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**INDEPENDENT REGULATORY REVIEW COMMISSION
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April 30, 2003

Steven J. Reto, O.D., Chairman
State Board of Optometry
116 Pine Street
Harrisburg, PA 17105

Re: Regulation #16A-528 (IRRC #2323)
State Board of Optometry
General Revisions

Dear Chairman Reto:

Enclosed are the Commission's Comments for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The Comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Pedro A. Cortes, Acting Secretary, Department of State

Comments of the Independent Regulatory Review Commission

on

State Board of Optometry Regulation No. 16A-528

General Revisions

April 30, 2003

We submit for your consideration the following Comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Optometry (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 23.1. Definitions. - Protection of the public health; Need; Clarity.

Means and methods for the examination, diagnosis and treatment of conditions of the visual system

Examination, diagnosis and treatment

The House Professional Licensure Committee (House Committee) commented requesting “a detailed explanation of the training of optometrists in order to perform the 14 services listed in the proposed regulations, as well as an explanation as to how long each service has been part of optometric practice. Additionally, the Committee requests information as to the extent these services are considered to be within the scope of optometric practice in other states.” The House Committee also listed the following specific concerns:

- Subsection (i)(C) appears to authorize optometric offices as facilities in which anesthesia may be administered.
- The House Committee noted the comments submitted by the Pennsylvania Medical Society (PMS) on Subsection (i)(F) requesting that the use of lasers be limited to diagnostic imaging purposes.
- Subsection (i)(H) would appear to limit low vision rehabilitation exclusively to the practice of optometry. The Committee fears this would have a negative impact on unlicensed individuals who are appropriately engaged in the practice of low vision rehabilitation.
- The House Committee noted the PMS comment that recommends deleting or modifying Subsection (i)(I) relating to diagnostic and non-surgical treatment of the lacrimal system.

- The House Committee questions why Subsection (ii) includes all levels of evaluation and management services, and not just those levels of evaluation and management services pertaining to the visual system.

We agree with the House Committee concerns and requests for additional supporting information regarding the scope of optometric practice.

Additionally, the public submitted comments questioning the list of procedures included in this definition as follows:

- Commentators believe Subsection (i)(E) should not allow optometrists to provoke attacks of glaucoma which they believe is outside the scope of the practice of optometry.
- Commentators believe that under Subsection (i)(K), an optometrist should not be allowed to order or calculate the lens implant power which they also believe is outside the scope of the practice of optometry.
- Commentators believe that under Subsection (i)(L), the ordering of computer assisted tomography (CAT) and magnetic resonance imaging (MRI) scans is the practice of medicine and is outside the scope of the practice of optometry.
- Under Subsection (i)(M), commentators believe that the ordering, interpretation and reporting of angiography studies is outside the scope of practice of optometry.

The Board should evaluate each comment and provide either an explanation of why each provision is appropriately within an optometrist's scope of practice under the Optometric Practice and Licensure Act, amend the provision to address the concern raised, or delete the provision.

Placement within the definition section

We have two concerns with the placement of this provision within the definitions section.

- Some of the provisions appear to be substantive, such as Subsection (i)(C). Substantive provisions within a definition are not enforceable. Therefore, it is not clear how this definition would be applied.
- We only found this term used once within the regulation in Section 23.83 *Continuing education subject matter*. We question the need to define this term rather than explain it where it is used in the regulation.

For these reasons, the Board should move the provisions in the proposed definition to a section in the body of the regulation under the title "Scope of practice."

2. Section 23.33. Practice. - Clarity.

Subsection (a) includes the phrase, “when practicing in *his* office.” (Emphasis added.) The use of words that show gender distinction should only be used in a regulation that specifically applies to one sex. The Board should amend this phrase to be gender neutral.

Subsection (b) states, in part, the following, “...an optometrist may arrange the professional practice to include service to a licensed health care service facility, including in-patient or out-patient hospitals and emergency rooms, nursing homes and long-term care facilities, or any facility with the need for optometric services.” We have two concerns.

First, the phrase, “or any facility” is very broad. Is the intention of this Subsection to allow optometrists to provide services in facilities other than licensed health care service facilities? Where would an optometrist be precluded from providing services?

Second, the phrase “optometric services” is vague. Would an optometrist be permitted to perform all of the services described in the definition of “means and methods for the examination, diagnosis and treatment of conditions of the visual system?” Would an optometrist be required to comply with § 23.21, relating to display of license and § 23.42, relating to equipment? The Board should specify what services are allowed.

Under Subsection (e), the phrase “visual screening” is used. However, this phrase is not defined. How does a visual screening differ from “optometric services” noted in Subsection (b)? The final-form regulation should include a definition of the phrase “visual screening.”

3. Section 23.34. Professional corporations. - Clarity.

Subsection (a) states, in part, the following, “An optometrist licensed by the Board may professionally incorporate with other optometrists, medical doctors, doctors of osteopathy, dentists, psychologists, podiatrists, chiropractors *and other health care professionals...*” (Emphasis added.) Besides the specific professions listed in this Subsection, what other “health care professionals” may professionally incorporate with a licensed optometrist? The regulation should clearly state or cross reference who specifically the Board considers to be a “health care professional.”

4. Section 23.71. Patient records. - Clarity; Reasonableness; Protection of the public health.

We have two concerns with Subsection (b). First, this Subsection states that requests for contact lens prescriptions may be given at the discretion of the optometrist. If an optometrist provides a contact lens prescription to a patient, Subsection (c) requires that certain factors be considered before that prescription is provided. The Preamble states that these factors were included to protect the optometrist from liability. Since these protections were included in the regulation, why is a patient’s request for contact lens prescriptions “at the discretion of the optometrist”?

Second, this Subsection states that a patient’s request for a spectacle prescription shall be complied with if the request was made within two years of the patient’s last eye examination. In

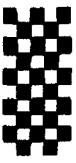
order to protect the public health, should a similar requirement be placed on contact lens prescription requests?

Subsection (c) includes the phrase, “in *his* discretion.” (Emphasis added.) The Board should amend this phrase to be gender neutral.

5. Section 23.72. Prescriptions. - Clarity.

Subsection (a) describes the information that must be included in an optometric prescription. A phone number would allow the person filling the prescription to easily verify a prescription if a question arises. The Board should consider adding this requirement.

Subsection (b) addresses information that must be included in a contact lens prescription. It states, in part, the following, “...but in no case shall the expiration date be greater than 1 year.” Does the one-year expiration date refer to the date of the contact lens examination or the date when the optometrist wrote the prescription? The final-form regulation should address this concern.



INDEPENDENT REGULATORY REVIEW COMMISSION

To: Suzanne Hoy
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Licensing Boards and Commissions
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From: Kristine M. Shomper
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Commission
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Date: April 30, 2003
of Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Optometry's regulation #16A-528 (#2323). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____

Suzanne Hoy

Date: _____

4/30/03