

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**382 MAINE BOARD OF OPTOMETRY****Chapter 1: INITIAL LICENSURE AND RENEWAL, LICENSURE BY ENDORSEMENT, FEES, CONTINUING EDUCATION**

SUMMARY: This chapter consists of rules covering initial licensure and renewal, Licensure by endorsement, fees and continuing education requirements.

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Section 1: Initial Licensure and Renewal**1. Application for Examination**

A. A complete application for examination, with all supporting documentation, is to be filed with the Board administrative staff at least thirty (30) days prior to the examination.

B. All information given on the application shall be given under oath.

C. The licensing examinations are scheduled by appointment, once all requirements are met. Information regarding the examination is available from the Board's administrative staff.

(1) Initial applicants must pass Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) examination, including the Treatment and Management of Ocular Disease (TMOD) examination prior to acceptance of the application.

(2) Initial applicants must pass the jurisprudence examination for the State of Maine as administered by the Board.

(3) Applicants who fail the jurisprudence examination and wish to reapply must wait a minimum of 30 days before completing a new application form, with application fee.

2. License Renewal Requirements

Licenses must be renewed annually before April 1. An applicant must submit a

completed application form (provided by the Board), the license renewal fee, and proof of the requisite number of hours of continuing education.

Section 2: Licensure by Endorsement

The Board is authorized to issue a license to an applicant who is licensed under the laws of another state or United States territory who furnishes proof, satisfactory to the Board, and meets the following requirements for licensure:

1. An applicant seeking licensure by endorsement must apply with the appropriate fee under this chapter, and any other materials required by the Board.
2. An applicant has 90 days after being notified of any materials needed to complete the application to submit those materials to the Board. Failure to complete the application within that 90-day period may result in a denial of the application.
3. Specific qualifications for licensure by endorsement; applicants licensed to practice in another jurisdiction:
 - A. Qualifications. The Board will review materials submitted by the applicant as outlined below to determine if the other jurisdiction's requirements for licensure are substantially similar to the requirements for initial licensure for the level of licensure applied for under the laws and rules of the Board.
 - B. An applicant seeking licensure by endorsement pursuant to this chapter must provide:
 1. Documentation of the laws and rules of all jurisdictions in which the applicant is licensed;
 2. Verification of all licenses in good standing under which the applicant is actively licensed;
 3. Verification that the applicant is in good standing in all jurisdictions in which the applicant was prior licensed.
 - C. All application materials for qualifications required for initial licensure as an optometrist.

Section 3: Fees

All fees are non-refundable. They should be made payable to the Maine Board of

Optometry as follows:

1. Application for Licensing Examination

The fee for the initial licensing examination application is \$300.00

2. Annual license fee

The annual license fee is \$490.00.

3. Late renewal fee

A license may be renewed up to ninety (90) days after the date of expiration upon payment of a late fee of \$300.00 in addition to the \$490.00 annual license fee.

PLEASE NOTE: Licenses expire upon the expiration date of the license. Practicing with an expired license may result in disciplinary actions. The sole purpose of the 90-day period is to permit expedited processing of renewals. It does not in any way operate to extend the expiration date of a license to practice.

Section 4: Continuing Education

1. All optometrists licensed under this Chapter are required to take no fewer than twenty-five (25) hours of continuing education-credits during the licensing period preceding license renewal. The continuing education credits must be in subjects related to the practice of optometry, such as the utilization and application of new techniques, scientific and technical advances, the use of pharmaceutical agents and treatment of ocular diseases, and the achievements of research to ensure comprehensive eye care to the public. The courses must be accredited by the Council on Optometric Practitioner Education (COPE), Accreditation Council for Continuing Medical Education (ACCME), or any such other accreditation program as approved by the board. A maximum of two hours in practice management may be applied toward this requirement. Courses may be completed either in person, on-line in person, or via video replay.

Optometrists authorized to use therapeutic pharmaceutical agents shall complete at least 15 hours of courses in diagnosis, treatment, and management of ocular or relevant systemic disease continuing education.

Attendance verification must be submitted by each optometrist at the time of license renewal to the board in the manner described by the board for license renewal.

2. **Prior Approval:** Any course not approved by the above-listed organizations may be submitted to the Board for prior approval. Request for course approval should be on

the form provided by the board, submitted with required attachments. The Board may, in its discretion, approve such courses submitted to it, if the request for approval and pertinent course materials are received by the Board at least thirty (30) days in advance of the date for which the course is scheduled. For good cause shown such as illness or family crisis, the Board may waive all or a portion of the 30-day period.

3. **Change in Requirements:** If there is an increase in the number of continuing education hours required, all licensed optometrists will be notified as of April 1 of the year in which the increase becomes effective.
4. **Waiver or Modification:** The board may waive or modify this continuing education requirement in cases of illness or undue hardship.
5. **Carry-over:** Each licensing renewal period, optometrists may carry over up to 5 credit hours to satisfy the requirements of the following renewal period.
6. **Potential discipline or renewal:** If an applicant for license renewal fails to comply with continuing education provisions and action has not been taken by the board to waive or modify the requirements pursuant to paragraph 4 of this section, because of the causes specified, then the board may not renew the license, except that in its discretion, the board may renew the license provided that the applicant completes all requirements for renewal of the license within six (6) months of the renewal date.
7. **Military Service;** license to practice optometry. An applicant who is a resident of the State serving in the Military Service of the United States must complete the requirements for licensure in the state of Maine in order to be licensed in Maine. An Optometrist in the military service may renew a Maine license upon payment of the required annual renewal fee, if all other requirements such as continuing education are met.
8. For the license period of April 1, 2024, through March 31, 2025, credits taken between January 1, 2024, and March 31, 2024, will be accepted for the license period beginning on April 1, 2024.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 19202 (3), §19204, §19305 (1), §19303, 19605.

REPEALED AND REPLACED:

EFFECTIVE DATE:

Chapter 2: ADVISORY RULINGS

SUMMARY: This chapter consists of the procedure for rendering advisory rulings.

Section 1: Advisory Rulings

- 1.** Authority and Scope. The Board may issue advisory rulings pursuant to 5 M.R.S.A., Section 9001, concerning the applicability of any statute or rule it administers to an existing factual situation. Advisory rulings will be issued at the Board's discretion and only upon request. Each request will be individually reviewed to determine whether an advisory ruling is appropriate. The Board may decline to issue an advisory ruling if the question is hypothetical, if there is insufficient experience upon which to base a ruling, or for any other reason the Board deems proper.
- 2.** Submission. Requests for advisory rulings shall be in writing and shall set forth in detail all facts pertinent to the question. The Agency may require additional information as necessary to complete a factual background for its ruling.

 - A.** Consideration. All requests for advisory rulings will be acknowledged by the Board within sixty days. The acknowledgment shall state whether a ruling will be given. Alternatively, the acknowledgment may request additional information which is necessary to determine whether an advisory ruling is appropriate.
 - B.** All advisory rulings shall be in writing and shall include a statement of the facts or assumptions or both upon which the rulings are based. The statement shall be sufficiently detailed to allow understanding of the basis of the opinion without reference to other documents. Advisory rulings shall be signed by the chief officer of the Board and shall be numbered in an appropriate serial manner.
 - C.** Disposition. Each completed advisory ruling will be mailed to the requesting party and a copy will be kept by the Board in a file or binder established for this purpose. All completed advisory rulings are public documents and shall be available for public inspection during the Board's normal working hours. In addition, the Board may otherwise publish or circulate any advisory ruling as it deems appropriate.

STATUTORY AUTHORITY: 5 M.R.S. § 8051, 5 M.R.S. § 9001, §19204

REPEALED AND REPLACED:

EFFECTIVE DATE:

Chapter 3: ENFORCEMENT, DISCIPLINARY PROCEDURES AND APPEALS

SUMMARY: This chapter outlines the Board's Complaint Procedures.

Section 1: Complaint Officer

1. Complaint Officer Elected. At the Annual Meeting, or when necessary, the Board shall elect one of its members as the Complaint Officer.
2. Duties of the Complaint Officer. The Complaint Officer shall be responsible for processing complaints and for responding to Optometrists and the public for information relative to the practice of optometry.
3. Delegation of Responsibilities. With the approval of the Board, the Complaint Officer may delegate any assigned responsibilities to other members of the Board.

Section 2: Complaint Procedures

The Board will follow the procedures for initiating and processing complaints set forth in its Complaint Procedure Policy, a copy of which shall be available upon request from the Office Specialist II.

Section 3: Appeals

1. Final Board decisions regarding action taken on applications for licensure may be appealed to Superior Court pursuant to 5 M.R.S.A. sections 110010-11008 and Maine Rules of Civil Procedure, Rule 80C.

STATUTORY AUTHORITY: 5 M.R.S. § 8051; 32 M.R.S. §§§ 19202, 19401, 19204

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Chapter 4: TELEHEALTH STANDARDS, USES, AND LIMITATIONS

TELEHEALTH STANDARDS OF PRACTICE SUMMARY:

Chapter 4 establishes standards for the practice of optometry using telehealth in providing optometric care. Telehealth care being provided under this section requires that the Optometrist have an established Optometrist Patient relationship except as otherwise provided in this chapter, Section 3, Subsection 16.

SECTION 1. STATEMENT REGARDING TELEHEALTH

- 1.** The Board recognizes that technological advances have made it possible for Optometrists in one location to provide health care to patients in another location with or without an intervening health care provider.
- 2.** Telemedicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.
- 3.** Failure to conform to the appropriate standards of care or professional ethics while using telehealth in providing optometric care may subject the Optometrist to discipline by the Board.

SECTION 2. DEFINITIONS

- 1.** “Distant site” means the location of the Optometrist providing telehealth services.
- 2.** “In-person encounter” means that the Optometrist and the patient are in the physical presence of each other and are in the same physical location during the optometrist-patient encounter.
- 3.** “Originating site” means the location of the patient at the time of the examination, diagnosis, consultation or treatment.

4. “Optometrist” means a person licensed by the Board.
5. “Optometrist-Patient Relationship” means the definition in 32 M.R.S. § 19101(21).
6. “Provider” means the definition provided in 32 M.R. S. § 19101(25).
7. “Telehealth” means the provision of health care services using electronic audio-visual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between an Optometrist in one location and a patient in another location with or without an intervening health care provider. Telehealth includes asynchronous store-and-forward technologies, telemonitoring, and real-time interactive services. When necessary and appropriate under the circumstances and if in compliance with the applicable standard of care, telehealth includes the use of audio-only technology. Telehealth shall not include the provision of health care services exclusively through e-mail, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof between an Optometrist in one location and a patient in another location with or without an intervening health care provider.
8. “Qualified Technician” means a technician employed by an Optometrist with a physical location in the State of Maine seeing patients in person in Maine and the technician is certified by the Commission on Paraoptometric Certification (CPC) as a Certified Paraoptometric Assistant (CPOA) or higher level (Certified Paraoptometric Technician/CPOT), or certified by the Joint Commission on Allied Health Personnel in Ophthalmology (JCAHPO) as a Certified Ophthalmic Assistant (COA) or higher level (Certified Ophthalmic Technician/COT, Certified Ophthalmic Medical Technologist/COMT).

SECTION 3. PRACTICE GUIDELINES

1. **MAINE OPTOMETRIC LICENSE REQUIRED** Any individual who uses telehealth in the optometric examination, diagnosis, consultation or treatment of a patient located in Maine shall hold an active Maine optometry license.
2. **STANDARDS OF CARE AND PROFESSIONAL ETHICS** An Optometrist who uses telehealth in providing optometric care shall be held to the same standards of care and professional ethics as an Optometrist using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics while using telehealth may be a violation of the laws and rules governing the practice of optometry and may subject the Optometrist to discipline by the Board.

3. SCOPE OF PRACTICE An Optometrist who uses telehealth in providing optometric care shall ensure that the services provided are consistent with the Optometrist's scope of practice, including the Optometrist's education, training, experience, ability, licensure, and certification.

4. IDENTIFICATION OF PATIENT AND OPTOMETRIST An Optometrist who uses synchronous telehealth technology in providing optometric care shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, certification, and credentials of the Optometrist providing telehealth services prior to the provision of care.

5. MEDICAL HISTORY AND EYE EXAMINATION Generally an Optometrist shall perform an in-person interview and eye examination for each patient. However, the interview and eye examination may -be via telehealth visit where there is an established Optometrist Patient relationship, and the technology utilized in a telehealth encounter is sufficient to establish an informed diagnosis as though the interview and eye examination had been performed in-person.

6. INFORMED CONSENT: Evidence documenting appropriate patient informed consent for the use of telehealth technologies shall be obtained and maintained. A signed and dated notice, including an electronic acknowledgement by the patient, establishes a presumption of notice. Appropriate informed consent should include the following terms:

A. Identification of the patient, the Optometrist, and Optometrist license number;

B. Necessity of in-person patient encounter. When, for whatever reason, a telehealth visit begins and it becomes apparent to the Optometrist that the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a Provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the Optometrist shall make this known to the patient, and advice and counsel the patient regarding the need for the patient to obtain an additional in-person patient encounter reasonably able to meet the patient's needs. The Optometrist shall describe how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure;

C. Hold harmless clause for information lost due to technical failures; and Requirement for express patient consent to forward patient-identifiable information to a third party.

7. **USE OF QUALIFIED TECHNICIANS.** If an Optometrist is at a location different from where the patient is located and a technician is used in the provision of telehealth services, the Optometrist shall use a Qualified Technician supervised by the Optometrist providing care. The Optometrist shall ensure that the Qualified Technicians not work outside the scope of their training and authority.

8. **COORDINATION OF CARE** An Optometrist who uses telehealth in providing optometric care shall, when optometrically appropriate, identify an appropriate health care provider(s) for the patient, when available, where in-person services can be delivered.

9. **EMERGENCY SERVICES** An Optometrist who uses telehealth in providing optometric care shall recommend that the patient seek appropriate care at a local optometrist or ophthalmologist, an acute care facility, or an emergency department for the safety of the patient in the case of emergency.

10. **MEDICAL RECORDS** An Optometrist who uses telehealth in providing optometric care shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, optometrist/patient communications, laboratory and test results, evaluations and consultations, prescriptions and instructions obtained or produced in connection with the use of telehealth technologies. The Optometrist shall note in the patient's record when telehealth is used to provide diagnosis and treatment.

11. **PRIVACY AND SECURITY** An Optometrist who uses telehealth in providing optometric care shall ensure that all telehealth encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act and applicable law to ensure that all patient communications and records are secure and remain confidential.

12. **TECHNOLOGY AND EQUIPMENT** The technology and equipment utilized for telehealth shall comply with the following requirements:

- (1) The technology and equipment utilized in the provision of telehealth services must comply with all relevant safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;
- (2) The technology and equipment utilized in the provision of telehealth services must be of sufficient quality, size, resolution and clarity such that the Optometrist can safely and effectively provide the telehealth services;
- (3) The technology and equipment utilized in the provision of telehealth services must be compliant with the Health Insurance Portability and Accountability Act and other applicable privacy and confidentiality law;

- (4) The technology and equipment utilized in the provision of telehealth services must be able to verify the identity of the patient; and
- (5) The technology and equipment utilized in the provision of telehealth services must be able to specify and disclose the identity and credentials of the health care provider(s) including the Optometrist.

13. DISCLOSURE AND FUNCTIONALITY OF TELEHEALTH SERVICES Except for optometrist to optometrist or other health care provider direct consultation, an Optometrist who uses telehealth in providing optometric care shall ensure that the following information is clearly disclosed to the patient on the Optometrist's website, in writing, or electronically via email:

- (1) Types of services provided, including services via telehealth are discretionary;
- (2) Contact information for the Optometrist; and
- (3) Identity, licensure, certification, credentials and qualifications of all health care providers who are providing the telehealth services.

14. PATIENT ACCESS AND FEEDBACK An Optometrist who uses telehealth in providing optometric care shall ensure that the patient has easy access to a mechanism for the following purposes:

- (1) To access, supplement and amend patient-provided personal health information;
- (2) To provide feedback regarding the quality of the telehealth services provided; and
- (3) To register complaints. The mechanism shall include information regarding the filing of complaints with the Board.

15. FINANCIAL INTERESTS Advertising or promotion of goods or products from which the Optometrist(s) receives direct remuneration, benefit or incentives (other than the fees for the optometric services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general optometric information sites to enhance education; however, the Optometrist(s) shall not endorse or benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, Optometrists should be aware of and avoid to the greatest extent practicable the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited unless pursuant to a collaborative practice agreement. Optometrists shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy unless pursuant to a collaborative practice agreement.

16. CIRCUMSTANCES WHERE THE STANDARD OF CARE MAY NOT REQUIRE An OPTOMETRIST TO PERSONALLY INTERVIEW OR EXAMINE A PATIENT

- A. Under the following circumstances, whether or not such circumstances involve the use of telehealth in providing optometric care, an Optometrist may treat a patient who has not been personally interviewed, examined and diagnosed by the Optometrist:
- (1) Situations in which the Optometrist prescribed medications on a short-term basis for a new patient and has scheduled an appointment to personally examine the patient;
 - (2) For existing patients who are in institutional settings, including nursing homes and care facilities;
 - (3) Call situations in which an Optometrist is taking call for another Optometrist who has an established optometrist-patient relationship with the patient; and
 - (4) Cross-coverage situations in which an Optometrist is taking call for another Optometrist who has an established optometrist-patient relationship with the patient;

17. PRESCRIBING BASED SOLELY ON AN INTERNET REQUEST, INTERNET QUESTIONNAIRE OR A TELEPHONIC INTERVIEW PROHIBITED

Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e. static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited.

Absent a valid optometrist-patient relationship, it is prohibited for an Optometrist to prescribe to a patient based solely on a telephonic evaluation, except as provided in the circumstances described in Section 16 of this chapter.

Telehealth technologies, where prescribing may be contemplated, must implement measures to uphold patient safety in the absence of traditional physical examination. Such measures should guarantee that the identity of the patient and Optometrist or other health care providers is clearly established and that detailed documentation for the clinical evaluation and resulting prescription is required. Optometrists shall take all reasonable measures to assure informed, accurate and error prevention prescribing practices (e.g. integration with e-Prescription systems).

All applicable law shall be complied with.

Prescribing medications, in-person or via telehealth, is at the professional discretion of the optometrist. The optometrist prescribing via telehealth must ensure that the clinical evaluation, indication, appropriateness, and safety consideration for the resulting prescription are appropriately documented and meet the applicable

standard of care. Consequently, prescriptions via telehealth carry the same accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, an Optometrist may exercise their judgment and prescribe medications as part of telehealth encounters consistent with the level of licensure the Optometrist holds.

STATUTORY AUTHORITY: 32 M.R.S. §§ 19204, 19605

EFFECTIVE DATE:

Chapter 5: Code of Ethics

Summary: This chapter sets forth a code of ethics applicable to licensed optometrists.

1. Generally

Licensed optometrists shall abide by the code of ethics set forth in this chapter.

2. Code of Ethics

The board adopts and incorporates into this chapter by reference the following code of ethics with the exceptions noted below:

Code of Ethics (American Optometric Association, Adopted by the House of Delegates as: Substantive Motion M-1944-1, June 1944; modified June 2005; Repealed June 2007 Modified and Adopted as Resolution #1969, June 2007).

To obtain a copy of the American Optometric Association Code of Ethics, please call 800-365-2219, visit <https://www.aoa.org/about-the-aoa/ethics-and-values?sso=y>, or write the American Optometric Association at this address:

American Optometric Association
243 Lindbergh Blvd.
St. Louis, MO 63141-7881
Phone: 314-991-4100

The language of the code of ethics adopted by the Board is as follows:

It shall be the ideal, resolve, and duty of all optometrists:

TO KEEP their patients' eye, vision, and general health paramount at all times;

TO RESPECT the rights and dignity of patients regarding their health care decisions;
TO TREAT all persons with respect, dignity and courtesy regardless of race, age, religion, national origin, gender orientation and expression, education, or financial status.

TO ADVISE their patients whenever consultation with, or referral to another optometrist or other health professional is appropriate;

TO ENSURE confidentiality and privacy of patients' protected health and other personal information;

TO STRIVE to ensure that all persons have access to appropriate eye, vision, and general health care;

TO ADVANCE their professional knowledge and proficiency to maintain and expand competence to benefit their patients;

TO PROMOTE ethical and cordial relationships with all members of the health care community;

TO RECOGNIZE their obligation to protect the health and welfare of society; and

TO CONDUCT themselves as exemplary citizens and professionals with honesty, integrity, fairness, kindness, and compassion.

The Board does not adopt "TO MAINTAIN their practices in accordance with general health care standards" but rather adopts the following ethical requirement:

TO MAINTAIN their practices in accordance with professional health care standards;

Further, the Board adopts the following ethical requirement:

TO NOT DISCRIMINATE in the access to and provision of care based on race, color, ancestry, national origin, sex (or gender), sexual orientation (which includes gender identity and expression), physical or mental disability, genetic predisposition, religion, or age.

STATUTORY AUTHORITY:

32 M.R.S. c. 151 § 19204

EFFECTIVE DATE: