02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

371 OFFICE OF PROFESSIONAL AND OCCPUATIONAL REGULATION

 MAINE BOARD OF OPTOMETRY LICENSING BOARD

BASIS STATEMENT AND SUMMARY AND RESPONSES TO COMMENTS

Basis Statement: The Maine State Board of Optometry was established to protect the public through the regulation of the practice of optometry in the State of Maine so as to maintain high professional standards. The primary responsibilities of the Board are to examine and license qualified applicants to practice the profession of optometry and to hold the title of Optometrist in the State of Maine.

The Board is undergoing a review of all existing chapters including application for examination, licensure by endorsement, telehealth standards, license renewal requirements, fees, ethics, and continuing education. Such broad rulemaking is required because the Governor signed a full repeal and replace of the laws as enacted by the 131st legislative sessions and the new law needs clarifying rules. Rulemaking authority is conferred by 32 M.R.S. § 19204.

To provide context to the current filing, the Board currently has three rules chapters:

02  382   State Board of Optometry

[Ch. 1](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2F02%2F382%2F382c001.docx&data=05%7C02%7CElizabeth.Stivers%40maine.gov%7Cc5638fd743524501c82908dcd269fc97%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638616600417059732%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=yj8DpcCHjIs5SbI4EydHM89gYw1mEkrP6iCadq9MBvo%3D&reserved=0)     Examination; Approved Schools; License Renewal; Fees; Continuing Education

[Ch. 2](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2F02%2F382%2F382c002.doc&data=05%7C02%7CElizabeth.Stivers%40maine.gov%7Cc5638fd743524501c82908dcd269fc97%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638616600417067233%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=k%2Fa9JjVVQZUBquVdkWMWoFoPjAESm8BU6O1w2RLz5GU%3D&reserved=0)     Rules of Practice

[Ch. 3](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2F02%2F382%2F382c003.doc&data=05%7C02%7CElizabeth.Stivers%40maine.gov%7Cc5638fd743524501c82908dcd269fc97%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638616600417073727%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=rJUJnEH8KBPOWJE8TxJ2VzHvm1oPGPsqAaDSf7aWrXc%3D&reserved=0)     Enforcement, Disciplinary Procedures, and Appeal

The board voted on July 24, 2024, to propose rules and first received oral comments on such rule changes at its public hearing on August 9, 2024, at 1:00 p.m., and continued to accept written comments through 5:00 pm on August 20, 2024. The board held a public meeting on August 30, 2024, to discuss and make changes to the proposed rule based on the comments, oral and written.

The changes to the originally proposed rules were substantial so on August 30, 2024, the Board voted to send revised proposed rules out for additional public comment. Because of the confusion and the Board’s desire for complete clarity, it offered a repeal and replace approach to better clarify what is new. The Board accordingly proposed rules that reflect a repeal and replacement of the existing three chapters.

In the revised proposed rules, chapters 1, 2, and 3 are repealed and replaced with the following clean version of new chapters 1 – 5 which are identified as follows:

Chapter 1: Initial Licensure and Renewal, Licensure by Endorsement, Fees, Continuing Education

Chapter 2: Advisory Rulings

Chapter 3: Enforcement, Disciplinary Procedures, and Appeals

Chapter 4: Telehealth Standards, use and Limitations,

Chapter 5: Code of Ethics.

Notice of the second proposed rulemaking was published in the Maine Secretary of State weekly notice on September 25, 2024, in the Portland Press Herald, the Kennebec Journal, the Bangor Daily News, and the Sun Journal on September 25, 2024, and uploaded to the Optometry Licensing Board webpage on September 24, 2024.

Changes from the July 24, 2024, published rules were published in bold red text so it would be obvious to the public what the changes are.

The Board accepted written comments on the second proposed rules through 5:00 pm on October 25, 2024

Summary of Comments and Responses on second proposed rules:

The Board received three (3) written comments on the proposed repeal and replace of rule(s).

1. Maine Optometric Association, by Bruce Gerrity (attorney, PretiFlaherty) (written comment provided October 25, 2024)

MOA made a number of comments wherein it agrees with the proposed changes and the Board thanks MOA but does not list such comments.

Chapter 4, Telehealth Standards, Uses, and Limitations

MOA commented in section 6(A), Informed Consent, that the appropriate informed consent also include the license number or identifier of any out of state provide who becomes involved in a patient’s telehealth care.

MOA also commented in section 7, requesting that a clause be added “in accordance with the educational standards of any professional certifications of any degree set forth in section 2(8).

MOA commented in Section 10 that any Optometrist or other healthcare provider forward complete records of their care to the optometrist with whom the patient has an optometric-patient relationship as set forth in section 2(5) of this chapter. This should include any records related to the provision of eye ware, particularly contacts, as contact lens can have a direct impact on the health of a patient’s eyes. Having a complete record of eye ware is a crucial element of a complete patient record.

MOA commented on section 17 Prescribing Based Solely on an Internet Request, Internet Questionnaire or a Telephonic Interview Prohibited, asking that “other health care providers” be stricken.

The board thanks MOA and does not accept these comments, having previously discussed the issues and settled on the language, some of which inherently addresses MOA concerns or is addressed by current practice.

2. National Association of Retail Optical Companies (“NAROC”) (written comments provided October 24 and 25, 2024)

Chapter 4, Telehealth Standards, Uses, and Limitations

NAROC commented on the definition of a “Qualified Technician” in “Section 2. Definitions” and asked that the Board reword as suggested. NAROC argues that requiring certification of technicians who are providing services to patients when the optometrist is not in the same office as the patient is overly burdensome and requires an unnecessary layer of administrative oversight.

The Board thanks NAROC and does not accept this comment. The requirement of certification is only in the context of telehealth and is important to assure a level of technician training and knowledge since the optometrist is not in the same physical location as the patient but the technician is.

NAROC argues that the Board should allow its licensees to determine the necessary training and telehealth protocols and retain internal evidence of such training, pointing out that if harm arises, the Board can prosecute against the optometrist’s license. The Board thanks NAROC but does not accept this comment, recognizing that its duty is to the safety and welfare of the public and shouldn’t wait for harm to arise due to inadequately trained assistants.

NAROC argues that optometrists should be able to train their own assistants and that the training is not necessarily applicable to the tasks performed by assistants. The Board thanks NAROC and agrees. If the optometrist adequately trains the assistant, the assistant may take the test without paying for a course.

NAROC also argues that the certification process is costly and that it takes time to take the training prior to certification so the effective date of this portion of the rule should be delayed at least one year into the future to allow personnel to study for and take the required test(s), which are only offered four times a year for assistants and two times per year for technicians, and only in one or two locations throughout the state. NAROC suggests that an Economic Impact Statement be filed. The Board thanks NAROC, and agrees, having filed an economic impact statement. It does not otherwise accept NAROC comment in this area, disagreeing that the Economic Impact Statement underestimates the impact on optometric practices and the states is understated. NAROC argues that it is unlikely that the expense to get a person certified is a one-time expense. The Board cannot estimate turnover since that is purely speculative, nor can the Board quantify how many assistants in the state are already certified. The Board agrees with NAROC that the initial estimate is likely accurate for a single assistant.

NAROC argues that there should be no distinction between the assistants used providing in-person and the telehealth models, just as there is no distinction between the standard of care involved in the two models. The Board does not accept this comment because in telehealth where the patient and optometrist are in different locations, the assistant providing service in telehealth should have a basic level of knowledge when providing service to the patient.

The Board thanks NAROC and declines the NAROC requests to (1) revise its economic impact statement, (2) adopt the NAROC definition, and (3) delay implementation of this rule.

3. American Telemedicine Association’s Action, (“ATAA”) (written comment provided October 22, 2024)

ATAA provided multiple comments expressing appreciation for changes made in following earlier comments on the rules. The Board thanks ATAA but does not list such comments.

ATA suggested that the qualified technician section was amended to make it clear that a Qualified Technician is not required whenever optometrists utilize telehealth to deliver care. With respect to this comment of ATAA’s, the Board thanks ATAA and does not accept this comment. Qualified Technicians are required when the optometrist is providing telehealth to a patient who is in a different location from the optometrist, and the optometrist uses the services of a Qualified Technician who is at the same location as the patient.