing the surgery, and must be provided with an accurate and comprehensive itemized statement of the specific postoperative care services that the physician performing the surgery and the licensed practitioner render, along with the charge for each service.

Co-Management Form



HB 239

Defines Topical Formulary

- The board shall establish a formulary of topical ocular pharmaceutical agents that may be prescribed and administered by a certified optometrist.

HB 239

Defines Topical Formulary

The formulary shall consist of those topical ocular pharmaceutical agents that are appropriate to treat or diagnose ocular diseases and disorders and that ~~which~~ the certified optometrist is qualified to use in the practice of optometry. The board shall establish, add to, delete from, or modify the topical formulary by rule. Notwithstanding any provision of chapter 120 to the contrary, the topical formulary rule becomes ~~shall become~~ effective 60 days from the date it is filed with the Secretary of State.

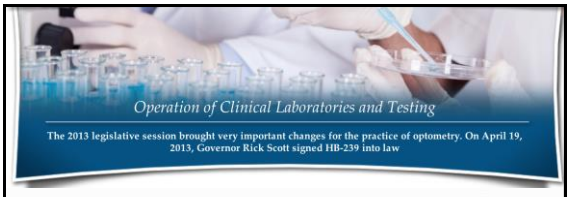
HB 239

Topical Formulary

Any person who requests an addition, deletion, or modification of an authorized topical ocular pharmaceutical agent shall have the burden of proof to show cause why such addition, deletion, or modification should be made.

- During the March 9, 2018 Board of Optometry meeting, the board approved for addition to Rule 64B13-18.002 Formulary of Topical Ocular Pharmaceutical Agents, Vyzulta (latanoprostene bunod ophthalmic solution) 0.024%.
- **Important note**, Vyzulta, at this time, cannot be prescribed by certified Optometrists in Florida until the rule has been approved. Once the rule has gone through the approval process, notice will be provided on this site, and at that time Vyzulta may be prescribed by certified optometrists.

This includes samples as well



483.181 Acceptance, collection, identification, and examination of specimens

- A clinical laboratory licensed under this part must accept a human specimen submitted for examination by a practitioner licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, s. 464.012, or chapter 466, if the specimen and test are the type performed by the clinical laboratory

HB 239

483.181 Acceptance, collection, identification, and examination of specimens

- A clinical laboratory may only refuse a specimen based upon a history of nonpayment for services by the practitioner
- A clinical laboratory shall not charge different prices for tests based upon the chapter under which a practitioner submitting a specimen for testing is licensed

463.0141 Reports of adverse incidents in the practice of optometry

- Effective January 1, 2014, an adverse incident occurring in the practice of optometry must be reported to the Department of Health
- "Adverse incident" is specifically defined in subsection 463.0141 (3) to mean any of the following events when it is reasonable to believe that the event is attributable to the prescription of an **ORAL** ocular pharmaceutical agent by the optometrist:

HB 239

463.0141 Reports of adverse incidents in the practice of optometry

- Any condition that requires transfer of the patient to a licensed hospital;
- Any condition that requires the patient to obtain care from a medical doctor or osteopathic doctor, other than a referral or a consultation required by Chapter 463;
- Permanent physical injury to the patient;
- Partial or complete permanent loss of sight by the patient; or
- Death of the patient.

HB 239

463.0141 Reports of adverse incidents in the practice of optometry

- If an "adverse incident" defined in subsection 463.0141 (3) occurs, the optometrist is required to provide written notice to the Florida Department of Health by certified mail.
- If the incident takes place while the patient is in the optometrist's office, the notice must be postmarked within 15 days after occurrence.
- If the incident occurs when the patient is not at the optometrist's office, the notification must be postmarked within 15 days after the optometrist discovers, or reasonably should have discovered, the occurrence of the adverse incident

Controlled Substances

- Florida Statutes, provides that a written prescription for a controlled substance listed in chapter 893 must be either written on a standardized counterfeit-proof prescription pad produced by a vendor approved by the Florida Department of Health (DOH) or electronically prescribed

Controlled Substances

- Section 893.04 provides that a pharmacy may dispense a prescribed controlled substance only if the full name and address of the prescribing practitioner and the practitioner's DEA registration number is printed thereon.

Controlled Substances

- DEA Numbers
  - Applications submitted at http://www.deadiversion.usdoj.gov/drugreg/
  - $731 every 3 years
  - 2 Controlled Substances - Schedule 3
    - A certified optometrist licensed under chapter 463 may not administer or prescribe a controlled substance listed in Schedule I or Schedule II of s. 893.03.
  - Tylenol w/Codeine - Acetaminophen 300 mg with No. 3 codeine phosphate 30 mg.
  - Tramadol hydrochloride (recently added)

Antibiotics

- The following antibiotics or their generic or therapeutic equivalents:
  - Amoxicillin with or without clavulanic acid.
  - Azithromycin.
  - Erythromycin.
  - Dicloxacillin.
  - Doxycycline/Tetracycline.
  - Keflex
  - Minocycline

Antiviral

- The following antivirals or their generic or therapeutic equivalents:
  - Acyclovir
  - Famciclovir
  - Valacyclovir

Anti-Glaucoma

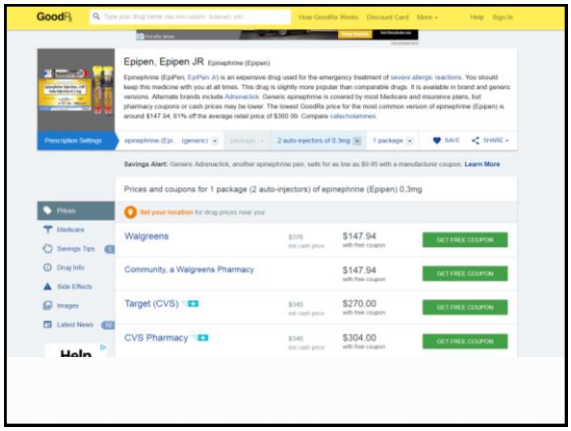
- The following oral anti-glaucoma agents or their generic or therapeutic equivalents, which may not be administered or prescribed for more than 72 hours:
- Acetazolamide
- Methazolamide

463.014 Certain acts prohibited

- (3) Prescribing, ordering, dispensing, administering, supplying, selling, or giving any drug for the purpose of treating a systemic disease by a licensed practitioner is prohibited. ***However, a certified optometrist is permitted to use commonly accepted means or methods to immediately address incidents of anaphylaxis.***

EpiPEN® for Anaphylaxis

- EpiPen® 0.3 mg
  - Yellow label - 66 lbs or more
- EpiPen® Jr.0.15 mg
  - Green label - 33-66 lbs.



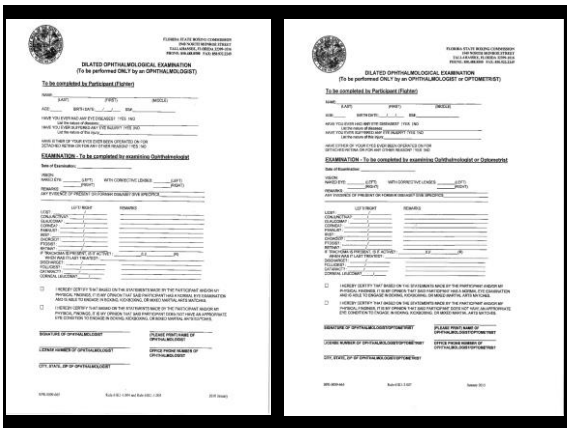
Declaratory Statement

Prokera®

The Florida Board of Optometry recently issued a declaratory statement finding that the non-surgical application of Prokera® [described by CPT code 65778 as the placement of amniotic membrane on the ocular surface without the use of sutures] by a Florida certified optometrist is authorized as being within the scope of optometric practice in Florida.

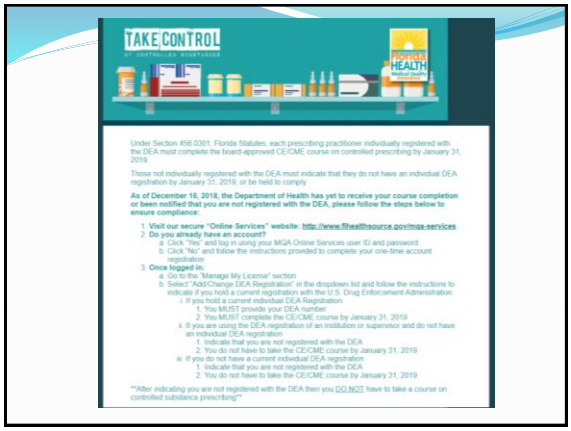
Chapter 548 Pugilistic Exhibition

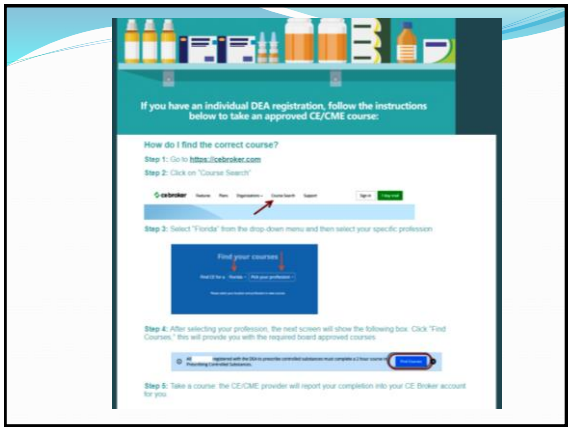
- Previous exclusion: "Physician" means an individual licensed to practice medicine and surgery in this state.
- A certified optometrist is authorized to perform any eye examination, including a dilated examination, required or authorized by chapter 548 or by rules adopted to implement that chapter.
  - Boxing
  - Kickboxing
  - Mixed Martial Arts



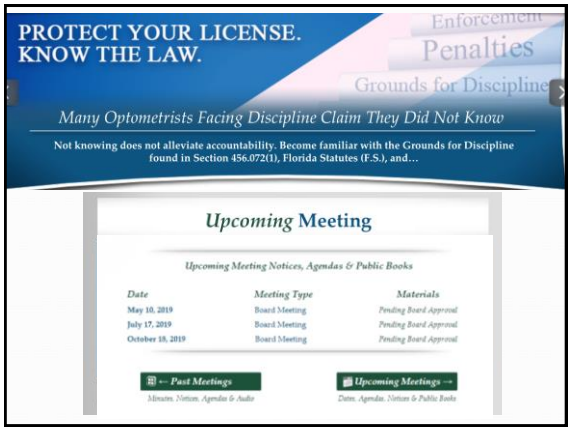
http://optometristonlinece.com/


FLORIDA Board of Optometry
Home
Licensing
Renewals
Resources
Meetings
The Board
Important Information Regarding Cequa
Apply
Renew
Status
Lookup
Complaints


TAKE CONTROL
Under Section 456.0301, Florida Statutes, each prescribing practitioner individually registered with the DEA must complete the board-approved CE/CME course on controlled prescribing by January 31, 2019.
Those not individually registered with the DEA must indicate that they do not have an individual DEA registration by January 31, 2019, or be held to comply.
As of December 16, 2018, the Department of Health has yet to receive your course completion or been notified that you are not registered with the DEA, please follow the steps below to ensure compliance:
1. Visit our secure "Online Services" website: http://www.flhealthsource.gov/mqa-services
2. Do you already have an account?
a. Click "Yes," and log in using your MQA Online Services user ID and password
b. Click "No" and follow the instructions provided to complete your one-time account registration
3. Once logged in:
a. Go to the "Manage My License" section
b. Select "Add/Change DEA Registration" in the dropdown list and follow the instructions to indicate if you hold a current registration with the U.S. Drug Enforcement Administration
i. If you hold a current individual DEA Registration
1. You MUST provide your DEA number
2. You MUST complete the CE/CME course by January 31, 2019
ii. If you are using the DEA registration of an institution or supervisor and do not have an individual DEA registration
1. Indicate that you are not registered with the DEA
2. You do not have to take the CE/CME course by January 31, 2019
iii. If you do not have a current individual DEA registration
1. Indicate that you are not registered with the DEA
2. You do not have to take the CE/CME course by January 31, 2019
After indicating you are not registered with the DEA then you DO NOT have to take a course on controlled substance prescribing


If you have an individual DEA registration, follow the instructions below to take an approved CE/CME course:
How do I find the correct course?
Step 1: Go to https://cebroker.com
Step 2: Click on "Course Search"
Step 3: Select "Florida" from the drop-down menu and then select your specific profession
Find your courses
Step 4: After selecting your profession, the next screen will show the following box. Click "Find Courses," this will provide you with the required board approved courses.
Step 5: Take a course: the CE/CME provider will report your completion into your CE Broker account for you.


FLORIDA Board of Optometry
Meeting Information


PROTECT YOUR LICENSE.
KNOW THE LAW.
Enforcement
Penalties
Grounds for Discipline
Many Optometrists Facing Discipline Claim They Did Not Know
Not knowing does not alleviate accountability. Become familiar with the Grounds for Discipline found in Section 456.072(1), Florida Statutes (F.S.), and…
Upcoming Meeting
Upcoming Meeting Notices, Agendas & Public Books
Date
Meeting Type
Materials
May 10, 2019
Board Meeting
Pending Board Approval
July 17, 2019
Board Meeting
Pending Board Approval
October 18, 2019
Board Meeting
Pending Board Approval
← Past Meetings
Minutes, Notices, Agendas & Audio
Upcoming Meetings →
Dates, Agendas, Notices & Public Books


Home
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Renewals
Resources
Meetings
The Board
New Legislation Impacting Your Profession
Click here to view a full list of bill summaries from the 2018 Florida Legislative Session that may impact your profession.
HB 7059 - Optometry
Effective Date: Upon becoming law.
HB 7059 (Full Text)
Summary:
Amends section 463.006, Florida Statutes, to require the Department to license an applicant for licensure and certification as an optometrist when the applicant meets specified requirements, and creates language relative to the time-period a national examination score can be accepted. Repeals language relating to the content of the licensure examination.

part of the optometric experience.

(2) The board shall approve a licensure examination consisting ~~shall consist~~ of the appropriate subjects and~~,~~ including applicable state laws and rules and general and ocular pharmacology with emphasis on the use and side effects of ocular pharmaceutical agents. The board may by rule substitute a national examination as part or all of the examination and, notwithstanding chapter 456, may by rule offer a practical examination in addition to a ~~the~~ written examination.

(3) Each applicant who submits proof satisfactory to the board that he or she has met the requirements of subsection (1), who successfully passes the licensure examination within 3 years before the date of application or after the submission of an application, and who otherwise meets the requirements of this chapter is entitled to be licensed as a practitioner and to be certified to administer and prescribe ocular pharmaceutical agents in the diagnosis and treatment of ocular conditions.

Section 2. Subsection (3) of section 463.0057, Florida

Main issues regarding Board violations:

463.0135 Standards of practice

64B13-3.007 Minimum Procedures for Vision Analysis (comprehensive eye exam).

463.0135 Standards of practice

- A licensed practitioner shall provide that degree of care which conforms to that level of care provided by medical practitioners in the same or similar communities. A licensed practitioner shall advise or assist her or his patient in obtaining further care when the service of another health care practitioner is required

- **64B13-2.008 Probable Cause Panel.**
- (1) The determination as to whether probable cause exists to believe that a violation of the provisions of Chapter 456, Part II, or 463, F.S., or of the rules promulgated thereunder, has occurred shall be made by the probable cause panel of the Board.
- (2) The probable cause panel shall be composed of at least two (2) present or former members of the Board of Optometry. At least one member of the panel must be a current Board member. At least one member shall be a present or former lay member, if available, willing to serve, and authorized by the Chair.

456

In determining what action is appropriate, the board, or department when there is no board, must first consider what sanctions are necessary to protect the public or to **compensate the patient**. Only after those sanctions have been imposed may the disciplining authority consider and include in the order requirements designed to rehabilitate the practitioner. **All costs** associated with compliance with orders issued under this subsection **are the obligation of the practitioner.**

What does this mean to you?

- When in doubt, give the money back to the patient (within reason).
  - Leading complaint to Board: failure to refund money for glasses
  - Could then lead to investigation into file
  - Take care Board doesn't overstep authority
- If a grievance is filed, you must defend yourself, preferably with the assistance of an attorney.
- Malpractice insurance typically does not cover this. You must bear the costs personally. Check with carrier now

Minimum Equipment

The following shall constitute the minimum equipment which a licensed practitioner must possess in each office in which he or she engages in the practice of optometry:

(1) Ophthalmoscope;

(2) Tonometer;

(3) Retinoscope;

(4) Ophthalmometer, keratometer or corneal topographer;

Minimum Equipment

(5) Biomicroscope;

(6) Phoropter or trial frame, trial lenses and prisms;

(7) Standard charts or other standard visual acuity test;

(8) Field testing equipment (other than that used for a confrontation test).

Note: Pachymeter, fundus camera, OCT, etc., not part of the minimum

Minimum Exam

64B13-3.007 Minimum Procedures for Vision Analysis (comprehensive eye exam).

(1) Vision analysis is defined as a comprehensive assessment of the patient's visual status and shall include those procedures specified in subsection (2) below.

(2) An examination for vision analysis shall include the following minimum procedures, which shall be recorded on the patient's case record:

(a) Patient's history (personal and family medical history, personal and family ocular history, and chief complaint);

Minimum Exam

- (b) Visual acuity (unaided and with present correction at initial presentation; thereafter, unaided or with present correction);
- (c) External examination;
- (d) Pupillary examination;
- (e) Visual field testing (confrontation or other);
- (f) Internal examination (direct or indirect ophthalmoscopy recording cup disc ratio, blood vessel status and any abnormalities);

Minimum Exam

(g) Biomicroscopy (binocular or monocular);

(h) Tonometry;

(i) Refraction (with recorded visual acuity);

(j) Extra ocular muscle balance assessment;

Not necessarily in this order

Minimum Exam

(k) Other tests and procedures that may be indicated by case history or objective signs and symptoms discovered during the eye examination;

(l) Diagnosis and treatment plan.

(3) If because of the patient's age or physical limitations, one or more of the procedures specified herein or any part thereof, cannot be performed, or if the procedures or any part thereof are to be performed by reason of exemption from this rule, the reason or exemption shall be noted on the patient's case record.

Minimum Exam

- Except as otherwise provided in this rule, the minimum procedures set forth in subsection (2) above shall be performed prior to providing optometric care during a patient's initial presentation, and thereafter at such appropriate intervals as shall be determined by the **optometrist's sound professional judgment**. Provided, however, that each optometric patient shall receive a complete vision analysis prior to the provision of further optometric care if the last complete vision analysis was performed more than two years before.

So what does this mean to you?

- Subjective:
  - personal and family medical history, personal and family ocular history, and chief complaint
- Objective:
  - VA (with and without at initial; with afterwards); pupils, EOMs, screening fields, ocular balance (Cover test), refraction, SLE, tonometry (some method), fundus (dilation at first- disc, vessels, abnormalities), any and all others as dictated by exam
- Assessment- detailed
- Plan-detailed

Standards of Practice

(7)(a) To be in compliance with paragraph 64B13-3.007(2)(f), F.A.C., certified optometrists shall perform a **dilated fundus examination** during the patient's initial presentation, and thereafter, whenever medically indicated. If, in the certified optometrist's sound professional judgment, dilation is not performed because of the patient's age, physical limitations, or conditions, the **reason(s) shall be noted in the patient's medical record.**

(b) ***Licensed optometrists*** who determine that a dilated fundus examination is medically indicated shall advise the patient that such examination is medically necessary and shall refer the patient to a qualified health care professional for such examination to be performed. The licensed optometrist shall document the advice and referral in the patient's medical record.

What about non-Comprehensive exams?

- Whenever a patient presents to a licensed practitioner or certified optometrist with any of the following as the primary complaint, the performance of the minimum procedures set forth in subsection (2) above shall not be required.
- (a) Emergencies;
- (b) Trauma;
- (c) Infectious disease;
- (d) Allergies;
- (e) Toxicities; or
- (f) Inflammations.

- The minimum procedures set forth in subsection (2) above shall not be required in the following circumstances:
- (a) When a licensed practitioner or certified optometrist is providing specific optometric services on a secondary or tertiary basis in patient co-management with one or more health care practitioners skilled in the diagnosis and treatment of diseases of the human eye and licensed pursuant to Chapter 458, 459, or 463, Florida Statutes

So what does this mean to you?

- If you can't do a required test, state the reason and the attempt.
- Reason for this statute is to protect and provide to public quality care
  - Discourages 'refraction mills'
    - *"There is no reason that you cannot do an eye exam in less than 5 minutes"*

Branch License

- 2014- you no longer need to apply for branch licenses for each office
- You must however have a copy of your Florida license displayed in each office

Drug Dispensing- For Profit

- A certified optometrist who dispenses medicinal drugs for a fee must register as a dispensing practitioner with the Florida Board of Optometry and pay a fee of $100.00 at the time of registration and upon each biennial renewal of licensure.
- Subject to and must comply with all laws and rules applicable to pharmacists and pharmacies
- Department of Health is authorized to inspect in the same manner and same frequency as it inspects pharmacies

Drug Dispensing- Samples

- Not required to register as a dispensing practitioner
- Must dispense the medicinal drugs in the manufacturer's labeled package with the practitioner's name, patient's name, and date dispensed.
- If not dispensed in the manufacturer's labeled package, they must bear the following information:
  - •Practitioner's name;
  - •Patient's name;
  - •Date dispensed;
  - •Name and strength of drug; and
  - •Directions for use.

What can get you sued for malpractice and what can get you sanctioned by the Board of Optometry are often two different things

The Board of Optometry does not involve itself in malpractice suits. Getting sued for malpractice does not get reported to the Board. The patient or other entity must file a separate grievance with the Board.

Bad Outcome vs Malpractice

- Florida OD
- 60 YOBF
- Routine exam
- IOP: Upper 40's OU
- Glaucoma suspect
- Begins topical treatment
- Manages for 2 years
- IOP low to mid 20's

Bad Outcome vs Malpractice

- Seeks care from ophthalmologist
- On multiple meds
- IOP mid 20's
- Meds changed
- IOP low 20's
- Undergoes ALTP, then trabeculectomy OU
- Sues optometrist
- Retained by patient's attorney

Bad Outcome vs Malpractice

- Allegations:
- Detected elevated IOP and ***only*** used topical medications
- Diagnosed glaucoma, but failed to warn of serious nature
- Failed to diagnose optic nerve injury
- Failed to properly treat optic nerve injury
- Failed to refer to ophthalmologist

Bad Outcome vs Malpractice

- Files:
- Medications obviously added, notations unclear
- No C/D ratio recorded for 1 ½ yrs
- Dilated exam performed, nothing recorded
- No gonio recorded
- No fields
- Frame style, bifocal style, seg height, PD, temple length, A/R coating, tint, all charges recorded
- Is this malpractice? Are allegations accurate?

Failure to Warn

- Consequences of contact lens use
  - Infectious Keratitis, overwear
- Consequences of spectacle wear
  - Breakage, polycarbonate, safety lenses
- Consequences of steroid use
  - Glaucoma, cataracts, superinfection

HB 1175; Chapter 2016-234

- Starting July 1, 2016, health care practitioners are required to provide a good faith estimate of anticipated charges to treat a condition if asked by the patient. The estimate must be provided to the patient or their proxy within 7 business days after receiving the request, however the practitioner is not required to adjust the estimate for any potential insurance coverage. Patients must contact their health insurer or health maintenance organization for any information relating to cost-sharing responsibilities.

HB 1175; Chapter 2016-234

- While the estimate does not preclude actual charges from exceeding the estimate, failure to provide it within the required time without good cause will result in discipline against the practitioner. This includes a daily fine of $500 until the estimate is provided to the patient. Total fines may not exceed $5,000.

463.009 Supportive Personnel

- No person other than a licensed practitioner may engage in the practice of optometry as defined in s. 463.002(7). Except as provided in this section, ***under no circumstances shall nonlicensed supportive personnel be delegated diagnosis or treatment duties***; however, such personnel may perform data gathering, preliminary testing, prescribed visual therapy, and related duties under the direct supervision of the licensed practitioner. Nonlicensed personnel, who need not be employees of the licensed practitioner, may perform ministerial duties, tasks, and functions assigned to them by and performed under the general supervision of a licensed practitioner, including obtaining information from consumers for the purpose of making appointments for the licensed practitioner. ***The licensed practitioner shall be responsible for all delegated acts performed by persons under her or his direct and general supervision***.

463.009 Supportive Personnel

- Technicians
- Student interns
- Unlicensed doctors
- Non-credentialed providers for insurance

What happens when you get in trouble with the Board?

No Su… Refer…

- OD see… … local ER
  - Ment… …llowing eclips…
- Ophtha… … OD to DOH fo…
  - Lists … …erate
- Review … …ness of referral …
  - DOH… …iate
  - But… perfo…

*Personal editorial

Case: Running afoul of a crazy person

- Visit 1: Older female presents for CEE
  - checks off on a questionnaire that she has cataracts, floaters, and dry eyes
  - does not check off or otherwise indicate eye pain, vision blur, vision loss or other symptoms
- Pt 'friends' with OD's parents- feels entitled to 'special treatment'
  - No waiting room or copays for her!
- OD flustered by pt 'barking' at her
- Performs IOP- normal, but not recorded

Case: Running afoul of a crazy person

- Successful dilation and stereoscopic evaluation of the optic nerves was performed and recorded as normal without suspicion of glaucoma. The patient was correctable to 20/20 in each eye following a thorough examination.

Case: Running afoul of a crazy person

- Pt returns 1 year for annual exam
- The patient does not complain of ocular pain or vision loss.
- Intraocular pressure by applanation is normal at this visit.
- A dilated fundus examination is successfully performed without precipitating an angle closure attack. There is no evidence of abnormality other than advancing age-appropriate cataracts

Case: Running afoul of a crazy person

- PT RTC 1 mos later complaining of blurred vision that had occurred 2 days previously, but had since resolved.
- The patient appears to have mentioned elevated blood pressure at this time.
- The anterior chamber was judged to be deep and quiet and the patient was successfully dilated again without precipitating an angle closure attack. No signs consistent with glaucoma were found upon examination.

Case: Running afoul of a crazy person

- Dr. diagnosed ocular surface abnormalities as a possible cause of the patient's transiently blurred vision and recommended lubrication as well as a referral to a primary care evaluation for a hypertension evaluation.
  - Pt diagnosed and now treated for HTN ☺
- PCP orders MRI to determine the cause of the patient's transiently obscured vision
  - MRI normal

Case: Running afoul of a crazy person

- 10 mos later, pt visits ophthalmologist who diagnoses 'narrow angle glaucoma'.
- MD examination details normal optic discs, normal retinal nerve fiber layer, and a normal GDx evaluation. Threshold perimetry done on this date also normal
  - Likely MD was using the antiquated term, "narrow angle glaucoma" to connote a potentially occludable angle.
    - Intraocular pressure at that visit was not in keeping with true angle closure.

Case: Running afoul of a crazy person

- Gonioscopy indicated potentially occludable angles and MD appropriately recommended laser iridotomy
  - Successful
- Interval of 10 months between the examinations
  - cataractogenesis process during this interval could easily increase pupil block and initiate narrowing of the anterior chamber angle, which may have not been present and observable to optometrist at the time of her last examination.

Case: Running afoul of a crazy person

- Pt quite agitated with optometrist for not 'diagnosing her glaucoma'
  - After all, pt needed surgery!
    - Prophylactic LPI
- Claims negligence against OD
  - Pain and suffering and mental anguish
    - Her life is 'ruined'
  - Negligent care
  - Misdiagnosis leads to vision loss
    - Nothing documentable

Case: Running afoul of a crazy person

- Pt claims she has sought counsel of several lawyers but doesn't 'want to go that way'
  - Translation:
- Pt send threatening letter to OD demanding refund of all fees, copays, and remuneration for 'pain and 'suffering' or she will 'avail herself of all legal means'
- Gives actual dollar amount for compensation
- Translation:
- OD seeks counsel
- Pt vindictively* reports OD to Board

* Personal editorial

Case: Running afoul of a crazy person

- Pt dilated twice- Stereoscopic disc analysis, BIO
- Pt treated appropriately for OSD, refractive error
- Pt referred for evaluation and diagnosed with HTN and treated
- *Sole issue: during 1 exam, under duress, OD did not record IOP*
  - OD admission- knew IOP could have been added and none of this would have happened, but knew it wasn't right thing to do
  - Did perform dilation and BIO and disc analysis at visit

Case: Running afoul of a crazy person

- Charge: Violation of Chapter 463.005 Rule 64B13-3.007 Minimum Procedures for Vision Analysis
  - Did not perform tonometry and 'specific glaucoma test'
- Board retains expert
- OD and attorney retain me as expert

- Nothing adversarial- just trying to protect and ensure right prevails

The Facts as I See Them

- Tonometry is not, in fact, a "glaucoma test" or "specific glaucoma test", but merely the measurement of IOP
- Elevated intraocular pressure is a risk factor for glaucoma, but not in itself a diagnosis of glaucoma.
- Tonometry is not even an accepted screening test for glaucoma
  - Tonometry is not specific enough a test to screen for glaucoma as many patients with the disease can be mis-labeled as normal
- Detailed stereoscopic evaluation of the optic disc is a more sensitive measurement for the determination of glaucoma
  - Ergo, the OD ***did*** do a 'specific glaucoma test'

The Facts as I See Them

- No permanent damage sustained by the patient.
- No evidence that any of the patient's complaints were attributable to intermittent angle closure.
- The patient was determined to merely have potentially occludable angles.
- The patient successfully underwent laser iridotomy, which has presumably reduced the risk of future occlusion.

The Facts as I See Them

- The same procedure would have been necessary had the potentially occludable state been diagnosed by any other qualified doctor at any time.
- Thus, the patient has received the proper treatment.
- There is nothing in any records reviewed that indicate the actions or alleged inactions of optometrist negatively impacted the apparently positive outcome for this patient.

The Facts as I See Them

- OD delivered excellent care in face of adversity
- OD was professional in not altering record
- OD sought legal counsel

Final Outcome

- Case dismissed for no probable cause

Case: Alleged Negligence

- Lawn/ tree service worker presents with corneal abrasion
  - No hx of vegetative matter given
  - 3 days of FB sensation; no complaints of vision loss
- Geographic abrasion and edema without infiltration
  - Treated with Maxitrol and bandage CL- f/u 2 days
    - RTC immediately if any changes
- Pt returns 2 days later with severe central corneal infiltration
- OD recognizes possibility of fungal infection- tries to refer immediately

Case: Alleged Negligence

- Pt wants to 'wait to see if it gets better'
- Workers comp- referral authorization will take 'at least a week'
- OD adamant- explains fungal infection and permanent vision loss
- Pt ultimately referred and seen next day and treated for bacterial keratitis despite OD note about fungus
- After 7-10 days of not improving, pt referred elsewhere and dx'ed with fungal keratitis

Case: Alleged Negligence

- Pt initiates litigation against OD
- Referral center recognized issue and offered compensation in advance of litigation, so was not sued
- Pt leaves country, not participating in legal process- case dies
- Pt' s attorney vindictively* reports OD to DOH for license sanctions

*personal editorial

Case: Alleged Negligence

- DOH Expert:
  - OD violated Chapter 463.0135(1) by failing to provide the degree of medical care provided by similarly trained medical practitioners in the same or similar communities
    - Treated corneal abrasion with antibiotic-steroid combination
      - Use of antibiotics alone is standard of care
    - Using steroid for vegetative corneal injury
    - Failed to timely refer fungal keratitis

The Facts as I See Them

- No hx of vegetative injury ever given by pt to anyone
  - DOH broad speculation based upon employment and final diagnosis
- Steroid-antibiotic combo reasonable for corneal abrasion
- No indication of fungal keratitis at first visit
  - Prophylactic natamycin? Refer abrasion to corneal specialist? What more could OD do?
- OD was first to consider fungus, but nobody listened
- What would have happened if OD used standard of care treatment with topical antibiotics alone?

Final Outcome

- Case dismissed for no probable cause

Responsibility

A licensed practitioner shall have an established procedure appropriate for the **provision of eye care to his/her patients in the event of an emergency outside of normal professional hours, and when the licensed practitioner is not personally available.** Since the licensed practitioner's continuing responsibility to the patient is of a personal professional nature, no licensed practitioner shall primarily rely upon a hospital emergency room as a means of discharging this responsibility.

So what does this mean to you?

- Unlike every other medical provider, your answering machine cannot say, "*If this is a medical emergency, hang up and dial 911*"
- You must have an on-call system after hours; The system cannot direct patients to the ER.
- Options: your cell phone #, professional answering service with your cell phone #; a colleague or practice/ institution who will accept your emergencies
- Note: you have no obligation to provide after hours emergency care to any person who is **NOT** your patient
  - Caveat: neither does your ophthalmology colleagues

64B13-3.010 Standards of Practice.

(2) An optometrist shall not use or perform any technique, function, or mode of treatment which the optometrist is not professionally competent to perform. Professional competence as used in this rule may be acquired by formal education, supervised training and experience, continuing education programs which have been approved by the Board, or an appropriate combination of such means.

So what does this mean to you?

64B13-3.010 Standards of Practice.

(4) Certified optometrists employing the topical ocular pharmaceuticals listed in subsection 64B13-18.002(9), F.A.C., Anti-Glaucoma Agents, shall comply with the following:

(a) Upon initial diagnosis of glaucoma of a type other than those specifically listed in Section 463.0135(2), F.S., the certified optometrist shall develop a plan of treatment and management.

1. The plan will be predicated upon the severity of the existing optic nerve damage, the intraocular pressure, and stability of the clinical course.

In the event the certified optometrist cannot otherwise comply with the requirements of subsections 64B13-3.010(1)-(3), F.A.C., a co-management plan shall be established with a physician skilled in the diseases of the human eye and licensed under Chapter 458 or 459, F.S.

So what does this mean to you?

- Not much different than what you are already doing.
- If you diagnose glaucoma, make a treatment plan
- If glaucoma is bad, make it an aggressive plan.
- If you can't, send it to someone who can

Standards of Practice

(b) Because **topical beta-blockers** have potential systemic side effects a certified optometrist employing beta-blockers shall, in a manner consistent with Section 463.0135(1), F.S., **ascertain the risk of systemic side effects** through either a case history that complies with paragraph 64B13-3.007(2)(a), F.A.C., or by **communicating with the patient's primary care physician**. The certified **optometrist shall also communicate with the patient's primary care physician**, or with a physician skilled in diseases of the eye and licensed under Chapter 458 or 459, F.S., **when, in the professional judgment of the certified optometrist, it is medically appropriate to do so**. This communication shall be noted in the patient's permanent record. The methodology of communication is left to the professional discretion of the certified optometrist.

So what does this mean to you?

- When in doubt…ask
- You are not obligated to tell the PCP that you have prescribed a beta blocker… but it is good care and a courtesy
- Easy way- write the Rx and tell the patient to show to PCP before filling.

Standards of (Glaucoma) Practice

(c) The certified optometrist shall have available, and be proficient in the use of, the following instrumentation:

1. Goldman-type **applanation** tonometer.
2. Visual fields instrumentation capable of **threshold perimetry.**
3. **Gonioscope.**
4. Fundus Camera or detailed sketch of optic nerve head.
5. Biomicroscope.
6. A device to provide **stereoscopic view of optic nerve**.

Hmmm… still no pachymeter, camera, or OCT

- (9) A licensed practitioner who believes a patient may have glaucoma shall promptly advise the patient of the serious nature of glaucoma. The licensed practitioner shall place in the patient's permanent record that the practitioner provided such advice to the patient.

Standards of Practice

- (2) A licensed practitioner diagnosing angle closure, infantile, or congenital forms of glaucoma shall refer the patient to a physician skilled in diseases of the eye and licensed under chapter 458 or chapter 459.

Why is this so?

- Acute angle closure, infantile, and congenital forms of glaucoma are primarily surgical diseases.
- Forces non-surgeons from "Forrest Gumping their way through" medically

- (3) When an infectious corneal disease condition has not responded to standard methods of treatment within the scope of optometric practice, the certified optometrist shall consult with a physician skilled in diseases of the eye and licensed under chapter 458 or chapter 459.

So what does this mean to you?

- Duh!
- Do I really have to explain it?
- However, the rule *is* vague…

Another RD Case

- Pt c/o floaters
- Examined by OD who dilates, performs BIO, finds retina intact, warns Si/Sx RD; RTC ASAP any changes
- Pt experiences vision reduction on a Thursday, somewhat worse on Friday- wants to see if it will 'clear up'
- Comes in Monday with macula off RD
- Sues OD
- Expert witness: "*He didn't look well enough*"
- Attorney invokes following statute:

- (4) A licensed practitioner shall promptly advise a patient to seek evaluation by a physician skilled in diseases of the eye and licensed under chapter 458 or chapter 459 for diagnosis and possible treatment whenever the licensed practitioner is informed by the patient of the sudden onset of spots or "floaters" with loss of all or part of the visual field.

- Defense attorney flustered by rule
  - Retained to defend OD

Why is this so?

- Do I have to refer every case of flashes and floaters?
- Difference between licensed practitioner (who cannot dilate) and certified practitioner (who can dilate).
- These patients need dilation- licensed practitioner can't and certified can.
  - If RD found- pt logically referred
  - If nothing seen but pt has vision loss- pt logically referred
- Why no statute regarding older patient with headache and jaw claudication, etc?