



**TELECONFERENCE/VIRTUAL
OPTOMETRY EXAMINING BOARD**
Virtual, 4822 Madison Yards Way, Madison
Contact: Tom Ryan (608) 266-2112
July 11, 2024

The following agenda describes the issues that the Council plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions and deliberations of the Council.

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-3)**
- B. Approval of Minutes of April 4, 2024 (4-6)**
- C. Introductions, Announcements and Recognition
- D. Reminders: Conflicts of Interest, Scheduling Concerns
- E. Administrative Matters – Discussion and Consideration**
 - 1) Department, Staff and Board Updates
 - 2) Board Members – Term Expiration Dates
 - a. Jenkins, Mark A. – 7/1/2016
 - b. Kenitz, Scott F. – 7/1/2025
 - c. Schulz, Robert C. – 7/1/2020
 - d. Slaby, Lisa L. – 7/1/2027
 - e. Sorce, Peter I. – 7/1/2023
 - f. Wilson, Emmylou – 7/1/2027
 - g. Wonderling, Ann M. – 7/1/2027
- F. Legislative and Policy Matters – Discussions and Consideration
- G. Administrative Rule Matters – Discussion and Consideration (7-17)**
 - 1) Final Rule Draft of Opt 8 Relating to Continuing Education **(8-11)**
 - 2) Preliminary Rule Draft of Opt 8, Related to New Course Format Definitions by ARBO and COPE **(12-16)**
 - 3) Pending or Possible Rulemaking Projects **(17)**
- H. Prescription Drug Monitoring Program (PDMP) Overviews and Updates (18-20)**

- I. Association of Regulatory Boards (ARBO) 2024 Annual Meeting Report – Peter Sorce (21-319)**
- J. Review of 2025 Board Goals to Address Opioid Abuse and Delegate Department to File Wis. Stat. s. 440.035(2m) Report to Legislature (320)**
- K. Discussion and Consideration of Items Added After Preparation of Agenda**
 - 1) Introductions, Announcements and Recognition
 - 2) Nominations, Elections, and Appointments
 - 3) Administrative Matters
 - 4) Election of Officers
 - 5) Appointment of Liaisons and Alternates
 - 6) Delegation of Authorities
 - 7) Education and Examination Matters
 - 8) Credentialing Matters
 - 9) Practice Matters
 - 10) Legislative and Policy Matters
 - 11) Administrative Rule Matters
 - 12) Liaison Reports
 - 13) Board Liaison Training and Appointment of Mentors
 - 14) Informational Items
 - 15) Public Health Emergencies
 - 16) Division of Legal Services and Compliance (DLSC) Matters
 - 17) Presentations of Petitions for Summary Suspension
 - 18) Petitions for Designation of Hearing Examiner
 - 19) Presentation of Stipulations, Final Decisions and Orders
 - 20) Presentation of Proposed Final Decisions and Orders
 - 21) Presentation of Interim Orders
 - 22) Petitions for Re-Hearing
 - 23) Petitions for Assessments
 - 24) Petitions to Vacate Orders
 - 25) Requests for Disciplinary Proceeding Presentations
 - 26) Motions
 - 27) Petitions
 - 28) Appearances from Requests Received or Renewed
 - 29) Speaking Engagements, Travel, or Public Relation Requests, and Reports

L. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

- M. Deliberation of Items Added After Preparation of the Agenda**
 - 1) Education and Examination Matters
 - 2) Credentialing Matters
 - 3) DLSC Matters
 - 4) Monitoring Matters
 - 5) Professional Assistance Procedure (PAP) Matters

- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Orders
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings
- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

N. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

O. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

P. Open Session Items Noticed Above Not Completed in the Initial Open Session

Q. Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

NEXT MEETING: SEPTEMBER 19, 2024

Board Member Training: November 15, 2024

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way, Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the board's agenda, please visit the Department website at <https://dsps.wi.gov>. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, or the Meeting Staff at 608-267-7213.

**VIRTUAL/TELECONFERENCE
OPTOMETRY EXAMINING BOARD
MEETING MINUTES
APRIL 4, 2024**

PRESENT: Mark Jenkins, Scott Kenitz, Lisa Slaby, Peter Sorce, Emmylou Wilson, Ann Wonderling

EXCUSED: Robert Schulz

STAFF: Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Jacob Pelegrin, Administrative Rules Coordinator; Tracy Drinkwater, Board Administration Specialist; and other DSPS Staff

CALL TO ORDER

Lisa Slaby, Chairperson, called the meeting to order at 9:00 a.m. A quorum was confirmed with six (6) members present.

ADOPTION OF AGENDA

MOTION: Mark Jenkins moved, seconded by Peter Sorce, to adopt the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF JANUARY 25, 2024

MOTION: Emmylou Wilson moved, seconded by Peter Sorce, to adopt the Minutes of January 25, 2024, as published. Motion carried unanimously.

9:00 AM PUBLIC HEARING: Clearinghouse Rule Opt 1, 5, and 6m, Relating to Telehealth

MOTION: Emmylou Wilson moved, seconded by Peter Sorce, to accept all Clearinghouse comments on the rule draft for OPT 1, 5, 6 and to reflect this in the Report to the Legislature. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

Discussion of public hearing comments and Clearinghouse Report on Opt 1, 5, and 6, related to telehealth.

MOTION: Mark Jenkins moved, seconded by Emmylou Wilson, to authorize the Chair to approve the Final Rule Draft and Report to the Legislature for rule OPT 1, 5, 6 for submittal to the Governor's Office and Legislature. Motion carried unanimously.

Discussion of preliminary rule draft of Opt 8, related to new course format definitions by ARBO and COPE.

MOTION: Lisa Slaby moved, seconded by Mark Jenkins, to appoint Emmylou Wilson to work with DSPS on drafting OPT 8. Motion carried unanimously.

Consideration of Board Approval of a Scope Statement on Opt 1 and 5 related to definitions.

MOTION: Emmylou Wilson moved, seconded by Peter Sorce, to authorize the Chair to approve the Scope Statement revising rules OPT 1 and 5 related to Definitions for submission to the Governor's Office and for publication in the Register. Additionally, the Board authorizes the Chair to approve the Scope Statement for implementation no less than 10 days after publication. If the Board is directed to hold a preliminary public hearing on the Scope Statement, the Chair is authorized to approve the required notice of hearing. Motion carried unanimously.

ASSOCIATION OF REGULATORY BOARDS OF OPTOMETRY (ARBO) MATTERS

ARBO invitation for Peter Sorce to serve on the 2024 ARBO Resolutions Committee

MOTION: Scott Kenitz moved, seconded by Lisa Slaby, to approve the appointment of Peter Sorce to the 2024 ARBO Resolutions Committee. Motion carried unanimously.

CLOSED SESSION

MOTION: Peter Sorce moved, seconded by Scott Kenitz, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.). Lisa Slaby, Chairperson, read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Mark Jenkins-yes; Scott Kenitz-yes; Lisa Slaby-yes; Peter Sorce-yes; Emmylou Wilson-yes and Ann Wonderling-yes. Motion carried unanimously.

The Board convened into Closed Session 10:38 a.m.

**DELIBERATION ON DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC)
MATTERS**

Proposed Stipulations, Final Decisions and Orders

23 OPT 003 – Joseph P. Carlino

MOTION: Lisa Slaby moved, seconded by Peter Sorce, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Joseph P. Carlino, DLSC Case Number 23 OPT 003. Motion carried unanimously.

Administrative Warning

22 OPT 001 – T.R.B.

MOTION: Peter Sorce moved, seconded by Scott Kenitz, to issue an Administrative Warning in the matter of T.R.B., DLSC Case Number 22 OPT 001. Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Mark Jenkins moved, seconded by Emmylou Wilson, to reconvene in Open Session. Motion carried unanimously.

The Board reconvened to Open Session at 10:44 a.m.

VOTING ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Lisa Slaby moved, seconded by Emmylou Wilson, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the Closed Session motions stand for the purposes of the affirmation vote.)

**DELEGATION OF RATIFICATION OF EXAMINATION RESULTS AND
RATIFICATION OF LICENSES AND CERTIFICATES**

MOTION: Emmylou Wilson moved, seconded by Peter Sorce, to delegate ratification of examination results to DSPS staff and to delegate and ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Emmylou Wilson moved, seconded by Mark Jenkins, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:47 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Jake Pelegrin Administrative Rules Coordinator		2) Date when request submitted: 6/21/24 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>																			
3) Name of Board, Committee, Council, Sections: Optometry Examining Board																					
4) Meeting Date: 7/11/24	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Rule Matters – Discussion and Consideration 1. Discussion on Legislature's actions on Final Rule Draft of Opt 8 relating to Continuing Education 2. Discussion of preliminary rule draft of Opt 8, relating to new course format definitions by ARBO and COPE 3. Pending or possible rulemaking projects.																			
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A																			
10) Describe the issue and action that should be addressed: Attachments: -Final Rule Draft for Opt 8 -Prelim rule draft for Opt 8 -Rules progress chart																					
<table style="width: 100%;"> <tr> <td style="width: 60%;">11)</td> <td style="width: 40%; text-align: right;">Authorization</td> </tr> <tr> <td><i>Jake Pelegrin</i></td> <td style="text-align: right;">6/21/24</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> <tr> <td>Signature of person making this request</td> <td style="text-align: right;">Date</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> <tr> <td>Supervisor (if required)</td> <td style="text-align: right;">Date</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> <tr> <td colspan="2">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> </table>				11)	Authorization	<i>Jake Pelegrin</i>	6/21/24	<hr/>		Signature of person making this request	Date	<hr/>		Supervisor (if required)	Date	<hr/>		Executive Director signature (indicates approval to add post agenda deadline item to agenda)		<hr/>	
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Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.																					

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 23-040)

PROPOSED ORDER

An order of the Optometry Examining Board to **amend** Opt 8.02 (1), (1m), and (3s), and to **create** Opt 8.02 (1s), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s.448.40 (1), Stats.

Statutory authority: ss. 15.08 (5) (b) and 449.06 (2m), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 449.06 (2m), Stats., provides that “the examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2–year period immediately preceding the renewal date specified in s. 440.08(2)(a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.”

Related statute or rule: None.

Plain language analysis:

The board is updating the continuing education requirements in order to clarify the number of in person continuing education hours required to renew an optometry license. Additionally, the continuing education requirements are also being reviewed and updated to create clarity and ensure required topics reflect the current practice of optometry, which takes into consideration if the licensee holds a DEA registration and does not prescribe controlled substances.

Summary of, and comparison with, existing or proposed federal regulation:

N/A

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

N/A

Comparison with rules in adjacent states:

Illinois: Rules of the Illinois Department of Financial and Professional Regulation establish continuing requirements for optometrists licensed in Illinois. [68 Ill. Adm. Code 1320.80]. Currently, the State of Illinois does not require licensed optometrists to complete cultural competency or DEI continuing education requirements.

Iowa: Rules of the Iowa Board of Optometry establish continuing education requirements for optometrists licensed in Iowa [645 IAC 181.1 – 181.111]. Currently, the State of Iowa does not require licensed optometrists to complete cultural competency or DEI continuing education requirement.

Michigan: Rules of the Michigan Board of Optometry establish continuing medical education requirements for optometrists licensed in Michigan [Mich Admin Code, R 338.319 to R 338.323]. Currently, the State of Michigan does not currently require licensed optometrists to complete cultural competency or DEI continuing education requirements.

Minnesota: Rules of the Minnesota Board of Optometry establish continuing education requirements for optometrists licensed in Minnesota [Minnesota Rules, Chapter 6500.3000]. Currently, the State of Minnesota does not currently require licensed optometrists to complete cultural competency or DEI continuing education requirements.

Summary of factual data and analytical methodologies:

The proposed rules were developed by obtaining input and feedback from the Optometry Board with additional information from the Association of Schools and Colleges of Optometry (ASCO).

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Opt 8.02 (1) and (1m) are amended to read:

Opt. 8.02 (1) A licensee shall complete 30 hours of approved continuing education in each biennial registration period. ~~A minimum of 20 of the 30 hours shall relate to ocular health, conditions, or disease management.~~ A licensee may elect to complete 1 of the 30 hours related to cultural competency or diversity training.

Opt 8.02 (1m) ~~During the biennial registration period commencing December 15, 2019 and ending December 14, 2021, unless~~ Each biennium, except as provided in sub. (1s), and unless granted a hardship waiver in accordance with sub. (3m), the 30 required hours of continuing education shall include ~~2 hours~~ 1 hour on the topic of responsible prescribing of controlled substances.

SECTION 2. Opt 8.02 (1s) is created to read:

Opt 8.02 (1s) The board shall provide an exemption to any licensee under sub. (1m) if the optometrist does not hold a DEA registration and does not prescribe controlled substances.

SECTION 3. Opt 8.02 (3s) is amended to read:

Opt 8.02 (3s) An optometrist who by the renewal date has been licensed for one year or less from the date issued shall not be required to report continuing education for the first renewal of the license. An optometrist who by the renewal date holds a license for more than one year and less than 2 years shall be required to report 15 hours of approved continuing education for the first renewal of the license. A minimum of 10 of the 15 hours shall be attended in person.

SECTION 4. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Optometry Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairperson
Optometry Examining Board

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Optometry Examining Board to **amend** OPT 8.02 (3e), OPT 8.02 (3s), OPT 8.03 (1) (a), and OPT 8.03 (2) (h); and to **create** OPT 8.01 (1m) and OPT 8.01 (5), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 449.06 (2m), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 449.06 (2m), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides that each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats. provides that “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 449.06 (2m), Stats. provides that “The examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2-year period immediately preceding the renewal date specified in s. 440.08 (2) (a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.”

Related statute or rule:

None.

Plain language analysis:

The objective of the proposed rule is to clarify the number of continuing education hours and instructional format required to renew an optometry license according to the updated standards adopted by the Association of Regulatory Boards of Optometry (ARBO) and the Council on Optometric Practitioner Education (COPE).

Updating the continuing education requirements will clarify the number of synchronous in person, synchronous virtual, and asynchronous continuing education hours required to renew an optometry license. COPE has updated definitions of synchronous and asynchronous course formats and hours to align with modern education terminology and provided new definitions to guide state regulatory boards.

Summary of, and comparison with, existing or proposed federal regulation:

N/A

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

N/A

Comparison with rules in adjacent states:**Illinois:**

Rules of the Illinois Department of Financial and Professional Regulation establish continuing education (CE) requirements for optometrists licensed in Illinois [68 Ill. Adm. Code 1320.80]. Illinois has recently updated their code to allow different course formats. Out of a total of 30 required CE hours per renewal cycle, at least 12 hours must be in person and up to 18 hours may be “completed online through live, real-time presentations or by pre-recorded video”. In other words, these are essentially the in person, synchronous virtual, and asynchronous course formats defined by COPE.

Iowa:

Rules of the Iowa Board of Optometry establish continuing education requirements for optometrists licensed in Iowa [645 IAC 181.1 – 181.3]. Iowa has not yet included the new COPE course format definitions within these rules. However, it only allows a maximum of 10 CE hours per renewal cycle to be virtual for both of their credential levels (30 hours total and 50 hours total required).

Michigan:

Rules of the Michigan Board of Optometry establish continuing education requirements for optometrists licensed in Michigan [Mich Admin Code, R 338.331 to R 338.333]. They require a total of 40 CE hours per renewal cycle. The only provision that covers the topic of in person versus virtual CE is the following: “A minimum of 20 of the required continuing education hours must be completed in a live, synchronous learning format. The remaining hours may be completed in any other format” [R 338.331 (4)]. Since it does not specify that courses must be in person, and since “live, synchronous” fits the COPE definition of a synchronous virtual course, it is presumed to mean that at least 20 hours must be either in person courses or synchronous virtual courses. In this case, all of a licensee’s CE hours may be virtual.

Minnesota:

Rules of the Minnesota Board of Optometry establish continuing education requirements for optometrists licensed in Minnesota [Minnesota Rules, Chapter 6500.3000]. They require a total of 40 CE hours per renewal cycle. At least 25 hours must be course formats of in person or virtual synchronous. A maximum of 15 hours may be asynchronous. In this case, all of a licensee’s CE hours may be virtual.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the new course format definitions, by reviewing chapter OPT 8, and by obtaining input and feedback from the Optometry Board.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted at Jennifer.Garrett@wisconsin.gov or (608) 266-2112.

Agency contact person:

Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OPT 8.01 (1m) is created to read:

OPT 8.01 (1m) “Asynchronous course” means an educational course in which content is created and made available for learners at a later date, and there is no real-time communication between the instructor and the learner. Examples include a recorded webinar without instructor interaction, reading an assigned journal article, or a webcast/podcast.

SECTION 2. OPT 8.01 (5m) is created to read:

OPT 8.01 (5m) “Synchronous virtual course” means an educational course with real time communication between the instructor and the learner, and learners can receive immediate feedback. Examples include interactive webinars in real time, videoconferences, or interactive posters with authors presenting in real time.

SECTION 3. OPT 8.02 (3e) is amended to read:

OPT 8.02 (3e) At least **2015 of the 30** hours of approved continuing education required under sub. (1) shall be completed by attending programs in person. Any programs not completed in person shall be COPE or Joint Accreditation for Interprofessional Continuing Education ~~approved~~ accredited programs, in accordance with s. OPT 8.03 (1) (a), or programs approved under s. OPT 8.03 (2). Programs not completed in person may include synchronous virtual courses or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation. Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 4. OPT 8.02 (3s), **as affected by CR 23-040**, is amended to read:

OPT 8.02 (3s) An optometrist who by the renewal date has been licensed for one year or less from the date issued shall not be required to report continuing education for the first renewal of the license. An optometrist who by the renewal date holds a license for more than one year and less than 2 years shall be required to report 15 hours of approved continuing education for the first renewal of the license. **A minimum of 107 of the 15 hours shall be attended in person.** Any programs not completed in person shall be COPE or Joint Accreditation for Interprofessional Continuing Education accredited programs, in accordance with s. OPT 8.03 (1) (a), or programs approved under s. OPT 8.03 (2). Programs not completed in person may include synchronous virtual courses or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation. Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 5. OPT 8.03 (1) (a) is amended to read:

OPT 8.03 (1) (a) Any continuing education program ~~approved~~ accredited by COPE or Joint Accreditation for Interprofessional Continuing Education. This may include course formats of in person courses, synchronous virtual courses, or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation. Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 6. OPT 8.03 (2) (h) is amended to read:

OPT 8.03 (2) (h) Delivery method of the program, whether in person, synchronous virtual, or asynchronous.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Optometry Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Chairperson
Optometry Examining Board

Optometry Examining Board Rule Projects

Clearinghouse Rule Number	Scope #	Scope Expiration	Code Chapter Affected	Relating clause	Current Stage	Next Step
CR 23-040	080-21	03/20/2024	OPT 8	Continuing Education	Assembly Committee on Health, Aging and Long-Term Care reported an “objection in part” on 5/22/2024. They referred it to JCRAR the next day. On 6/12/24, JCRAR requested a meeting. JCRAR’s jurisdiction extended to 7/22/2024.	Approval by the Legislature, then rule adoption.
CR 24-028	018-23	08/20/2025	OPT 1, 5 and 6	Telehealth	The Final Rule Draft is currently with the Legislature for review. They will take it up at the beginning of next year.	Approval by the Legislature, then rule adoption.
	057-23	2/26/2026	OPT 8	Continuing Education-ARBO COPE	Rule Drafting.	Board Approval of Preliminary Rule Draft.
	057-24	11/28/2026	OPT 1 and 5	Definitions	Scope implementation, rule drafting.	Board discussion of rule draft.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

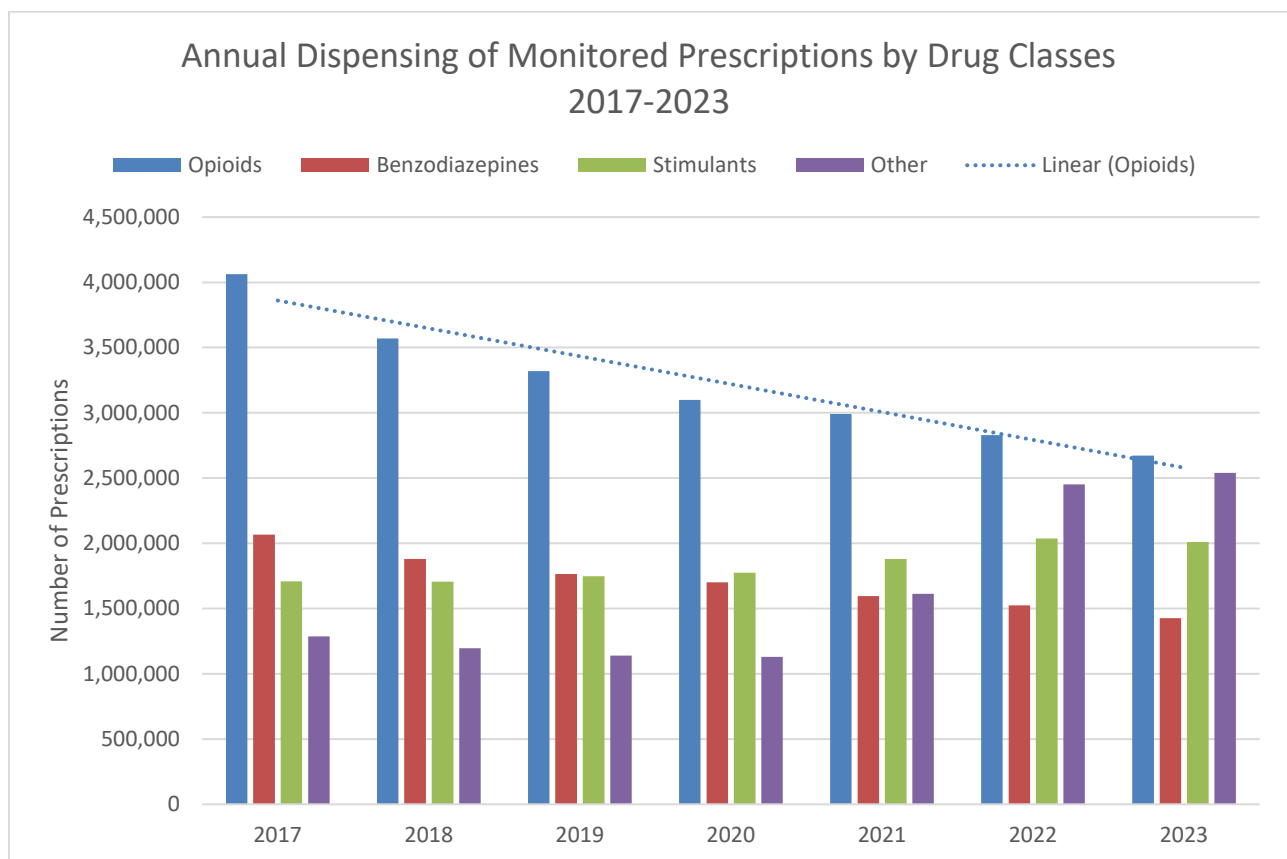
1) Name and title of person submitting the request: Marjorie Liu Program Lead, PDMP		2) Date when request submitted: 06/27/2024 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>													
3) Name of Board, Committee, Council, Sections: Optometry Examining Board															
4) Meeting Date: 7/11/2024	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Prescription Drug Monitoring Program (PDMP) Overview and Updates													
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session		8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:												
10) Describe the issue and action that should be addressed: 1. WI PDMP Overview <ul style="list-style-type: none"> a. Recent Enhancements b. Gabapentin and Upcoming NPI Requirement 2. PDMP Data Updates: Optometry															
<table style="width: 100%; border: none;"> <tr> <td style="width: 40%; border: none;">11) <i>Marjorie Liu</i></td> <td style="width: 20%; border: none; text-align: center;">Authorization</td> <td style="width: 40%; border: none; text-align: right;">6/27/2024</td> </tr> <tr> <td style="border-top: 1px solid black;">Signature of person making this request</td> <td style="border-top: 1px solid black;"></td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-top: 1px solid black;">Supervisor (if required)</td> <td style="border-top: 1px solid black;"></td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="3" style="border-top: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date</td> </tr> </table>				11) <i>Marjorie Liu</i>	Authorization	6/27/2024	Signature of person making this request		Date	Supervisor (if required)		Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date		
11) <i>Marjorie Liu</i>	Authorization	6/27/2024													
Signature of person making this request		Date													
Supervisor (if required)		Date													
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date															
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.															



WISCONSIN | ePDMP

Wisconsin Prescription Drug Monitoring Program (PDMP) Overview

- 721,000 Dispensing Records Submitted per Month in 2023
- 82,000 Data-Driven Patient History Alerts per Month in 2023
- 50,000 Active Healthcare Professional Users
- 487,000 Patient Queries per Month in 2023





WISCONSIN | ePDMP

Wisconsin Prescription Drug Monitoring Program (PDMP) Updates- Optometry

ePDMP Registration (As of 3/31/2024)

Total Number of Licensed Optometrists - Active Only	1,310
Total Number of Licensed Optometrists Registered with the WI ePDMP	212
Number of Licensed Optometrists who have logged in to the ePDMP in the past 12 months	50

ePDMP Usage (Q1 2024)

Number of Optometrists with Rx Required of PDMP Review	0	
Total Queries by Optometrists (Including Delegates)	0	
ePDMP Usage/Prescribing Compliance Rate	ePDMP Usage	Number of Prescribers
	100%	0
	99-75%	0
	74-51%	0
	50-26%	0
	25-1%	0
	0%	0

Prescribing of Monitored Prescription Drugs Q1 2024

	Total Unique Prescribers	Total Prescriptions
Optometrists with Monitored Drug Prescriptions	2	2
Optometrists with Opioid Prescriptions	1	1
Optometrists with Benzo Prescriptions	1	1

Opioid Prescribing Trend 2023-2024 (Optometrists)

	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024
Opioid Prescriptions	3	5	3	0	1
Change from Prev. Q	0%	66.7%	-40%	-100%	100%

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Peter Sorce		2) Date when request submitted: 6/19/2024 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 7/11/24	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Association of Regulatory Boards of Optometry (ARBO) 2024 Annual Meeting Report – Peter Sorce	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if applicable: N/A	
10) Describe the issue and action that should be addressed: Peter Sorce will deliver a presentation summarizing the 2024 ARBO Annual Meeting.			
11) Authorization <hr/> <div style="display: flex; justify-content: space-between;"> Signature of person making this request Date </div> <hr/> <div style="display: flex; justify-content: space-between;"> Supervisor (Only required for post agenda deadline items) Date </div> <hr/> <div style="display: flex; justify-content: space-between;"> Executive Director signature (Indicates approval for post agenda deadline items) Date </div> <hr/> <div style="background-color: #f0f0f0; padding: 5px;"> <p>Directions for including supporting documents:</p> <ol style="list-style-type: none"> This form should be saved with any other documents submitted to the Agenda Items folders. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. </div>			



Model Practice Act for Optometric Regulation

A reference Guide for Regulatory Language

5/6/2024

ARBO Model Practice Act for Optometric Regulation

Introduction

The Association of Regulatory Boards of Optometry (ARBO) is a not-for-profit, 501(c) (3) association whose membership is comprised of optometric licensing boards from the United States, Canada, Australia and New Zealand. ARBO is committed to serving these regulatory agencies (its Member Boards) by providing quality, relevant programs and services they can rely on to carry out their statutory responsibilities in the interest of public protection.

In 2022, the ARBO Board of Directors convened a task force to create a model practice act for regulating the optometric profession as a resource document available for use by its Member Boards. ARBO acknowledges and thanks the members of the Model Practice Act Task Force for their valuable input and participation in developing the model act. ARBO believes that the Model Practice Act for Optometric Regulation provides a uniform perspective that promotes public protection through regulation.

The purpose of the ARBO Model Practice Act for Optometric Regulation is to provide a resource to Optometry Boards to integrate as a model for regulating the practice of optometry. The Model Practice Act for Optometric Regulation reflects current issues in professional regulation and facilitates greater standardization of terminology and regulation from jurisdiction to jurisdiction. Greater standardization promotes increased mobility for licensed optometrists, and consistency in legal decisions related to licensure, renewal, discipline, and other board activities. Optometry Boards are free to use some, or all of the ARBO Model Act for their own Practice Act.

The core text of the Model Practice Act for Optometric Regulation is in the main section of the document. Comments and options for consideration are shown on the right side. Definitions of words that are capitalized in the Model Act can be found in Section 106. Suggestions and discussion are encouraged to ensure a document that is current and responsive to the needs of ARBO's membership. The language used throughout the ARBO Model Practice Act represents an attempt to promote uniformity to regulation and terminology. Member Boards are encouraged to review and use the Model Practice Act within the context of regulatory and language issues that may be unique to each respective jurisdiction. ARBO understands that modifications may be necessary to address existing regulatory, legal, cultural, and political climates.

ARBO Model Optometry Practice Act

An ACT concerning the regulation of the Practice of Optometry and related matters.

Be it enacted

ARTICLE I Title, Purpose, and Definitions

Section 101. Title of Act.

This Act shall be known as the “(Name of state or other jurisdiction) Optometry Practice Act.”

Section 102. Legislative Declaration.

(a) The Practice of Optometry in the _____ of _____ is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the Practice of Optometry, as defined in this Act, merit and receive the confidence of the public and that only qualified, individuals be permitted to engage in the Practice of Optometry in the _____ of _____. This Act shall be liberally construed to carry out these objectives and purposes.

(b) It is further declared that the intent of this legislation is to regulate the Practice of Optometry and will result in displacing competition by restricting licensure to practice Optometry, as such practice is defined and interpreted by the Board, to individuals determined by the Board to be qualified under this Act.

(c) It is further declared that any such restriction on competition is outweighed by the broader interest in protection of public health, safety, and welfare. It is understood that the regulatory structure calls for Optometrists and public members to serve on the Board and this legislation recognizes the need for professional expertise provided by Optometrists serving the public interest.

(d) This Act is intended to provide active jurisdiction oversight and supervision through its legislative enactment, the promulgation of enabling regulations, the appointment of Board members by the Governor or legislature, legal representation of the Board by the office of the State Attorney General, legislative appropriation of monies to support the Board, and Board engagement in a periodic review process.

Section 103. Statement of Purpose.

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective regulation of the Practice of Optometry; the licensure of Optometrists; the licensure, control, and regulation of individuals, in or out of this state, that practice optometry within this state.

Commented [LF1]: The term state can be changed to province, district, territory, etc. throughout the Practice Act as appropriate.

Section 104. Practice of Optometry.

The Practice of Optometry means practice in which an individual employs primary eye care procedures including the prescription of Diagnostic and Therapeutic Pharmaceutical Agents, medical devices and Ophthalmic Surgery, measures the powers and range of vision of the human eye using subjective and objective means, including the use of lenses and prisms before the eye and auto-refractors and other automated testing devices to determine its accommodative, refractive and binocular state and general scope of function; and the adaptation, sale, and dispensing of frames and lenses in all their forms, including plano or zero power contact lenses, to overcome errors of refraction and restore as near as possible normal human vision, or for orthotic, prosthetic, therapeutic, or cosmetic purposes with respect to contact lenses. Optometry also includes the examination, diagnosis, and treatment of abnormal conditions and diseases of the human eye, its adnexa, and visual system, including the use or prescription of vision therapy, ocular exercises, rehabilitation therapy, subnormal vision therapy, ordering of appropriate diagnostic lab or imaging test, and the dispensing of samples to initiate treatment.

The Board shall have the authority to interpret the practice act consistent with the intent of the legislature. Nothing in this chapter shall be construed as allowing any agency, Board, or other entity of this state other than the _____ Board of Optometry to determine what constitutes the Practice of Optometry.

Section 105. Optometry Telehealth Practice.

- (a) The Practice of Optometry in this jurisdiction through Telehealth or other means, regardless of the location of the practitioner, shall constitute the practice of optometry and shall be subject to regulation under this Act.
- (b) The Practice of Optometry by a practitioner in this jurisdiction through Telehealth or other means, regardless of the location of the Patient(s), shall constitute the Practice of Optometry and shall be subject to regulation under this Act.
- (c) Optometrists providing Telehealth Optometry Services shall take all necessary measures to ensure compliance with relevant practice standards.

Section 106. Definitions.

- (a) Act means the Optometry Practice Act duly enacted and as amended from time to time.
- (b) Applicant means an individual who has submitted to the Board an application for licensure whether or not such application has been completed.
- (c) Approved Optometry Education Program means a degree program of an accredited school or college of optometry that has been approved by the Board.

Commented [LF2]: There are varying approaches to defining the practice of optometry. Language for this can include inclusive language (what optometrists can do), or exclusive language (what optometrists cannot do). The recommended language is very specific, Boards may also utilize language here that is less specific, if preferred.

Commented [LF3]: If exclusionary language is preferred the following could be utilized: The following ophthalmic surgery procedures are excluded from the practice of optometry, except for the preoperative and postoperative care of these procedures:

The following procedures:

- Retina laser procedures
- Penetrating keratoplasty or corneal transplant
- The administration of general anesthesia
- Surgery done with general anesthesia
- Laser or non-laser procedure into the vitreous chamber of the eye to treat any retinal or macular disease.

The following non-laser surgical procedures:

- Surgery related to removal of the eye from a living human being.
- Surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye.
- Surgery requiring incision of the iris and ciliary body, including diathermy or cryotherapy.
- Surgery requiring incision of the vitreous.
- Surgery requiring incision of the retina.
- Surgical extraction of the crystalline lens.
- Surgical intraocular implants.
- Incisional or excision surgery of the extraocular muscles.
- Surgery of the eyelid for suspect malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis and tarsorrhaphy.
- Surgery of the bony orbit, including orbital implants.
- Incisional or excision surgery of the lacrimal system other than probing or related procedures.
- Surgery requiring full thickness conjunctivoplasty with graft or flap.
- Pterygium surgery.

(ARBO recommends the practice act state that the Board approves which optometry education programs it will accept. Board rules should state that approved optometry education programs are those that are accredited by the Accreditation Council on Optometric Education (ACOE) or equivalent.)

(d) Approved Provider of Continuing Education means an entity that provides Approved Programs of Continuing Education accredited by the Association of Regulatory Boards of Optometry (ARBO) Council on Optometric Practitioner Education (COPE) or approved by the Board.

(e) Approved Programs of Continuing Education means a post licensure education program accredited by the Association of Regulatory Boards of Optometry (ARBO) Council on Optometric Practitioner Education (COPE) or approved by the Board.

(f) Association of Regulatory Boards of Optometry also referred to as ARBO means the not-for-profit organization whose members include the regulatory Boards of optometry from the United States, Canada, Australia, and New Zealand, which provides programs and services to its Member Boards that lessen burdens on state government.

(g) Board or Board of Optometry means the Board of Optometry created and amended thereto under this Act.

(h) Continuing Education means education and training which are oriented to maintain, improve, or enhance competent optometry practice.

(i) Continuing Education Hour means the Optometrist must be present for at least fifty (50) minutes of instruction to receive one hour of credit.

(j) Conviction means conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no contest plea, a plea of nolo contendere, or a guilty plea.

(k) Diagnostic and Therapeutic Pharmaceutical Agent means any prescription or nonprescription drug delivered by any route of administration, used or prescribed for the diagnosis, treatment, prevention, or mitigation of abnormal conditions and diseases of the human eye and its adnexa, and visual system of those which may be used for such purposes, and approved narcotics when used in the treatment of disorders or diseases of the eye and its adnexa.

(l) Examination means a mechanism(s) designed to assess the knowledge, skills and abilities of applicants seeking licensure as Optometrists and is approved by the Board. *(ARBO recommends the National Board of Examiners in Optometry (NBEO) Exams. NBEO has the expertise that Optometry Boards require for consistency across jurisdictions and high-quality, psychometrically valid exams. Board rules should state that the Board approves the NBEO Parts I, II, and III of the NBEO Exam or equivalent.)*

(m) Felony means a criminal act as defined by this state or any other state or by definition under federal law.

(n) Final Adverse Action means any action taken or order entered by the Board, whether through a consent agreement, as the result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against a Licensee, applicant or individual which is public information under applicable law and which impacts the licensure status or record, practice status or record, or other related practice privileges. Final Adverse Actions include, in addition to the above and without limitations, denial of licensure applications, denial of licensure renewal applications, and surrender of licensure. Board actions or orders are Final Adverse Actions irrespective of any pending appeals. To the extent applicable, Final Adverse Actions under this statute are intended to encompass, at a minimum, all actions that require reporting to state or federal authorities, including but not limited to the Healthcare Integrity Protection Databank (HIPDB)/National Practitioners Data Bank (NPDB).

(o) Licensee means an individual duly licensed or registered under this Act.

(p) Ophthalmic surgery means a procedure upon the human eye and adnexa in which in vivo tissue is injected, cut, burned, frozen, sutured, vaporized, coagulated, or photodisrupted by the use of surgical instrumentation such as, but not limited to, a scalpel, cryoprobe, laser, electric cautery, or ionizing radiation.

(q) Optometrist means an individual duly licensed to practice Optometry under this Act.

(r) Patient means the individual that seeks or receives optometry services from an individual Optometrist.

(s) Practice of Optometry means the defined scope of optometry as set forth in this Act and as specifically set forth in Article I, Section 104 and Section 105 above.

(t) Telehealth means the use of computers (including the Internet, social media, online chat, text, and email) and other electronic means (such as smartphones, landline telephones, and video technology) to (a) provide information to the public, (b) deliver optometry services to patients, (c) communicate with patients, (d) manage confidential information and case records, (e) store and access information about patients, and (f) arrange payment for professional services.

ARTICLE II Board of Optometry

Section 201. Designation.

The responsibility for enforcement of the provisions of this Act is hereby vested in the Board of Optometry (Board). The Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as

such other duties, powers, and authority as it may be granted from time to time by applicable law.

Section 202. Membership.

The Board shall consist of _____ members, [at least _____ of whom shall be a representative of the public, and the remainder] [each] of whom shall be optometrists who possess the qualifications specified in Section 203.

Section 203. Qualifications.

- (a) Each Optometrist member of the Board shall at all times as a Board member:
 - (1) Be a resident of this state;
 - (2) Be currently licensed and in good standing to engage in the Practice of Optometry in this state;
 - (3) At the time of appointment, have been actively engaged in the Practice of Optometry, for at least one (1) out of the last five (5) years; and
 - (4) Have at least three (3) years of experience in the Practice of Optometry.
- (b) Public member(s) of the Board shall be residents of this state who have attained the age of majority and shall not be, nor shall ever have been an Optometrist, or the spouse thereof, or an individual who has ever had any material financial interest in the provision of optometric services or who has engaged in any activity directly or indirectly related to the Practice of Optometry.

Section 204. Appointment.

The Governor shall appoint the members of the Board in accordance with other provisions of this Article and the state constitution.

Section 205. Terms of Office.

- (a) Except as provided in subsection (b), members of the Board shall be appointed for a term of _____ years, except that members of the Board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.
- (b) The terms of the members of the Board shall be staggered. Each member shall serve until a successor is appointed and qualified.
 - (1) The present members of the Board shall serve the balance of their terms.
 - (2) Any present Board member appointed initially for a term of less than _____ years shall be eligible to serve for two (2) consecutive full terms.

(c) No member of the Board shall serve more than two (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

Section 206. Vacancies.

(a) Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled by the Governor in the manner prescribed by Section 204.

(b) In the event that the Governor does not fill any vacancy within a ____ month period, such appointment authority shall vest in the Board to be filled by a majority vote. Any such Board appointed individual shall meet the qualifications of this Act.

Section 207. Removal.

(a) A Board member may be removed pursuant to the procedures set forth in subsection (b) herein, upon one or more of the following grounds

- (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
- (2) The misuse of office by a member of the Board to obtain pecuniary or material gain or advantage personally or for another through such office;
- (3) The violation of the laws governing the Practice of Optometry by any member; or
- (4) For other just and reasonable causes as determined solely by the Board pursuant to applicable law.

(b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this state, or other applicable laws.

Section 208. Organization.

(a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to the conduct of its business. The Chairperson shall preside at all meetings of the Board and shall be responsible for the performance of all of the duties and functions of the Board required or permitted by this Act. Each additional officer elected by the Board shall perform those duties customarily associated with the position and such other duties assigned from time to time by the Board.

(b) Officers elected by the Board shall serve terms of one (1) year commencing with the day of their election and ending upon election of their successors and shall serve no more than three (3) consecutive full terms in each office to which they are elected.

(c) The Board shall employ an Executive Director to serve as a full-time employee of the Board. The Executive Director shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

Section 209. Meetings.

(a) The Board shall meet at least once every three (3) month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.

(b) The Board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.

(c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by the Administrative Procedures Act.

(d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by this Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.

(e) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in Executive Session, closed to the public.

Section 210. Employees.

The Board may, in its discretion, employ individuals in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and to the fulfillment of the Board's responsibilities as defined by the Act.

Section 211. Rules.

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

Section 212. Board Authority and Responsibilities.

(a) The Board shall be responsible for the control and regulation of the Practice of Optometry in this state including, but not limited to, the following:

- (1) The licensing by Examination or by licensure transfer of applicants who are qualified to engage in the Practice of Optometry under the provisions of this Act;
- (2) The renewal of licenses to engage in the Practice of Optometry;

(3) The establishment and enforcement of compliance with professional standards of practice and rules of conduct of Optometrists engaged in the Practice of Optometry;

(4) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of optometry whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training;

(5) The enforcement of those provisions of the Act relating to the conduct or competence of Optometrists practicing in this state, investigation of any such activities related to the practice or unauthorized Practice of Optometry, and the suspension, revocation, or restriction of licenses to engage in the Practice of Optometry;

(6) With probable cause that an applicant or Licensee has engaged in conduct prohibited by this Act or a statute or rule enforced by the Board, the Board may issue an order directing the applicant or Licensee to submit to a mental or physical examination or chemical dependency evaluation at the expense of the Licensee. For the purpose of this section, every applicant or Licensee is considered to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the Board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;

(7) The collection of professional demographic data;

(8) The issuance and renewal of licenses of all individuals engaged in the Practice of Optometry; and

(9) Inspection of any licensed individual at all reasonable hours for the purpose of determining if any provisions of the laws governing the Practice of Optometry are being violated. The Board, its officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to the Practice of Optometry.

(b) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The Board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the Practice of Optometry for the protection of the health and welfare of the public and/or whose activities assist and facilitate the work of the Board.

(2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the state, provided:

Commented [LF4]: Examples of funds are grants, private donations, gifts, bequeaths, or other funds. It can be further defined in rules where funds may come from.

(i) Such funds are awarded for the pursuit of a specific objective which the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(ii) Such funds are expended for the pursuit of the objective for which they are awarded;

(iii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act.

(iv) Such funds are kept in a separate, account; and

(v) Periodic reports are made concerning the Board's receipt and expenditure of such funds.

(3) The Board may establish a Bill of Rights for Patients concerning the services a Patient may expect in regard to optometry services.

(4) Any investigation, inquiry, or hearing which the Board is empowered to hold or undertake may be held or undertaken by or before any member or members of the Board and the finding or order of such member or members shall be deemed to be the order of said Board when approved and confirmed as noted in Section 209(d).

(5) It is the duty of the Attorney General [State's Attorney] to whom the Board reports any violation of this Act which also is deemed as violative of applicable criminal statutes to cause appropriate proceedings to be instituted in the proper court in a timely manner and to be prosecuted in the manner required by law. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(6) The Board shall have the power to subpoena and to bring before it any individual and to take testimony either orally or by deposition, or both, in the same manner as prescribed in civil cases in the courts of this State. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing which the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board.

(7) In addition to the fees specifically provided for herein, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Rules adopted hereunder. Such services rendered shall include but not be limited to the following:

(i) Issuance of duplicate certificates or identification cards;

- (ii) Mailing lists, or reports of data maintained by the Board;
- (iii) Copies of any documents;
- (iv) Certification of documents;
- (v) Notices of meetings;
- (vi) Licensure transfer;
- (vii) Examination administration to licensure applicants;
- (viii) Examination materials.
- (ix) Approval of providers or programs for Continuing Education.

(8) Cost Recovery.

(i) If any order issues in resolution of a disciplinary proceeding before the Board, the Board may request the (Administrative Law Judge (ALJ)/Hearing Officer (HO)) to direct any Licensee found guilty of a charge involving a violation of any laws or rules, to pay to the Board a sum not to exceed the reasonable costs of the investigation and prosecution of the case.

(ii) In the case of an Agency, the order permissible under (i) above may be made as to the corporate owner, if any, and as to any Optometrist, officer, owner, or partner of the Agency who is found to have had knowledge of or have knowingly participated in one or more of the violations set forth in this section.

(iii) The costs to be assessed shall be fixed by the (ALJ/HO) and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) (ALJ/HO), the (ALJ/HO) shall not increase any assessed costs.

(iv) Where an order for recovery of costs is made and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in the _____ Court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any individual directed to pay costs.

(v) In any action for recovery of costs, proof of the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(9) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.

(c) Notwithstanding any other law to the contrary, the Board shall, on a timely basis, publicize Final Adverse Actions ultimately determined against any individual. Publication of such Final Adverse Actions shall include, but not be limited to, reporting to any applicable federal or state repository of final disciplinary actions. The Board shall also timely report to any databank Final Adverse Actions maintained by an association of which the Board is a member.

ARTICLE III Licensing

Section 301. Unlawful Practice.

(a) Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the Practice of Optometry unless duly licensed as an Optometrist under the applicable provisions of this Act.

(b) No individual shall offer optometry services or use the designation Optometrist or any other designation indicating licensure status or hold themselves out as practicing optometry unless duly licensed as such.

(c) Any individual who, after a hearing, shall be found by the Board to have unlawfully engaged in the Practice of Optometry shall be subject to a fine to be imposed by the Board not to exceed \$_____ for each offense. Each such violation of this Act or the rules promulgated hereunder pertaining to unlawfully engaging in the Practice of Optometry shall also constitute a _____(misdemeanor) punishable upon conviction as provided in the criminal code of this state.

(d) Nothing in this Act shall be construed to prevent members of other professions from performing functions for which they are duly licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are engaged in the Practice of Optometry or that they are licensed to engage in the Practice of Optometry.

(e) Students currently participating in an Approved Optometry Education Program are exempt from licensure under this Act when completing internship, externship, or other optometry experience requirements for such programs.

(f) In response to a disaster or emergency declared by the appropriate authority or governor of the state, an individual currently licensed and in good standing to practice optometry in another jurisdiction who is providing optometry services within the scope of practice designated by such license and whose professional licenses in all other disciplines are current and in good standing may, upon prior written notice to the Board and without otherwise applying for a license, provide such services in this jurisdiction for the time said emergency or disaster declaration is in effect. Individuals exercising rights under this Section shall be deemed to have submitted themselves to the jurisdiction of the applicable Board or state agency and to be bound by the laws of this state in addition to other applicable laws by virtue of licensure status in other states.

(g) Individuals who have at any time surrendered any professional license under threat of administrative disciplinary sanction or in response to administrative investigation, or have any professional license currently under suspension, revocation, or agency order restricting or limiting practice privilege, with the exception of expired or lapsed licenses due to voluntary non-renewal of such license, are ineligible to practice under this Section.

Section 302. Qualifications for Licensure by Examination as an Optometrist.

(a) To obtain a license to engage in the Practice of Optometry, an applicant for licensure by Examination must provide evidence satisfactory to the Board, subject to Section 307, that the applicant:

(1) Has submitted a written application in the form prescribed by the Board;

(2) Has attained the age of majority;

(3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to [insert reference to authorizing state statute] and applicable federal law. The [state agency responsible for managing fingerprint data e.g. the department of public safety] may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All good moral character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

(4) Has graduated and received a Doctor of Optometry degree from an Approved Optometry Education Program;

(5) Has successfully passed an Examination or Examinations prescribed by the Board; and

Pursuant to the legislative rulemaking authority set forth in Article II, Section 211, the Board hereby promulgates the following rule as it relates to Article I, Section 106 (I) and Article III, Section 302(a)(5):

- *(a). The board determines that successful completion of all parts of the examinations developed, administered, scored and maintained by the National Board of Examiners in Optometry (NBEO) that are necessary to demonstrate entry to practice competence complies in all material respects with the examination requirements of the Act and satisfy the examination requirement of Article III, Section 302(a)(5) as one component of licensure eligibility.*
- *(b) As part of the application process, each applicant shall cause to be submitted an original source NBEO score report(s) indicating the results of each NBEO examination administration.*

(6) Has paid all applicable fees specified by the Board relative to the licensure process.

Commented [LF5]: See Section 106(c)

Commented [LF6]: See section 106(I)

Commented [LF7]: ARBO recommends using this language in Board rules regarding the Examination.

Section 303. Examinations.

- (a) Any Examination for licensure required under this Act shall be administered to applicants often enough to meet the reasonable needs of candidates for licensure. If applicable, the Board may confer with and rely upon the expertise of an Examination entity in making such determinations. *(ARBO recommends the use of the National Board of Examiners in Optometry (NBEO) Exams. NBEO has the expertise that Optometry Boards require for consistency across jurisdictions and high-quality, psychometrically valid exams.)*
- (b) The Examination shall document that the applicant meets the standard for minimum competence to engage in the Practice of Optometry. The Board may rely on an organization or consultant for the development, administration, scoring and reporting of an Examination.

Section 304. Qualifications for Licensure by Endorsement.

- (a) To obtain a license by endorsement at the equivalent designation and subject to Article IV of this Act, an applicant currently licensed as an Optometrist in another jurisdiction must provide evidence satisfactory to the Board, subject to Article III, Section 307, that the applicant:

- (1) Has submitted a written application and paid the fee as specified by the Board; and
- (2) Has presented to the Board proof of an active optometry license in good standing.

Section 305. Renewal of Licenses.

- (a) Licensees shall be required to renew their license at the time and in the manner established by the Board, including the form of application and payment of the applicable renewal fee. Under no circumstances, however, shall the renewal period exceed three years.
- (b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that such Licensee has annually completed at least ____ Continuing Education hours from a Program of Continuing Education.
- (c) The Board shall also provide procedures to ensure licensure renewal candidates maintain the qualifications to practice optometry as set forth in this Act.
- (d) If an Optometrist fails to make application to the Board for renewal of a license within a period of ____ years from the expiration of the license, such individual must reapply as an initial applicant for licensure and pass the current licensure Examination; except that an individual who has been licensed under the laws of this state and after the expiration of the license, has continually practiced optometry in another state under a license issued by the authority of such state, may renew the license upon completion

of the Continuing Education requirements set forth by the Board and payment of the designated fee.

Section 306. Continuing Optometry Competence.

The Board shall, by rule, establish requirements for Continuing Education in optometry, including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section and the continued competence of practitioners.

Section 307. Source of Data.

In making determinations under this Article III and to promote uniformity and administrative efficiencies, the Board shall be authorized to rely upon the expertise of and documentation and verified data gathered and stored by not-for-profit organizations which share in the public protection mission of this Board.

ARTICLE IV Enforcement

Section 401. Grounds, Penalties, and Reinstatement.

(a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the license of, or fine any individual pursuant to the Administrative Procedures Act or the procedures set forth in Section 402 herein below, upon one or more of the following grounds as determined by the Board:

- (1) Unprofessional conduct as determined by the Board;
- (2) Practicing outside the scope of practice applicable to that Licensee;
- (3) Conduct which violates any of the provisions of this Act or rules adopted pursuant to this Act, including the Standards of Practice;
- (4) Incapacity or impairment that prevents a Licensee from engaging in the Practice of Optometry with reasonable skill, competence, and safety to the public;
- (5) Conviction of a Felony (as defined under state, provincial, or federal law);
- (6) Any act involving moral turpitude or gross immorality;
- (7) Violations of the laws of this jurisdiction, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government;
- (8) Misrepresentation of a material fact by an applicant or Licensee;
 - (i) In securing or attempting to secure the issuance or renewal of a license;

(ii) In statements regarding the optometrist's skills or efficiency or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the Practice of Optometry including, but not limited to, false or misleading advertising;

(9) Fraud by a Licensee in connection with the Practice of Optometry including engaging in improper or fraudulent acts or billing practices or violating related laws;

(10) Engaging or aiding and abetting an individual to engage in the Practice of Optometry without a license, or falsely using the title of Optometrist;

(11) Failing to pay the costs assessed in a disciplinary matter pursuant to Section 212(b)(8) or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;

(12) Being found by the Board to be in violation of any of the provisions of this Act or rules adopted pursuant to this Act;

(13) (i) Conduct which violates the security of any licensure Examination materials; removing from the Examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing Examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing Examination; paying or using professional or paid Examination-takers for the purpose of reconstructing any portion of the licensing Examination; obtaining Examination questions or other Examination material, except by specific authorization either before, during or after an Examination; or using or purporting to use any Examination questions or materials which were improperly removed or taken from any Examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing Examination;

(ii) Communicating with any other examinee during the administration of a licensing Examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing Examination any books, equipment, notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or impersonating any examinee or having an impersonator take the licensing Examination on one's behalf;

(14) Being the subject of the revocation, suspension, surrender or other disciplinary sanction of an Optometrist or related license or of other adverse action related to an Optometrist or related license in another jurisdiction or country including the failure to report such adverse action to the Board;

(15) Being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent or mentally ill, chemically dependent, mentally ill and dangerous to the public;

(b) (1) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing not to practice optometry and to enter an approved treatment and monitoring program in accordance with this section, provided that this section should not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act or an offense relating to a controlled substance in a court of law of the United States or any other state, territory, or country or a Conviction related to sexual misconduct. A Licensee who is physically or mentally impaired due to mental illness or addiction to drugs or alcohol may qualify as an impaired Optometrist and have disciplinary action deferred and ultimately waived only if the Board is satisfied that such action will not endanger the public and the Licensee enters into an agreement with the Board for a treatment and monitoring plan approved by the Board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the agreement and all other applicable terms of subsection (b)(2). Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this section and the Board may activate an immediate investigation and disciplinary proceeding. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the Licensee may apply for permission to resume the Practice of Optometry upon such conditions as the Board determines necessary.

(2) The Board may require a Licensee to enter into an agreement which includes, but is not limited to, the following provisions:

(i) Licensee agrees that the license shall be suspended or revoked indefinitely under subsection (b)(1).

(ii) Licensee will enroll in a treatment and monitoring program approved by the Board.

(iii) Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith.

(iv) Licensee consents to the treating physician or professional of the approved treatment and monitoring program reporting to the Board on the progress of Licensee at such intervals as the Board deems necessary and such individual making such report will not be liable when such reports are made in good faith.

(3) The ability of an impaired Optometrist to practice shall only be restored and charges dismissed when the Board is satisfied by the reports it has received from the approved treatment program that Licensee can resume practice without danger to the public.

(4) Licensee consents, in accordance with applicable law, to the release of any treatment information to the Board from anyone within the approved treatment program.

(5) The impaired Licensee who has enrolled in an approved treatment and monitoring program and entered into an agreement with the Board in accordance with subsection (b)(1) hereof shall have the license suspended or revoked but enforcement of this suspension or revocation shall be stayed by the length of time the Licensee remains in the program and makes satisfactory progress, and complies with the terms of the agreement and adheres to any limitations on the practice imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this section and the Board shall activate an immediate investigation and disciplinary proceedings.

(6) Any Optometrist who has substantial evidence that a Licensee has an active addictive disease for which the Licensee is not receiving treatment under a program approved by the Board pursuant to an agreement entered into under this section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall make or cause to be made a report to the Board. Any individual who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the Licensee so failing to report.

(c) Subject to an order duly entered by the Board, any individual whose license to practice optometry in this state has been suspended or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals, to petition the Board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the Board. Upon investigation and hearing, the Board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board, also at its discretion, may require such individual to complete other requirements including but not limited to passing an Examination(s).

(d) The Board may in its own name issue a cease and desist order to stop an individual from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order which the Board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the individual's right to request a hearing under applicable procedures as set forth in the

Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.

(e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.

(f) Any individual whose license to practice Optometry is revoked, suspended, or not renewed shall return such license to the offices of the Board within 10 days after notice of such action.

Section 402. Procedure.

Notwithstanding any provisions of the state Administrative Procedures Act, the Board may, without a hearing, temporarily suspend a license for not more than (60 days) if the Board finds that an Optometrist has violated a law or rule that the Board is empowered to enforce, and if continued practice by the Optometrist would create an imminent risk of harm to the public. The suspension shall take effect upon written notice to the Optometrist specifying the statute or rule violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within 20 days thereafter. The Optometrist shall be provided with at least 20 days notice effective with the date of issuance of any hearing held under this subsection.

Article V. Confidentiality.

Section 501. Privileged Communications and Exceptions.

(a) No Optometrist shall disclose any information acquired from or provided by a Patient or from individuals consulting with the Optometrist in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:

(1) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, in which instance all recipients of such information are similarly bound to regard the communication as privileged;

(2) With the written consent of the individual who provided the information;

(3) In case of death or disability, with the written consent of a personal representative, other individual authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;

(4) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the Optometrist to protect any individual from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or

(5) When the individual waives the privilege by bringing any public charges against the Licensee.

(b) When the individual is a minor under the laws of the _____ of _____ and the information acquired by the Optometrist indicates the minor was the victim of or witness to a crime, the Optometrist may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry and when the court determines that the interests of the minor in having the information held privileged are outweighed by the requirements of justice, the need to protect the public safety or the need to protect the minor.

(c) Any individual having access to records or anyone who engages in the Practice of Optometry or who is supervised by an Optometrist, is similarly bound to regard all information and communications as privileged in accord with the section.

(d) Nothing shall be construed to prohibit an Optometrist from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children, elderly, and physically and mentally impaired adults, except as prohibited under the applicable state and federal laws.

(e) The _____, as now or hereafter amended, is incorporated herein as if all of its provisions were included in this Act.

Article VI. Mandatory Reporting.

Section 601. Permission to Report.

An individual who has knowledge of any conduct by an Applicant or a Licensee which may constitute grounds for disciplinary action under this chapter or the rules of the Board or of any unlicensed practice under this chapter may report the violation to the Board.

Section 602. Professional Societies or Associations.

A national, state or local professional society or association for Licensees shall forward to the Board any complaint received concerning the ethics or conduct of the practice which the Board regulates. The society or association shall forward a complaint to the Board upon receipt of the complaint. The society or association shall also report to the Board any disciplinary action taken against a member.

Section 603. Optometrists.

(a) Optometrists shall report to the Board information on the following conduct by an applicant or a Licensee:

- (1) sexual contact or sexual conduct with a Patient or a former Patient; the Patient shall only be named with the Patient's consent;

- (2) failure to report as required by law;
- (3) impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;
- (4) improper or fraudulent billing practices,
- (5) fraud in the licensure application process or any other false statements made to the Board;
- (6) conviction of any Felony or any crime reasonably related to the Practice of Optometry;
- (7) a violation of Board order.

(b) Optometrists shall also report to the Board information on any other conduct by any individual Licensee that constitutes grounds for disciplinary action under this chapter or the rules of the Board.

(c) Any Optometrist who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death shall immediately report this information pursuant to _____.

Section 604. Reporting Other Licensed Professionals.

An Applicant or Licensee shall report to the applicable Board conduct by a licensed health professional which would constitute grounds for disciplinary action under the chapter governing the practice of the other licensed health professional and which is required by law to be reported to the Board.

Section 605. Courts.

The court administrator of district court or any other court of competent jurisdiction shall report to the Board any judgment or other determination of the court that adjudges or includes a finding that an Applicant or a Licensee is mentally ill, mentally incompetent, guilty of a Felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the applicant or Licensee or commits an applicant or Licensee pursuant to applicable law.

Section 606. Self-Reporting.

An Applicant or Licensee shall report to the Board any personal action that would require that a report be filed pursuant to this Act.

Section 607. Deadlines, Forms.

Reports required by this Act must be submitted not later than 30 days after learning of the reportable event or transaction. The Board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Section 608. Immunity.

Any individual, Optometrist, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under this Act or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter.

Article VII. Other.**Section 701. Severability.**

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any individual or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other individuals and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

Section 702. Effective Date.

This Act shall be in full force and effect on (date).



*ARBO Annual Meeting
June 16, 2024*

Introducing ARBO's Model Practice Act for Optometric Regulation

What is ARBO's Model Practice Act?

- ARBO's Model Practice Act for Optometric Regulation, developed by a task force of ARBO members, suggests best practices in optometric regulation.
- ARBO's Model Practice Act is a resource document available for use by optometric regulators that promotes uniformity in the laws regulating the profession of optometry.
- Uniform language facilitates mobility and portability of licensure and consistency in legal decisions related to licensure, renewal, discipline, and other board activities.

Why Did ARBO Develop a Model Practice Act?

- The profession of optometry is regulated at the state and provincial level, licensing requirements vary across jurisdictions.
- Most state/provincial practice acts originated 50 years ago or longer.
- Amendments over time have turned many practice acts into varied collections of regulatory language that are very diverse in their approach to the basic responsibility of a Board: protecting the public and regulating the profession.

Why Did ARBO Develop a Model Practice Act?

- Questions from our member Boards about regulatory language used in other jurisdictions.
- Requests for “best practice” language regarding optometric regulation.
- Most other health professions have model practice acts developed by their national regulatory organization.

ARBO's Model Practice Act is NOT

- A compilation of practice standards; it is documentation of *best practices* for regulation of licensed optometrists.
- A mandate for states/provinces to immediately change their statutes.

ARBO's Model Practice Act is NOT

- Just a model definition of the practice of optometry for use in scope of practice expansion.
- Unique to ARBO. Other professions have had model acts for many years including audiology, chiropractic, massage therapy, medicine, nursing, occupational therapy, osteopathy, pharmacy, physical therapy, psychology, social work, veterinarians, etc.

How Can Boards Use the ARBO Model Practice Act?

- The ARBO Model Practice Act is a model for optometric regulation and offers a resource for jurisdictions to adapt and adopt as legislatures consider amendments to the practice acts and regulatory frameworks.
- Optometry Boards are free to use some, or all of the ARBO Model Act for their own Practice Act.

How Can Boards Use the ARBO Model Practice Act?

- Member Boards are encouraged to use the ARBO Model Act within the context of regulatory and language issues that may be unique to each respective jurisdiction.
- Existing law may differ from the ARBO Model Act, but the model statute language can be applied to many regulatory situations.
- Modifications may be necessary to address existing regulatory, legal, cultural, and political climates.

ARBO's Model Practice Act

The ARBO Model Practice Act is divided into 7 Articles.

Article I:

- Explains why optometric regulation is in the public interest.
- Defines the practice of optometry and other key terms.

ARBO's Model Practice Act

Article II:

- Establishes the Board of Optometry:
 - Who serves on the Board.
 - How members are appointed.
 - What authority the Board has.

ARBO's Model Practice Act

Article III:

- Defines unlawful practice.
- Sets the standards for licensing including passing an examination.
- Encourages consistent terminology.
- Provides for licensure by endorsement.

ARBO's Model Practice Act

Article IV:

Enforcement:

- Sets forth the grounds for discipline/adverse action and the sanction options.

ARBO's Model Practice Act

Article V:

- Confidentiality.
- Privileged communication.

ARBO's Model Practice Act

Article VI:

- The licensed optometrist's responsibility as a mandatory reporter.

ARBO's Model Practice Act

Article VII

- Deals with matters related to the constitutionality of the Act.
- The effective date of the language.

Next Steps

- We will be asking you to vote to approve the ARBO Model Act for Optometric Regulation as a resource for ARBO's member Boards.
- The ARBO Model Practice Act will be reviewed regularly to make sure it stays current.
- Suggestions and comments from ARBO's member Boards are always welcome.
- Proposed revisions will be voted on by delegates at future annual meetings.

Questions?

Thank you!



CELMO®

For License Mobility



2023–2024 CELMO Committee

- ▶ Glenn Kawaguchi, OD, Co–Chair
- ▶ Margaret Whelan, Co–Chair
- ▶ Leo Breton, OD, Quebec
- ▶ Evan Kaufman, OD, VA
- ▶ Jan Murray, KS
- ▶ Jeanne Perrine, OD, GA
- ▶ Rudy Rodriguez, OD, NJ
- ▶ Donna DeLay, Lisa Fennell, Staff

What is CELMO?



What is the CELMO acronym?

- **C** = Council
on
- **E** = Endorsed
- **L** = Licensure
- **M** = Mobility
for
- **O** = Optometrists

Why is License Mobility an Issue?

- ▶ Access to care while maintaining consumer protection.
- ▶ Telehealth is expanding where healthcare providers can practice.
- ▶ Efforts to reduce barriers to licensure and issue licenses faster and more efficiently.

What's in it For You?

- ▶ CELMO assists ARBO Member Boards in the licensure mobility process.
- ▶ CELMO *gathers, authenticates, and stores* documentation required for licensure from an optometrist licensed in another jurisdiction.
- ▶ Licensure decisions remain with the Member Board. CELMO simply increases efficiencies by gathering and verifying authenticity of common documents related to licensure eligibility

What about “scope” variability?

- ▶ CELMO is not meant deal with the intricacies and variabilities jurisdiction to jurisdiction.
- ▶ CELMO is designed to lessen the burden on license candidates and Member Jurisdictions/State Boards on gathering, authenticating and storing documentation that is common.
- ▶ License candidates will still be responsible for providing unique Jurisdiction/State requirements.

Question

Are you able to issue a license as fast as the recipient wants it?

Why should you care?

Efficient license processing:

- ▶ CELMO can help create a more streamlined application process.
- ▶ Reduces Jurisdiction/State Board staff administrative time spent gathering and authenticating required documents.
- ▶ Timely processing may become a regulated necessity.

More reasons to care

Staff and licensee enhanced satisfaction

- ▶ Reduced burden/faster processing for License Candidates
- ▶ Reduces Jurisdiction/State Board staff administrative burden and stress
- ▶ CELMO ensures that the verification process is handled by professionals with expertise

Benefits to consumers

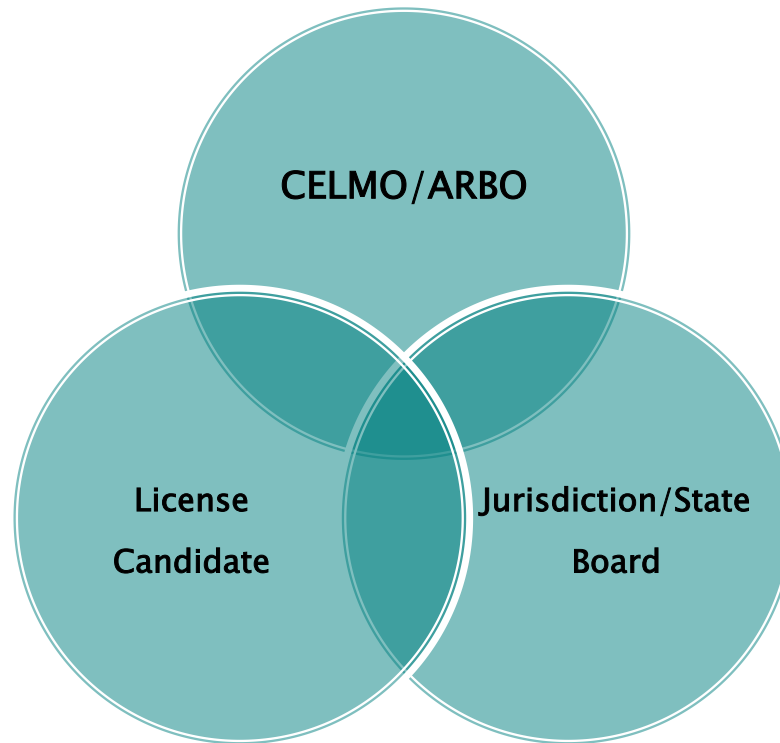
Access to quality eye care

- ▶ Allows ARBO Member Boards to be better prepared for anticipated increase in licensee mobility.
- ▶ By utilizing CELMO, the reduced time spent will free up internal resources to focus on other important activities.

License mobility regulations

- ▶ Regulations can be complex, vary from state to state, and not all states have them.
- ▶ Lack of uniformity makes it difficult for licensees to meet specific requirements for each state.
- ▶ Lack of uniformity makes it difficult for boards to process some license applications.

CELMO Administration



- ▶ Here is how the program works...

CELMO Requirements

(For OD License Candidate)

Based on Jurisdiction/State licensing requirements:

- ▶ Have an OD degree from an accredited school or college of optometry.
- ▶ Engaged in active practice for 3 of the last 4 years.
- ▶ Hold the highest level of prescriptive authority in the state in which they practice.
- ▶ Have 50 hours of COPE–Accredited CE over a 2–year period
- ▶ Be in good standing with every licensing board from which a license is currently held.
- ▶ Report all disciplinary actions taken by any licensing board.

CELMO Sign-up (For OD license candidate)

- ▶ Fill out initial application
- ▶ Pay initial fee of \$50
- ▶ Pay primary certificate fee of \$200 once verification by CELMO complete.
- ▶ Pay renewal certificate fee of \$100 after 2 years if looking to be licensed in a new jurisdiction.

Verification (by CELMO)

- ▶ National Practitioner Data Bank (NPDB) Self-Query provided by the OD
- ▶ Optometry Degree Verification
- ▶ National Board Exam Scores
- ▶ 50 Hours of COPE-Accredited CE over a 2-year period
- ▶ *After verification, a CELMO Certificate is issued.*



CELMO Sign-up

(For Jurisdiction/State Board of Optometry)

- ▶ As a Member Board of ARBO, you can participate if your laws allow.
- ▶ There are currently *no fees* for Member Boards.
- ▶ We ask that you simply inform ARBO of your intent to participate.
- ▶ Develop an action plan to communicate CELMO acceptance with prospective optometry licensees.

Question

Based on current laws/regulations, can your Jurisdiction/State Board accept licensure application documents that have been gathered, authenticated, and stored by ARBO via CELMO?

Documentation

(For Licensing Entity i.e., Jurisdiction/State Board of Optometry)

- ▶ Consider the following language in your laws:
 - “The Board shall be authorized to rely upon the expertise of and documentation and verified data gathered and stored by not-for-profit organizations which share in the public protection mission of this Board.”

CELMO is here to support you!

- ▶ ARBO through its Board of Directors and the CELMO committee aims to help Member Boards with license mobility in an efficient, uniform, consistent manner.



QUESTIONS?

Thank You!

*Contact Lisa Fennell
ARBO Executive Director
Lfennell@arbo.org*



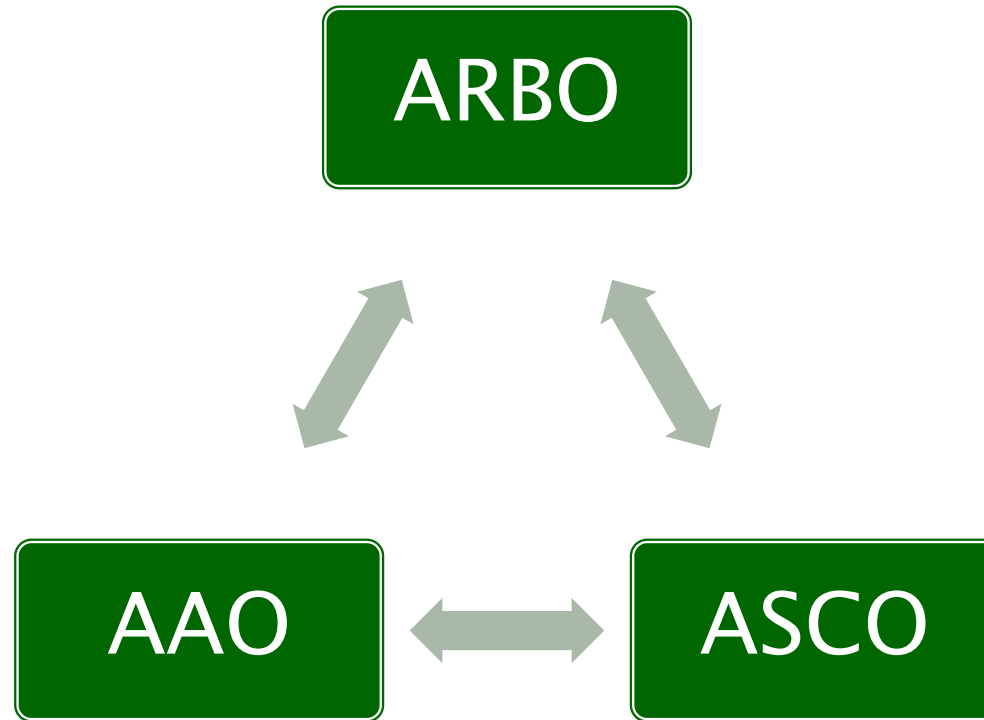
Synergistic Service

ARBO Annual Meeting
June 16, 2024

We Are Better Together



Representative Organizations that form the COPE Governing Council



What has COPE been up to in 2024?



COPE 2024 Updates

- ▶ We have a new name!

COPE Governing Committee is now:

COPE Governing Council

2024 COPE Governing Council

- ▶ Gary Chu, OD, MPH, Chair (ASCO Appointee)
- ▶ Julie Tyler, OD, Vice–Chair (AAO Appointee)
- ▶ Brett Bence, OD, (AAO Appointee)*
- ▶ Jim Campbell, OD, (ARBO Appointee)*
- ▶ Brian Kawasaki, OD (AAO Appointee)
- ▶ Blair Lonsberry, OD (AAO Appointee)
- ▶ Richard Madonna, OD (ASCO Appointee)
- ▶ Caroline Pate, OD (ASCO Appointee)
- ▶ Tonya Reynoldson, OD (ARBO Appointee)
- ▶ Linda Tharp, OD (ARBO Appointee)
- ▶ Melissa Vitek, OD (ASCO Appointee)
- ▶ Susy Yu, OD, MBA (ARBO Appointee)*
- ▶ Donna DeLay; Lisa Fennell; Sierra Powell; Audrey Vazquez (Staff)

* Past Council Chair

2024 Updates: COPE Mission Statement

- Current Mission Statement:
 - To assist Member Boards in the accreditation of optometric continuing education.
- Some themes we are considering incorporating into the new mission statement:
 - Lifelong learning and professional development, inclusivity, Member Board support, quality assurance, public protection, and innovation

2024 Updates: COPE's Objectives

➤ Current Objectives:

- To accredit optometric continuing education providers and activities for the public welfare.
- To monitor programs to help assure the quality and independence of continuing education in appropriate settings with adequate administration.
- To reduce duplication of effort by member boards.
- To create a uniform method of recording continuing education activities.
- To be the reference source for member boards for information about continuing education providers and activities utilized by licensed optometrists to fulfill their continuing education requirements.

➤ Some themes we are considering incorporating into the new objectives

- Curriculum innovation, encouraging collaboration (interprofessional CE), quality education, addressing practice gaps, providing clear processes, promoting independence in learning

2024 Updates: ACCME Research Poster

- IPCE Opportunity: Quantifying Interprofessional Interactions with Optometrists
- Study completed to:
 - Develop a survey that quantifies interactions of optometrists with other healthcare disciplines and assess potential opportunities for interprofessional CE.
 - Identify healthcare professionals and the patients they serve, that would most benefit from optometry participating in IPCE.
 - Identify healthcare conditions with the greatest opportunities to educate about and manage interprofessionally to ensure improved outcomes.
- Poster available to view during the meeting!

WHEN and WHY is COPE Accredited CE important?



COPE Accreditation

- ▶ Sets the highest educational **standards and policies** for optometric CE AND monitors adherence to those standards.
- ▶ Ensures that accredited CE is designed to be **relevant, evidence-based, and independent** of commercial bias.
- ▶ Guarantees **high-quality effective** CE programs that meet rigorous standards for educational excellence and independence.

COPE Accreditation

- ▶ Meets **best practices** in the CE/CME industry and is an **essential tool** that, in our opinion, should be referenced when **expanding scope of practice**.
- ▶ Requires administrators/providers **assess educational outcomes** and **apply quality improvement measures** to improve their CE programs over time.
- ▶ Is the **ONLY** method designed specifically for **ALL** optometric licensing boards to ensure that their licensees maintain the education required for licensure.

What is the difference between “Approved” CE and “Accredited” CE?



Accredited vs. Approved CE

COPE Accredited CE	Non-Accredited/Approved CE
COPE Accreditation Criteria focus on improving knowledge, performance in practice, and patient outcomes.	<ul style="list-style-type: none">• Not criterion based• Learners' educational needs and professional practice gaps not determined
COPE Standards for Integrity & Independence require evidence-based material free of commercial bias.	<ul style="list-style-type: none">• SII not required• Content not reviewed for commercial bias
COPE requires assessment of educational outcomes and continuous quality improvement.	<ul style="list-style-type: none">• No assessment of outcomes• No QI requirement
Deemed to be Substantially Equivalent to medicine's CME.	Not equivalent to medicine's CME.
Joint Accreditation allows for interprofessional CE to enable collaboration and improve health outcomes.	Not a member of the Joint Accreditation collaborative.

- COPE's Accreditation program has been **recognized since 2017 as substantially equivalent** to the ACCME Accreditation program used by medicine.
- Involves:
 - Submission of data about the COPE accreditation system
 - scope of the system
 - how accreditation decisions are established
 - quality assurance processes
 - independence from commercial bias
 - an overview of COPE accredited activities
 - an accreditation interview.



What are the key components of COPE Accreditation?



COPE Accreditation Criteria

Accreditation Criteria adopted from the ACCME



3 Criterion for CE Mission and Program Improvement:

Determining the expected results, conducting a program-based analysis, and identifying and planning program improvements.



5 Criteria for Educational Planning and Evaluation:

Identifying educational needs and addressing professional practice gaps and analyzing changes in the learners after the activity.

COPE Accreditation Criteria

Accreditation Criteria support QUALITY

- Based on a learner-centered, continuous improvement model of CE.
- Address optometrists' real-world practice needs.
- Designed to change:
 - Optometrists' competence (strategies for translating new knowledge into action) *or*
 - Optometrists' performance (what they do in practice) *or*
 - Patient outcomes.

COPE Standards for Integrity and Independence in Accredited Continuing Education (SII)

The SII are a modernized version of the Standards for Commercial Support (SCS) to ensure continued effectiveness in the changing healthcare environment.

The SII went live on July 1, 2022.

COPE Standards for Integrity and Independence in Accredited Continuing Education (SII)

- **Standard 1:** Ensure Content is Valid
- **Standard 2:** Prevent Commercial Bias and Marketing in Accredited Continuing Education
- **Standard 3:** Identify, Mitigate, and Disclose Relevant Financial Relationships
- **Standard 4:** Manage Commercial Support Appropriately
- **Standard 5:** Manage Ancillary Activities Offered in Conjunction with Accredited Continuing Education

COPE Quality Assurance



COPE course review process validates content and identifies commercial bias.



COPE On-Site Review program monitors compliance with accreditation standards.



ARBO member boards provide valuable feedback to the program.



AAO and ASCO provide educational expertise.

We updated the COPE Course Formats in 2023... how is it going?



Updated COPE Course Formats

SYNCHRONOUS IN-PERSON: The course instructor is face-to-face with the audience and can touch the participants.

1. CE: There is no post-course test.
2. CEE (Continuing Education with Examination): There is a post-course test.

SYNCHRONOUS VIRTUAL: The course instructor is not face to face but meets with learners in real-time and can provide immediate feedback.

Examples: Interactive webinars in real time, Videoconferences, Interactive posters with authors presenting in real time. Once the event has taken place, learners may no longer participate in that activity.

Updated COPE Course Formats

ASYNCHRONOUS: The course instructor and learner are not together at the same time, have no real-time communication, and the content is learner-paced.

Examples: Recorded webinar without instructor interaction, Journal article, Recorded Webcast/podcast. There is not just one time on one day to participate in the activity, rather, the learner determines when they participate.

Courses Submitted in 2023 By Format

Format	COPE Courses	%
Synchronous In-Person	4,210	65%
Synchronous Virtual	1,533	24%
Asynchronous	702	11%
Total	6,445	

Courses Taken in 2023 By Format

Format	COPE Courses	Non-COPE Courses	Total	%
Synchronous In-Person	313,746	49,659	363,405	47%
Synchronous Virtual	310,457	13,110	323,567	42%
Asynchronous	81,854	3,286	85,140	11%
Total	706,057	66,055	772,112	

What else has been a priority the past year?



COPE Outreach Task Force

Working for you / Working with you

- COPE: Liaisons to our Member Boards
 - COPE Updates throughout the year, answer COPE-related questions, voice concerns
- Webinars for COPE CE Providers centered around concerns, relevant topics voiced by Member Boards
 - Pre-Activity Application
 - Post-Activity Application
 - COPE SII Deep Dive
- Training Webinar for COPE Reviewers
- COPE Reviewer Reception at 2023 AAO Meeting
 - Thank you to COPE Reviewers

COPE Administrative Report

- ▶ The COPE Administrative Report is available on the meeting app and will include:
 - Course and Activity/Event Totals
 - Course Format Distribution
 - Course Category Distribution
 - COPE Utilization by State/Province
 - COPE Reviewers by State/Province
 - On-Site Review Results



Want to be more involved with
COPE?

Volunteer to be a COPE Reviewer
or serve on the Council!



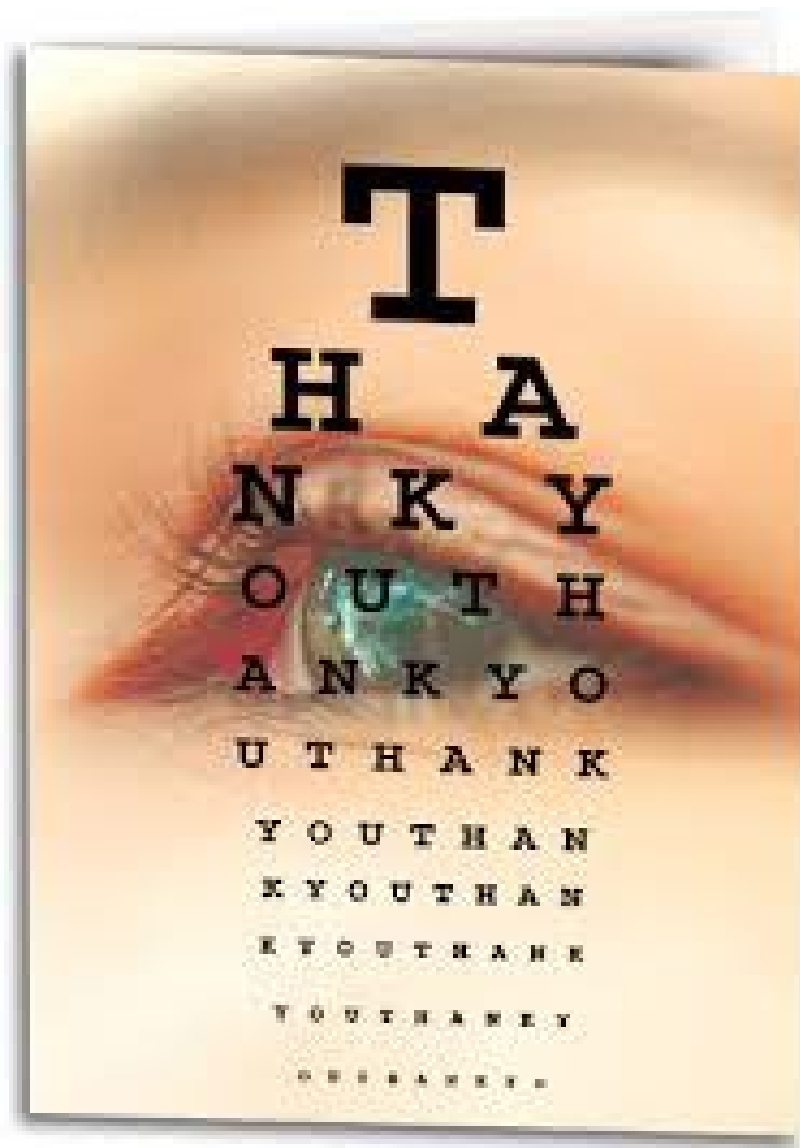
Thank You!

Questions?

Contact Sierra Powell at spowell@arbo.org or 704-970-2771

Mindset: Politics & Regulation

What is the regulator role?



Dale Atkinson, Esq.

dale@atkinsonfirm.com

THE ATKINSON FIRM

LEGAL & CONSULTING SERVICES

Minds Shared

- ARBO
- FSBPT
- AAVSB
- ASWB
- ASPPB
- FSMTB
- ICFSEB
- NMTCB
- LEARN
- JRCERT
- NWRP
- JFCFS



Regulatory Mindset

- ▶ Must understand the arena.



Branches of Government

- ▶ Legislative
- ▶ Executive
- ▶ Judicial

Branches of Government

- ▶ Legislative.....enact
- ▶ Executive.....enforce
- ▶ Judicial.....interpret

Basis for Government Regulation



LEGISLATIVE

- House & Senate **enacts** statutes
- Delegates authority to Boards
- In the interest of the public as a whole



EXECUTIVE

- **Enforces** the statutes
- Governor appoints volunteer Board Members
- Promulgate rules
- Attorney Generals Office provides legal representation to the Boards which follow ADMINISTRATIVE LAW procedures



JUDICIAL

- **Interprets** Statutes and regulations through:
- civil cases
- criminal cases
- Appeals of administrative cases

Basis for gov't regulation of a profession/occupation

- ▶ The underlying basis for the regulation of any profession arises from the creation (by the Legislature) of an entity and the establishment of its purpose, duties, and limits of power (through Law)
- ▶ Laws are established by the Legislature
- ▶ Rules are promulgated by the various entities created in the Laws who have some particular expertise in the subject matter to better inform the implementation and enforcement of law (generally the Boards)

Boards of Optometry

- ▶ Regulatory/Administrative arm of Government
- ▶ Operate under the Executive branch

REGULATORY MINDSHIFT: From “I” to “We”

Mindshift → Alignment

What HATS do you
wear?

Child
Friend
Student
Spouse/Partner
Colleague
Mentor
Teacher
Researcher
Licensee
Practitioner
Volunteer
Board Member
Staff/Employee/Consultant
Consumer
Hockey fan

REGULATORY MINDSHIFT:



What are YOUR values?

REGULATORY MINDSHIFT:

Altruism
Dependability
Integrity
Generosity
Courage
Gratitude
Well-being
Sustainability
Family
Self-Respect

Adaptability
Uniqueness
Assertiveness
Support
Open-mindedness
Personal Growth
Flexibility
Frugality
Improvement
Self-Reliance

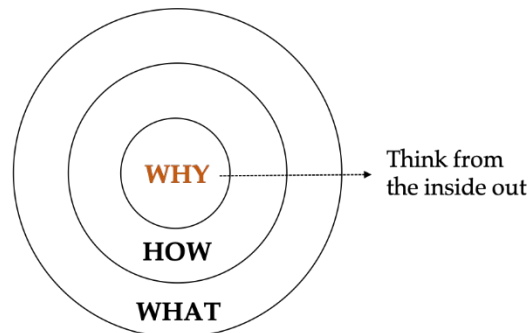
WHY did you sign up for service?

REGULATORY MINDSHIFT:

WHY: The purpose, cause or belief behind what you are doing.

HOW: The actions taken to realize the WHY

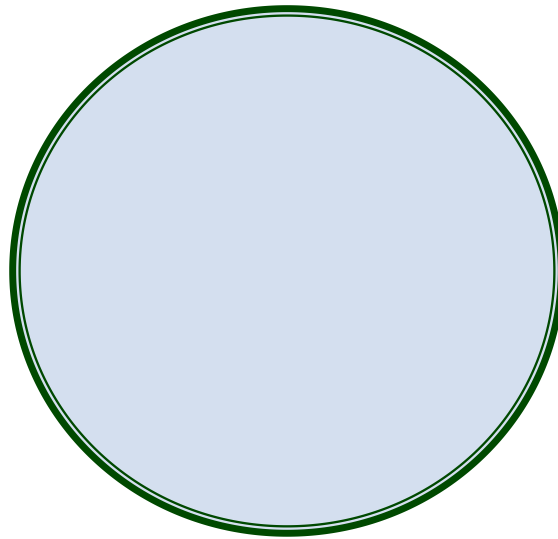
WHAT: The product, service or job function. Provides tangible proof of your purpose.



WHAT is your personal
Mission Statement?

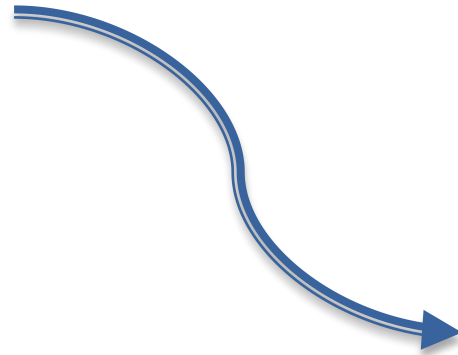
How much of YOU is a Regulator?

REGULATORY MINDSHIFT:



MAJOR MINDSHIFT

"I" Mission



REGULATORY MINDSHIFT:

"We" Mission

BOARD MISSION

REGULATORY MINDSHIFT:

BOARD MISSION Statement

The Board of Optometry was created in 1925 by an act of the State Legislature. Its mission to safeguard the health, safety, and welfare of Tennesseans by requiring that all who practice optometry within this state are qualified. The Board interprets the laws, rules, and regulations to determine the appropriate standards of practice in an effort to ensure the highest degree of professional conduct. The Board is authorized to issue licenses to qualified candidates who have completed appropriate education and successfully completed required examinations. The Board is also responsible for the investigation of alleged violations of the Practice Act and rules and is responsible for the discipline licensees who are found guilty of such violations.

Question: What entity(ies) are responsible for drafting the Administrative Code?

- a) Legislators
- b) Licensing boards
- c) The Trade Association
- d) Academic community
- e) Other

LICENSURE: Handy Dandy Definition

What is licensing?

- ▶ “Licensure is the process by which a federal, state, or local government agency grants an individual permission to practice in a particular occupation or profession that is subject to regulation under the government’s authority and to refer to oneself as “licensed” or authorized to practice.”
- ▶ “Licensing is a mandatory credentialing process established by a state government board.”
- ▶ PRACTICE and/or TITLE

...still defining

What is Licensing?

- ▶ “A process by which a governmental agency grants time-limited permission to an individual to engage in a given occupation after verifying that he or she has met predetermined and standardized criteria (usually education, experience, and examination).”
- ▶ “The goal of licensure is to ensure that the licensees have the minimal degree of competency necessary to ensure that public health, safety, and/or welfare are protected.”
- ▶ Licensure benefits ALL citizens of the public, not just a single person

More Handy Dandy Definitions

What is Professional Certification?

- ▶ “Professional Certification is the voluntary process by which a nongovernmental entity grants a time-limited recognition and use of a credential to an individual after verifying as having met predetermined and standardized criteria.”

Another way to think about Professional Certification

- ▶ “Certification is the process by which private organizations recognize individuals for meeting certain criteria established by the private organization in which individuals are recognized for advanced knowledge and skills ... There is no requirement to be certified and no governmental penalties for failure to achieve or loss of certification.”
- ▶ Certification benefits individuals



But wait! There's more...



What is Registration?

- ▶ Registration of information with an appropriate regulatory body. May include name, address, and/or qualifications. Registration provides a standard for being on the list, but complaints from consumers or improper listing of credentials can result in removal from the list.

Basis for regulation: Statutes & Regulations/Rules

- ▶ The foundation of occupational licensing is established by the Legislators in state law (authorizing legislation) – these are **STATUTES**.
- ▶ Licensing laws provide the framework for state regulation of occupations and professions.
- ▶ Governmental licensure is a process to protect the health, safety, and welfare of the public.
PUBLIC – all consumers who may receive the services or a population as a whole vs. a single consumer or recipient of services.
- ▶ In administrative law, **rule**-making is the process that an executive branch agency uses to create, or “promulgate” **regulations**.

Basis for Regulation: Continuing Education/Competence

Meant to address:

- ▶ Learning about new aspects of providing services
- ▶ Maintaining knowledge over time
- ▶ Engaging with colleagues to allow for professional growth and communication, feel less rural, observe concerns
- ▶ Keep up with new laws and changes to practice requirements
- ▶ Understanding the ethical basis for professional conduct (**note this may change over time*)

Who is responsible for your knowledge of changes?



Board role vis-à-vis Legislature



Intentionally be an information source



Model Act suggestion....

- ▶ *“The legislature shall seek information and input from the Board of _____ prior to the enactment of any material changes to this Act.*



Navigating the AI Frontier:

Regulatory Challenges and Opportunities for State Licensing Boards

Presented by: Frank Meyers, JD

Disclosures

This presentation is for informational purposes only and is not intended to provide legal or medical advice.

The views and opinions expressed in this presentation are those of the presenter and do not necessarily reflect the official policy or position of any organization.

Portions of this presentation, including the generation of images, were assisted by the use of artificial intelligence.

The use of AI in the creation of this presentation does not imply endorsement or validation of the content by the AI or its creators.

About FSMB

At the Federation of State Medical Boards (FSMB), we proudly support state medical boards within the United States, its territories, and the District of Columbia. We serve our member boards as they fulfill their mandate of protecting the public's health, safety, and welfare through proper medical regulation, licensing, and disciplining of physicians, physician assistants/associates (PAs), and other healthcare professionals.

About FSMB

FSMB's top priority is supporting state medical boards in their critical mission of public protection. Our support is vast and diverse and includes:

- Advocacy, Policy, and Communications
- Technology and Information Services
- Educational Programming
- Assessment Services
- Licensing and Disciplinary Data

What are the Learning Objectives?

 Defining AI

 Regulating AI

 Uses of AI

 Future of AI



Defining AI

What is



What is AI?

- Artificial Intelligence
- Augmented Intelligence
- Machine Learning
- Generative AI
- Natural Language Processing (NLP)
- Large Language Models (LLM)
- Multi-Modal
- Fine-Tuning
- Digital Twins
- Agents

Figure 1. Chirps per Minute vs. Temperature in Celsius.

As expected, the plot shows the temperature rising with the number of chirps. Is this relationship between chirps and temperature linear? Yes, you could draw a single straight line like the following to approximate this relationship:

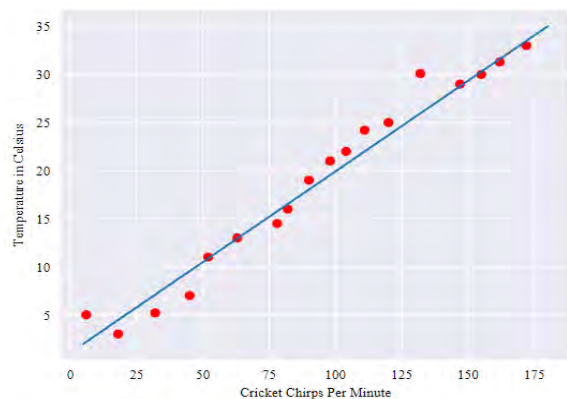
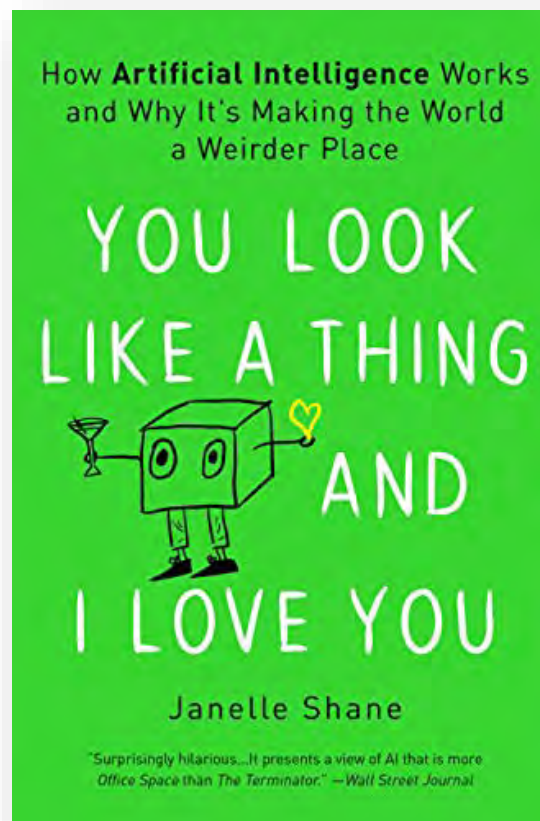


Figure 2. A linear relationship.

True, the line doesn't pass through every dot, but the line does clearly show the relationship between chirps and temperature. Using the equation for a line, you could write down this relationship as follows:

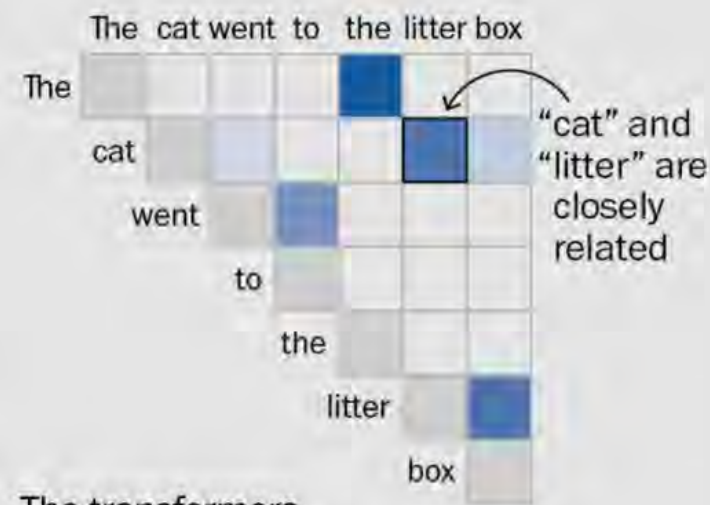
$$y = mx + b$$



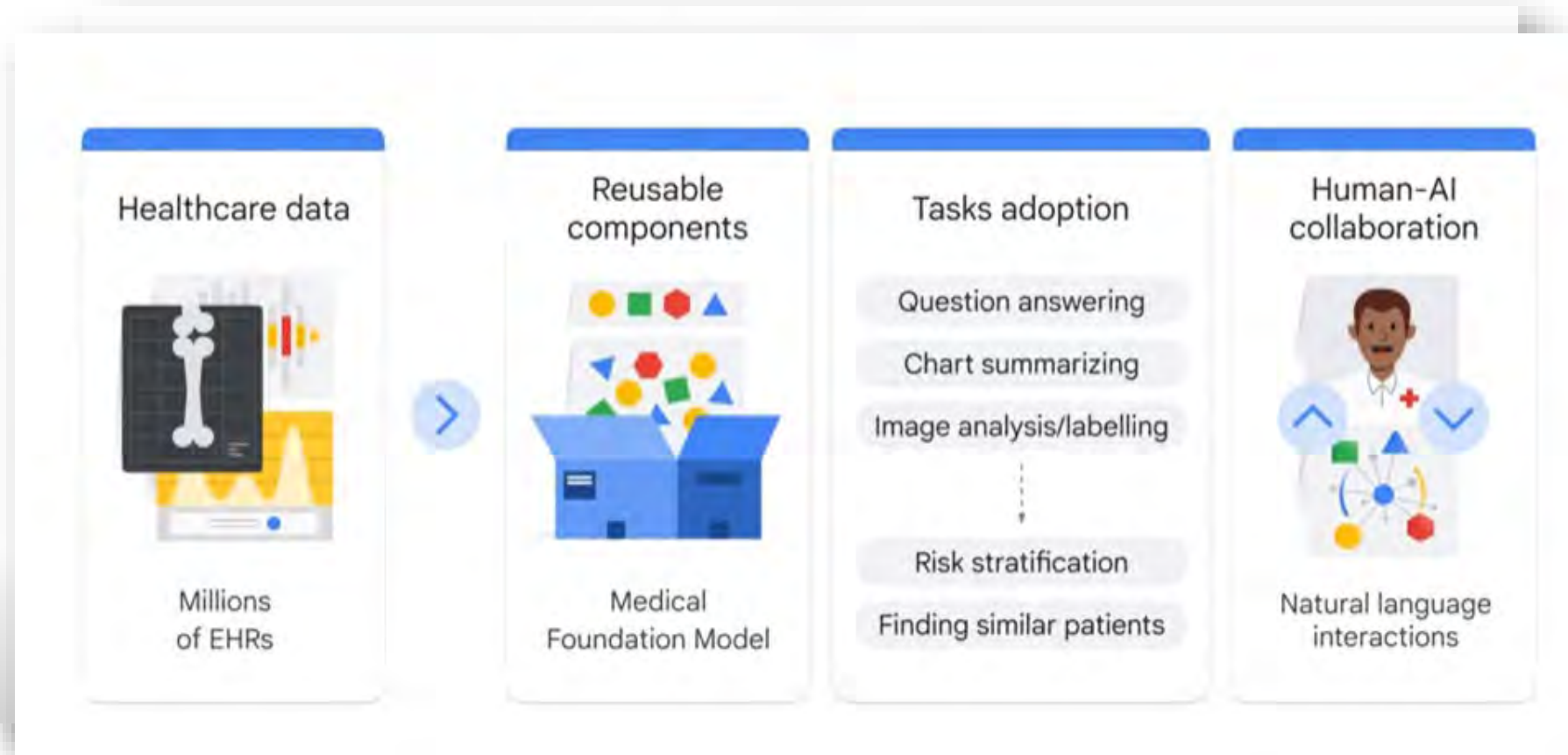


The cat went to the litter **box**.

Previously, AI models would analyze the sentence sequentially, processing the word “the” before moving onto “cat” and so on. This took time, and the software would often forget its earlier learning as it read new sentences.



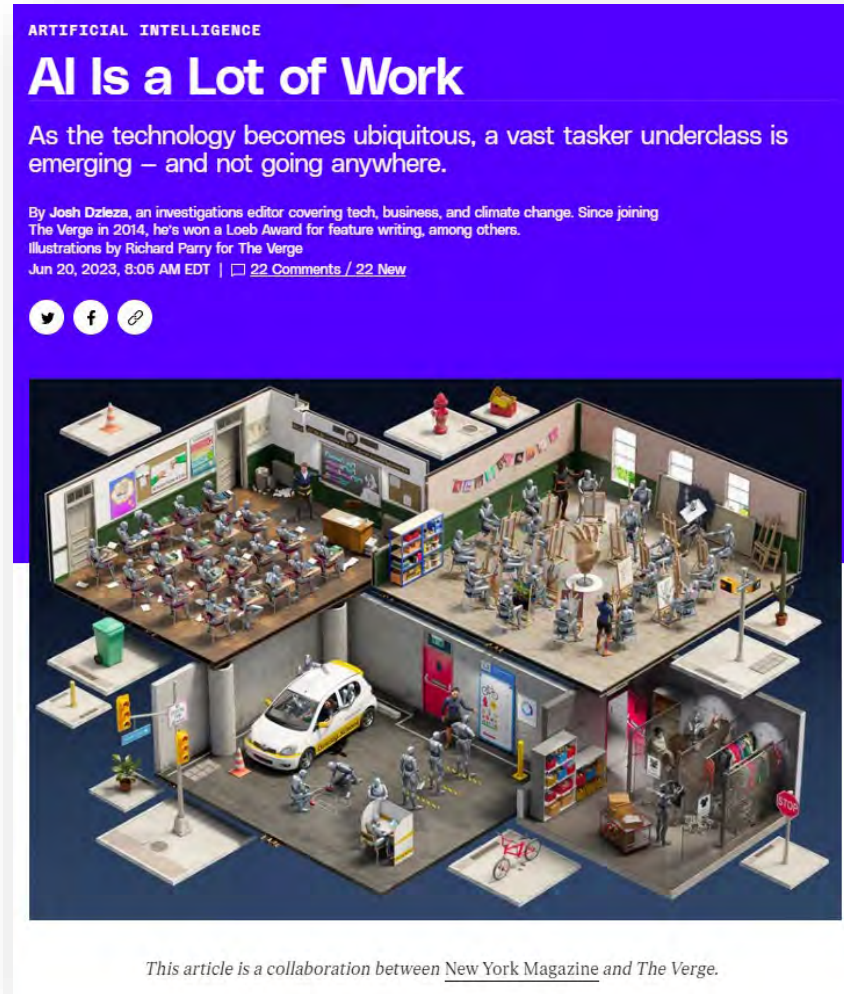
The transformers model immediately processes the relationships between words — a method called attention. New AI models can examine “cat” alongside “litter” and “box.”



 Where is the data coming from?

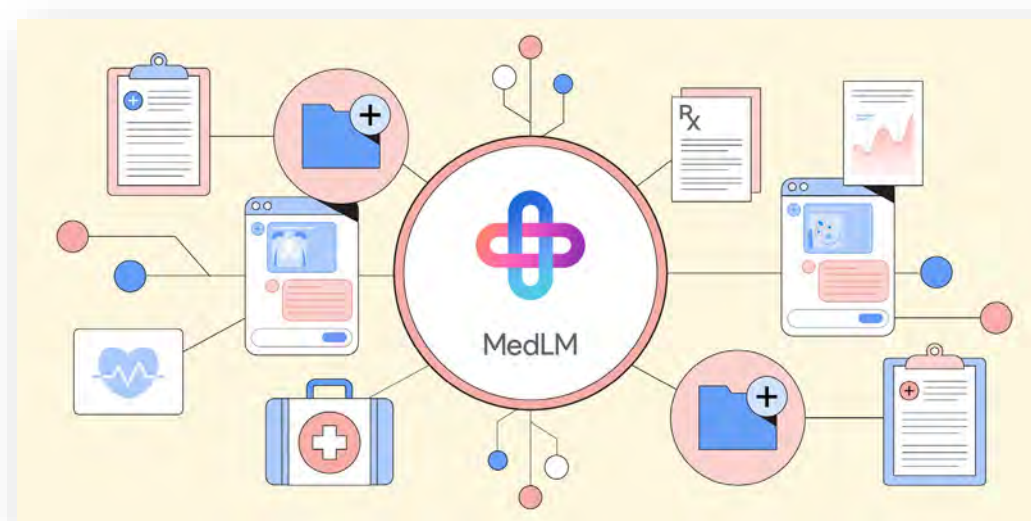
 How is the data “verified”?

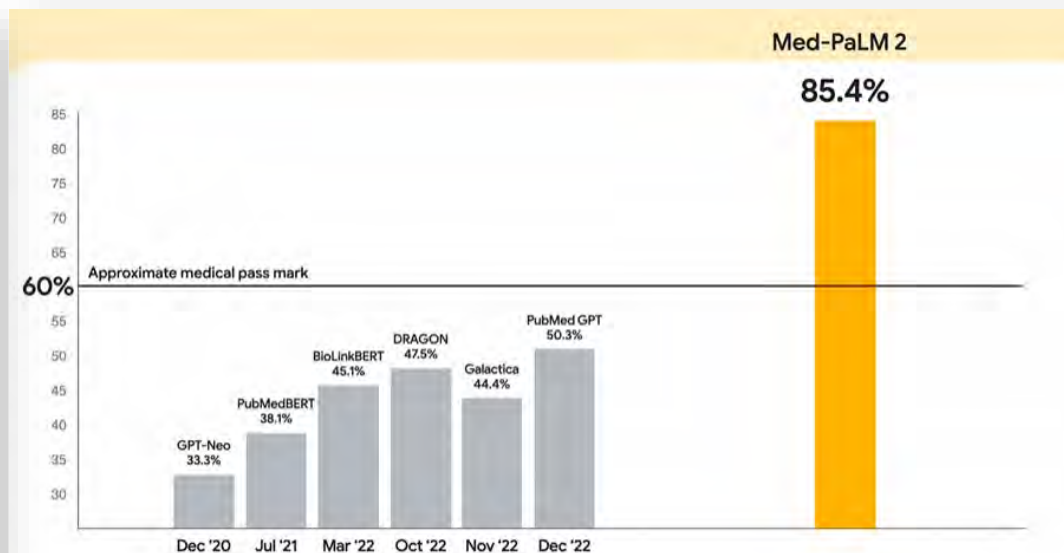
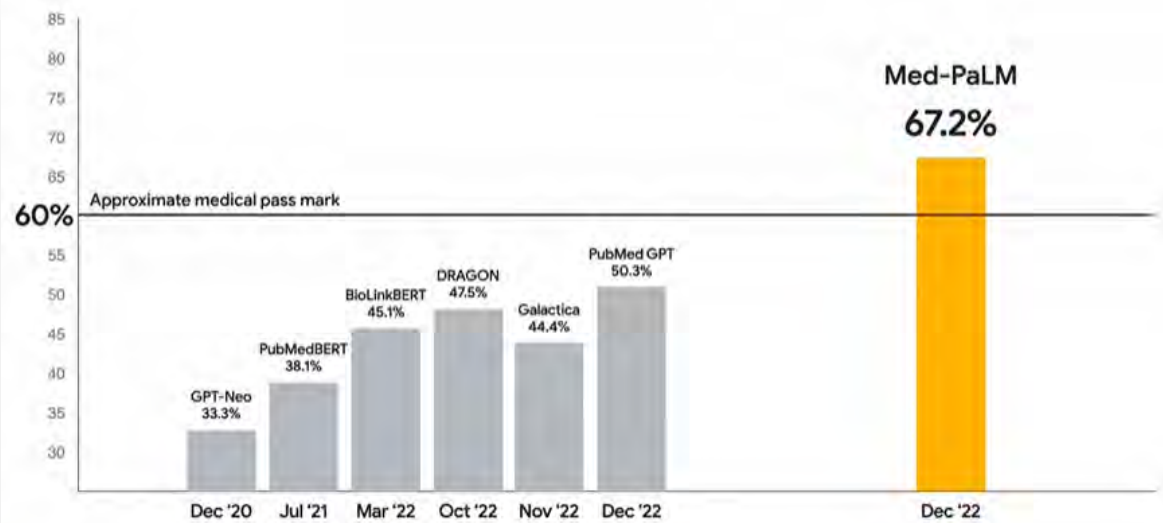
 What role do humans play?





Uses of AI





Google Cloud Unveils New AI-enabled Claims Acceleration Suite to Streamline Health Insurance Prior Authorization and Claims Processing, Helping Experts Make Faster, More Informed Decisions

Medical Imaging Suite

Accelerate development of AI for medical imaging by making imaging data accessible, interoperable, and useful.

[Contact us](#)

- ✓ Support convergence of diverse storage formats to the DICOM standard
- ✓ Seamless integration with on-premises storage via NetApp or Change Healthcare cloud-native PACS
- ✓ AI-assisted annotation environment powered by NVIDIA and the MONAI open framework
- ✓ Support healthcare-specific security and compliance



ARTIFICIAL INTELLIGENCE / TECH / GOOGLE

Google's medical AI chatbot is already being tested in hospitals



Illustration: The Verge

/ The Mayo Clinic has reportedly been testing the system since April.

By [Wes Davis](#), a weekend editor who covers the latest in tech and entertainment. He has written news, reviews, and more as a tech journalist since 2020.

Jul 8, 2023, 6:01 PM EDT | [11 Comments](#) / [11 New](#)

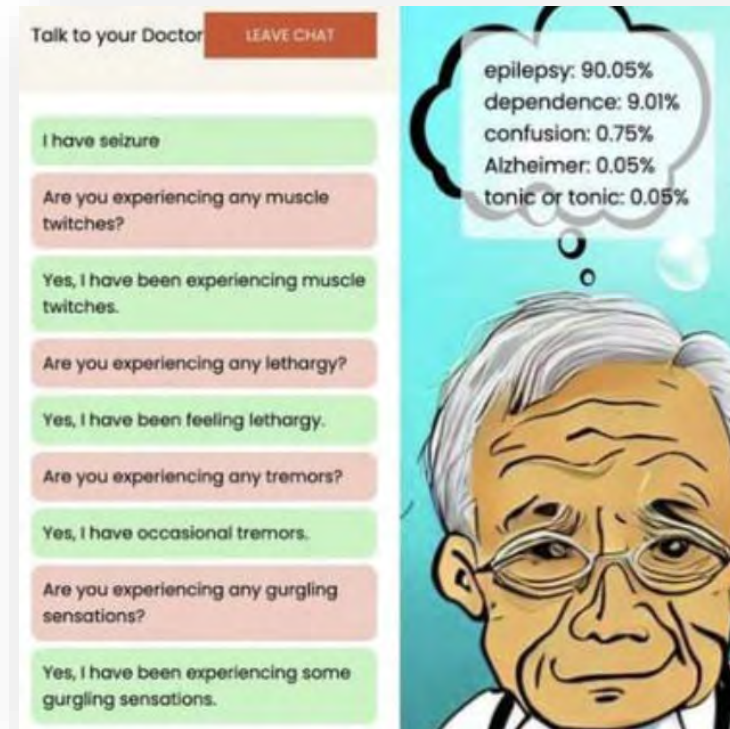
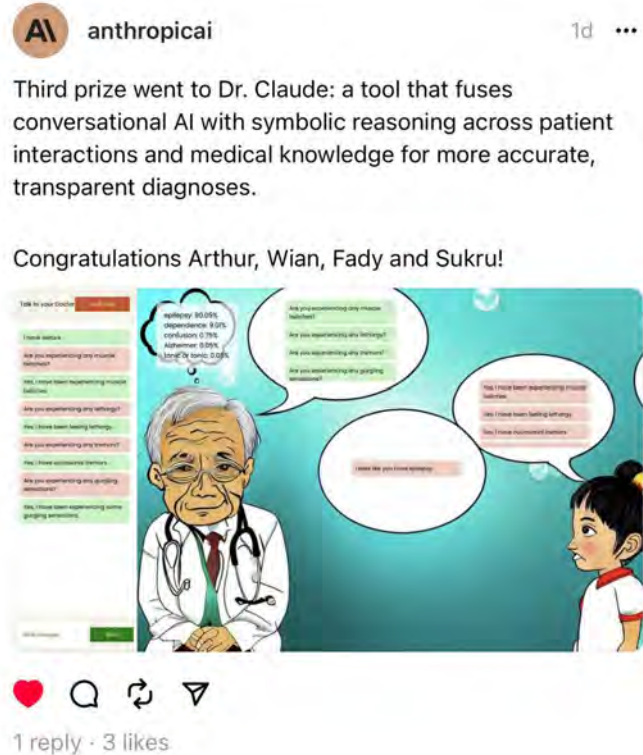


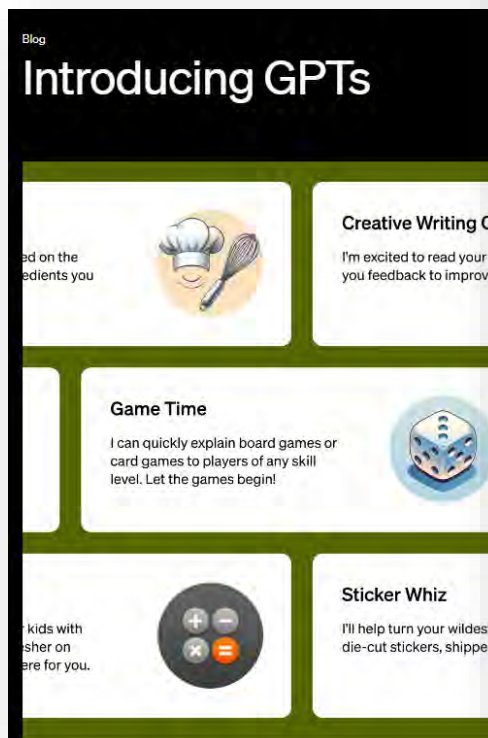
Automatically document care with the Dragon Ambient eXperience

Enhance quality of care and the patient experience, increase provider efficiency and satisfaction, and improve financial outcomes with the Dragon Ambient eXperience (Nuance DAX), an ambient clinical intelligence solution that automatically documents patient encounters accurately and efficiently at the point of care.

[Explore Nuance DAX](#)







You

Write a SOAP note for a patient with asthma exacerbation.



Doctor SOAP Note

S:

The patient is a 35-year-old female presenting with complaints of increased shortness of breath, wheezing, and coughing more than usual over the past two days. Reports that symptoms have worsened despite using a salbutamol inhaler "a few times a day." Denies fever, chest pain, or other systemic symptoms. History of asthma, usually controlled with a daily low-dose inhaled corticosteroid. No recent changes in asthma medications. Last exacerbation was approximately 6 months ago.

O:


- **General:** Alert, oriented, in mild distress due to dyspnea
- **Vital Signs:** BP 120/80 mmHg, HR 102 bpm, RR 22/min, Temp 98.6°F, O2 Sat 94% on room air
- **Lungs:** Diffuse wheezing on auscultation, prolonged expiratory phase
- **Cardiovascular:** Regular rate and rhythm, no murmurs
- **ENT:** No nasal flaring or use of accessory muscles
- **Skin:** No cyanosis or peripheral edema

A:

Acute asthma exacerbation, likely triggered by an unidentified allergen or recent respiratory infection, considering the lack of systemic symptoms and the patient's report of progressive dyspnea and wheezing despite the use of rescue medication.

P:

1. Medication Adjustments:

- Increase frequency of Salbutamol inh  to 2 puffs every 4 hours as needed for wheezing or breathlessness.

Note



notes for medical records.

1K+

Conversations

enerate a SOAP note for a
abetic patient with foot ulcer.

ft a SOAP note for
ertension management.

ai atlas > Tech > Services & Software

Adobe Defends Changes in Its Terms of Service Amid Gen AI 'Explosion'

It could still cause issues for creators, even as Adobe says it won't scan every file.

Joe Hindy

June 10, 2024 9:57 a.m. PT

4 min read



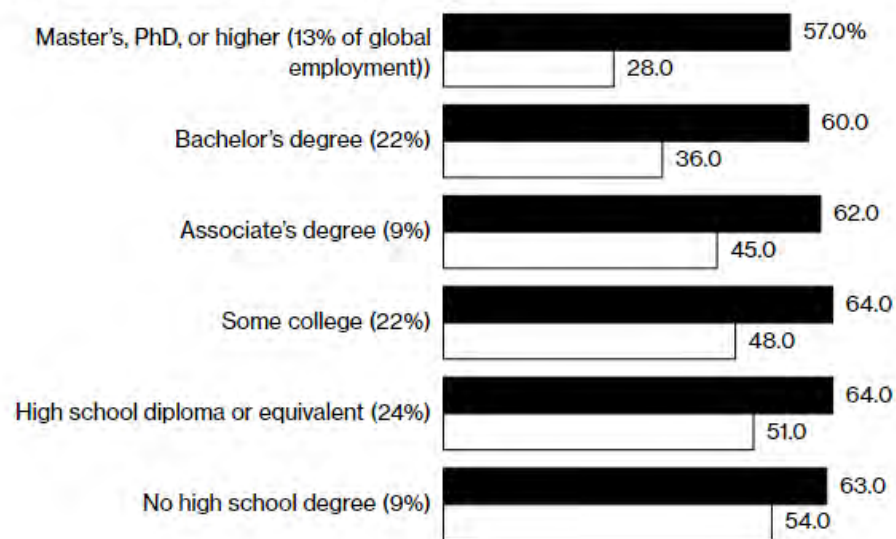


Regulating AI

AI Will Increase Vulnerability of Most Educated Workforce

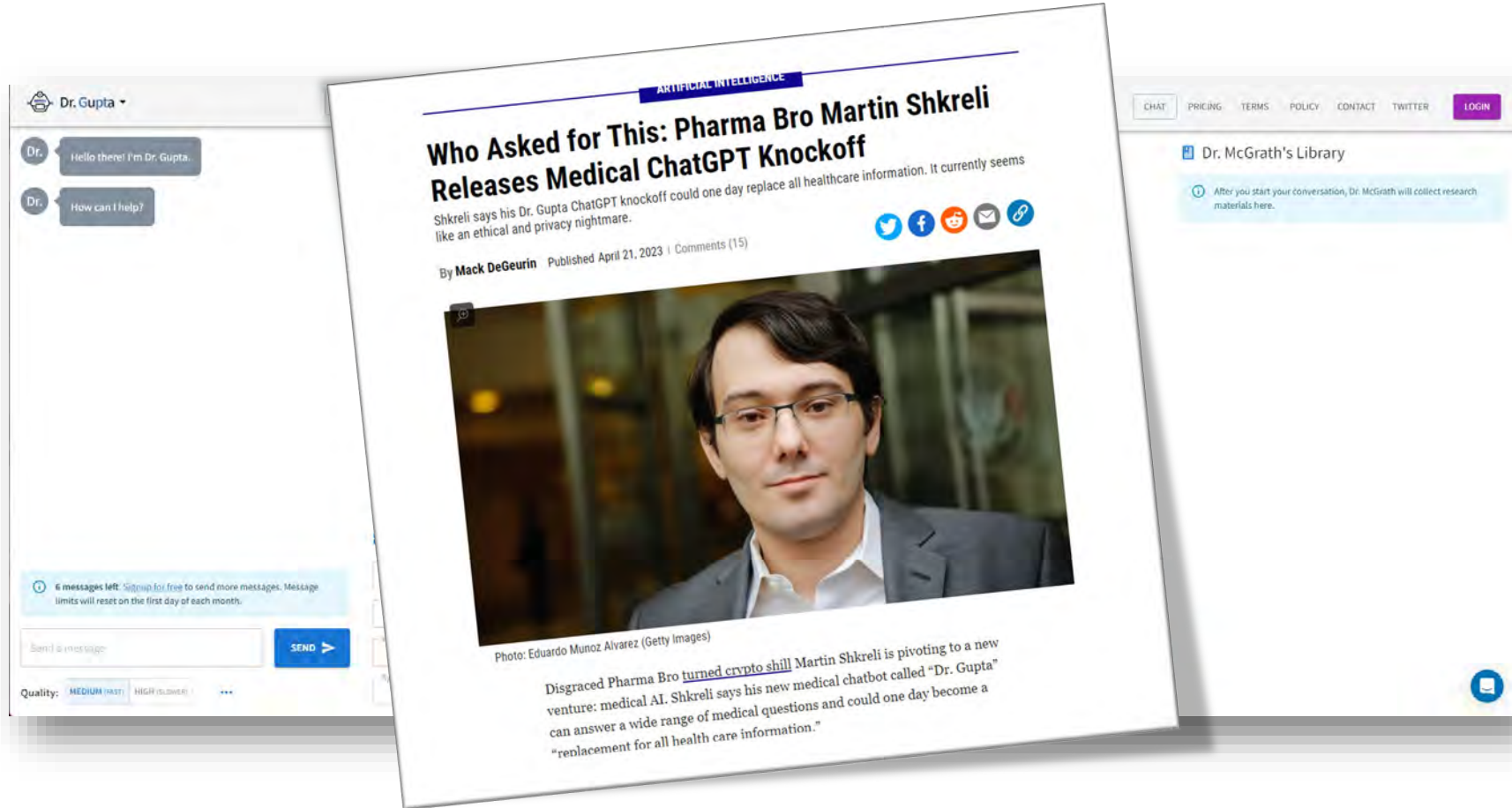
Share of work that can be automated, by education level of employee

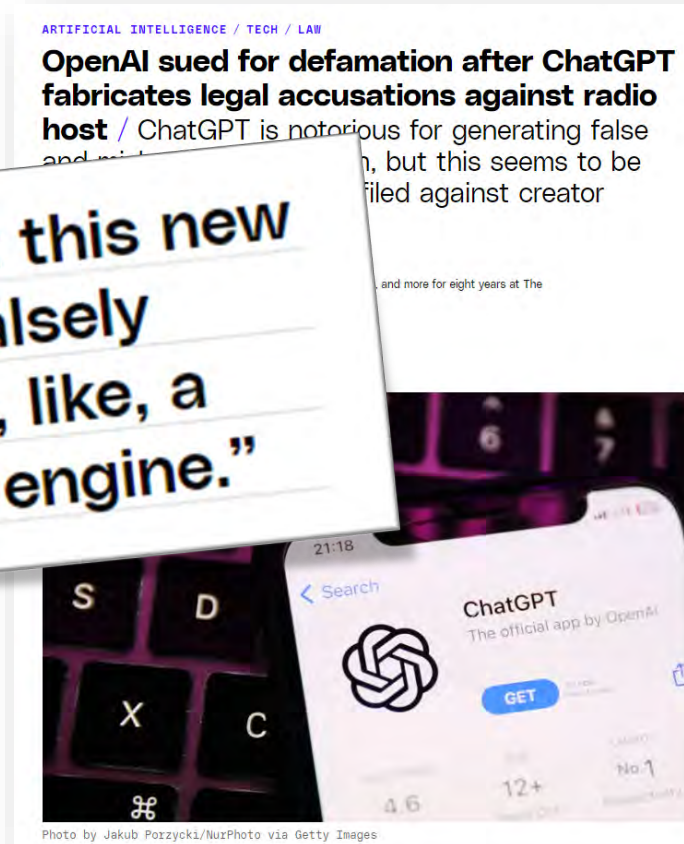
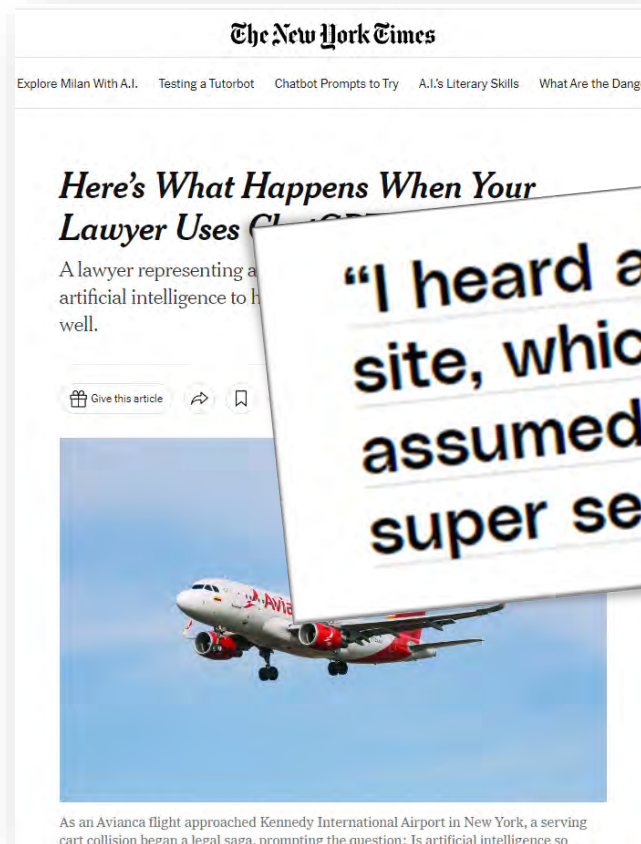
■ With generative AI □ Without generative AI



Source: McKinsey Global Institute analysis

Note: Educational includes share of global employment





AMAZON / TECH / ARTIFICIAL INTELLIGENCE

Amazon insists Just Walk Out isn't secretly run by workers watching you shop



Image: Amazon

/ Amazon says human reviewers only annotate shopping data for its cashierless tech.

By [Emma Roth](#), a news writer who covers the streaming wars, consumer tech, crypto, social media, and much more. Previously, she was a writer and editor at MUO.

Apr 17, 2024, 12:38 PM EDT



11 Comments (11 New)



LUMINETICSCORE™
AI Diagnostic System *Formerly IDx-DR*

LumineticsCore is an AI diagnostic system that autonomously diagnoses patients for diabetic retinopathy (including macular edema)

- ✓ Diagnostic results at the point-of-care
- ✓ No need for specialist overread or telemedicine call backs
- ✓ A simple user interface
- ✓ Customized workflow integration solutions

The New York Times

A.I. and Chatbots > Meet the New ChatGPT Meta's A.I. Characters ChatGPT's Image Generator Google's Bard Extensions

New A.I. Tool Diagnoses Brain Tumors on the Operating Table

A new study describes a method for faster and more precise diagnoses, which can help surgeons decide how aggressively to operate.

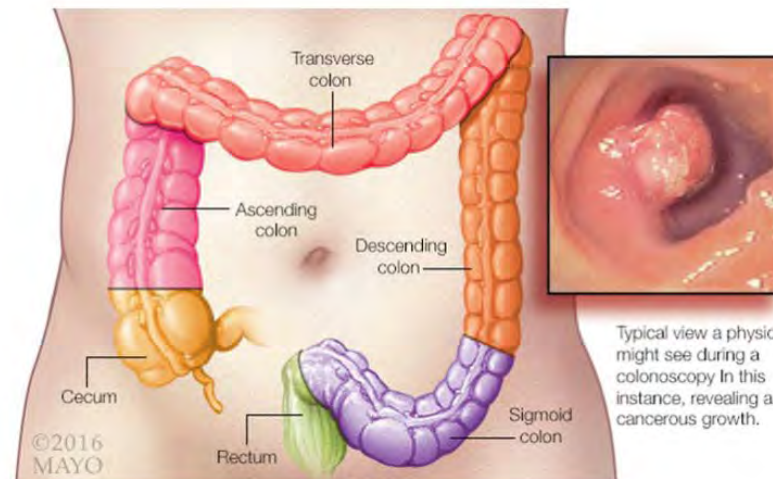
Share full article



An A.I. diagnosis generated during the early stages of an hourslong surgery can help surgeons decide how aggressively to operate, researchers said. A. Noor/BSIP, via Alamy

AI-assisted colonoscopies reduce miss rate by 50 percent

Aug. 12, 2022



Typical view a physician might see during a colonoscopy. In this instance, revealing a cancerous growth.

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Schumer Lays A.I., Without

The Senate majority leader took a course in a technology meant to build bipartisan support.



"In many ways we're starting from scratch," Senator Chuck Schumer said.

OCTOBER 30, 2023

FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence



BRIEFING ROOM

STATEMENTS AND RELEASES

Today, President Biden is issuing a landmark Executive Order to ensure that America leads the way in seizing the promise and managing the risks of artificial intelligence (AI). The Executive Order establishes new standards for AI safety and security, protects Americans' privacy, advances equity and civil rights, stands up for consumers and workers, promotes innovation and competition, advances American leadership around the world, and more.

As part of the Biden-Harris Administration's comprehensive strategy for responsible innovation, the Executive Order builds on previous actions the President has taken, including work that led to voluntary commitments from 15 leading companies to drive safe, secure, and trustworthy development of AI.

first-ever
AI

emotion recognition,

AI-generated

high-risk



emotion recognition.

trustworthy AI and protect
its harmful effects.



Enrolled

S.B. 149

ARTIFICIAL INTELLIGENCE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Jefferson Moss

LONG TITLE

General Description:

This bill creates the Artificial Intelligence Policy Act.

Highlighted Provisions:

This Bill:

- defines terms;
- establishes liability for use of artificial intelligence (AI) that violates consumer protection laws if not properly disclosed;
- creates the Office of Artificial Intelligence Policy (office) and a regulatory AI analysis program;
- enables temporary mitigation of regulatory impacts during AI pilot testing;
- establishes the Artificial Intelligence Learning Laboratory Program to assess technologies, risks, and policy;
- requires disclosure when an individual interacts with AI in a regulated occupation; and
- grants the office rulemaking authority over AI programs and regulatory exemptions.



NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 24-205

BY SENATOR(S) Rodriguez, Cutter, Michaelson Jenet, Priola, Winter F., Fenberg;
also REPRESENTATIVE(S) Titone and Rutinel, Duran.

CONCERNING CONSUMER PROTECTIONS IN INTERACTIONS WITH ARTIFICIAL INTELLIGENCE SYSTEMS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 17 to article 1 of title 6 as follows:

PART 17 ARTIFICIAL INTELLIGENCE

6-1-1701. Definitions. AS USED IN THIS PART 17, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "ALGORITHMIC DISCRIMINATION" MEANS ANY CONDITION IN WHICH THE USE OF AN ARTIFICIAL INTELLIGENCE SYSTEM RESULTS IN AN UNLAWFUL DIFFERENTIAL TREATMENT OR IMPACT THAT DISFAVORS AN INDIVIDUAL OR GROUP OF INDIVIDUALS ON THE BASIS OF THEIR ACTUAL OR

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

Machine Learning

AI Benchmarks Hit Saturation

AI continues to surpass human performance; it's time to reevaluate our tests.

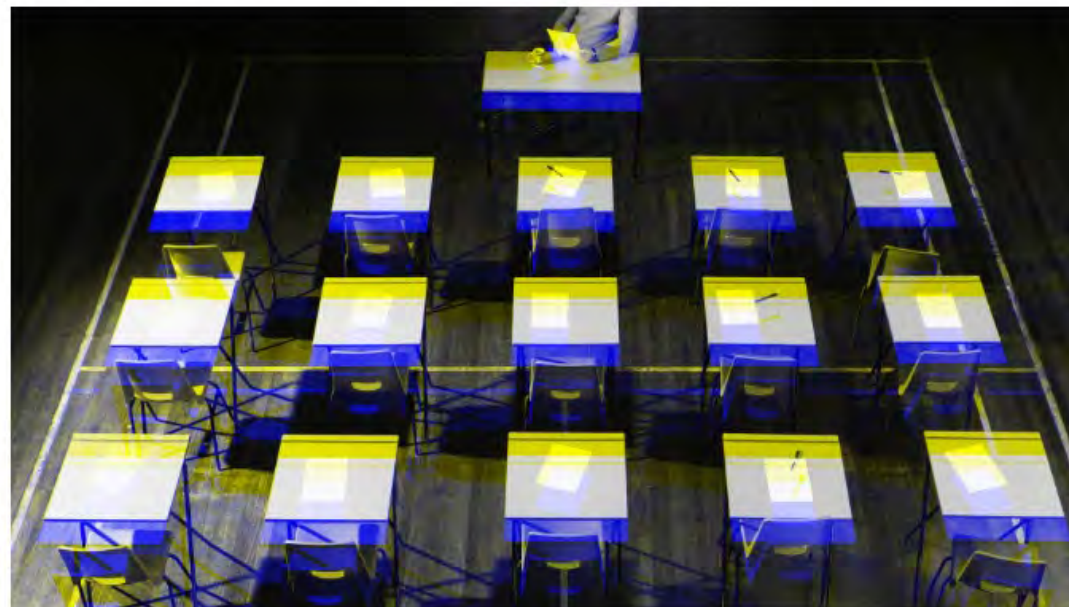
Apr 3, 2023 | Shana Lynch [Twitter](#) [Facebook](#) [YouTube](#) [LinkedIn](#) [Instagram](#)



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Did OpenAI's GPT-4 really pass the bar exam?

The large language model's claims of a top 10% score may have been relative to test-takers who had already failed the exam at least once, according to an MIT researcher.



[Photo: Tim Macpherson/Getty Images]

www.fsmb.org | 33



***Navigating the Responsible and Ethical Incorporation of
Artificial Intelligence into Clinical Practice***

Adopted by FSMB House of Delegates, April 2024

EXECUTIVE SUMMARY

Artificial Intelligence (AI) holds tremendous potential to aid healthcare providers in diagnosis, treatment selection, clinical documentation, and other tasks to improve quality, access, and efficiency. However, these technologies introduce risks if deployed without proper 'guardrails' and understanding which may impact considerations in clinical practice as well as regulatory processes of state medical boards. By taking a proactive and standardized governance approach anchored in ethical principles, state medical boards can promote safe and effective integration of AI, in its various forms, while prioritizing patient wellbeing.

This report summarizes expert opinion and proceedings to develop guidance from the FSMB Ethics and Professionalism Committee to aid physicians and state medical boards in navigating the responsible and ethical incorporation of AI centered on (1) education, (2) emphasizing human accountability, (3) ensuring informed consent and data privacy, (4) proactively addressing responsibility and liability concerns, (5) collaborating with experts, and (6) anchoring AI governance in ethical principles.

Clinical systems and processes making use of AI must be continually monitored and refined. This should not occur in a vacuum but should be the focus of collaborative efforts among physicians, health systems, data scientists, and regulatory agencies, *including state medical boards*. By thoughtfully addressing the opportunities and challenges posed by AI in healthcare, state medical boards can promote the safe, effective, and ethical use of AI as a tool to enhance, but generally not replace, human judgment and accountability in medical practice. In fulfilling their missions to ensure that patients benefit from and are not harmed by applications of AI in their care, it is essential that state medical boards avoid over-regulation and regulatory overreach by attempting to regulate that which is not in their purview. With focused efforts on the current and future state of the use of AI by licensees, state medical boards may sustain regulatory efficiency, achieve consistency across jurisdictions in the regulation of AI in clinical practice, help secure the benefits of AI, and proactively safeguard patients while upholding professional standards.

 Education is critical.

 Physicians remain accountable.

 Informed consent and data privacy are paramount.

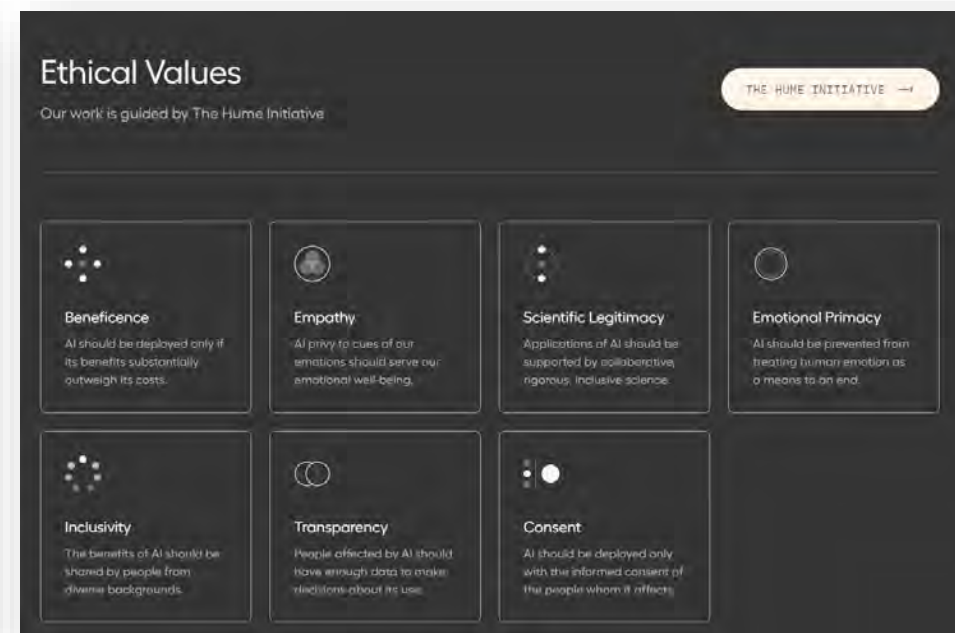
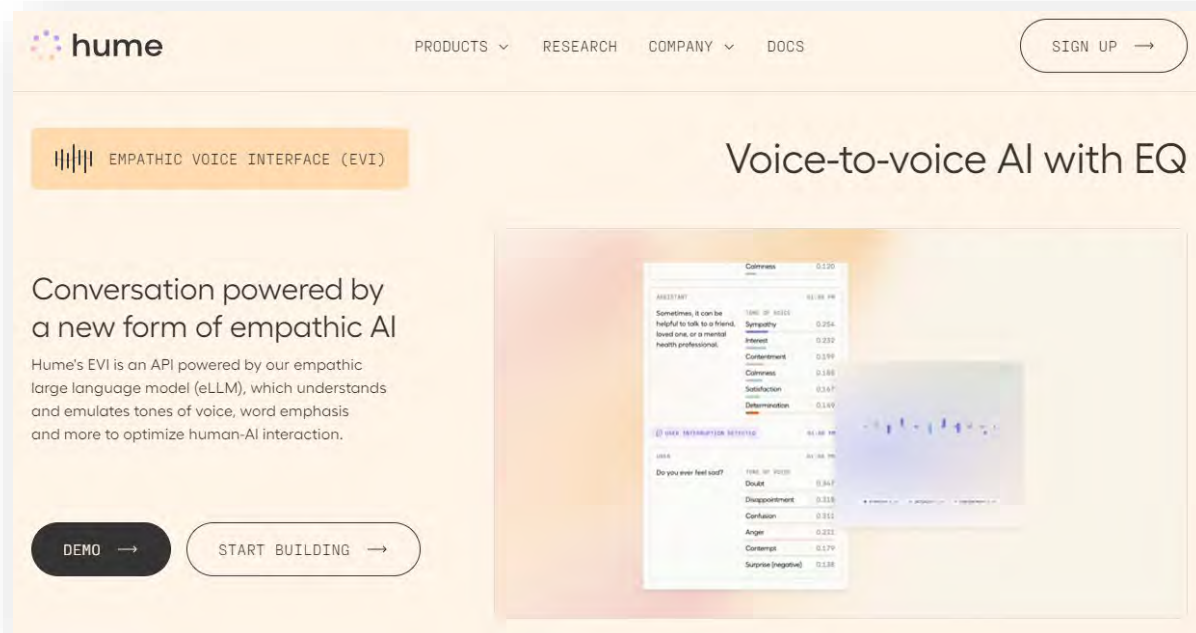
 Proactively address bias and access.

 Anchor AI governance in ethics.

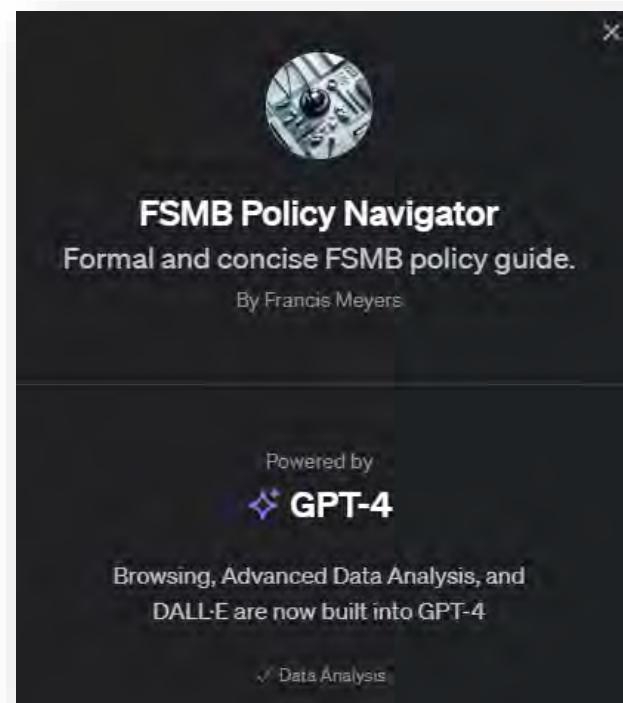
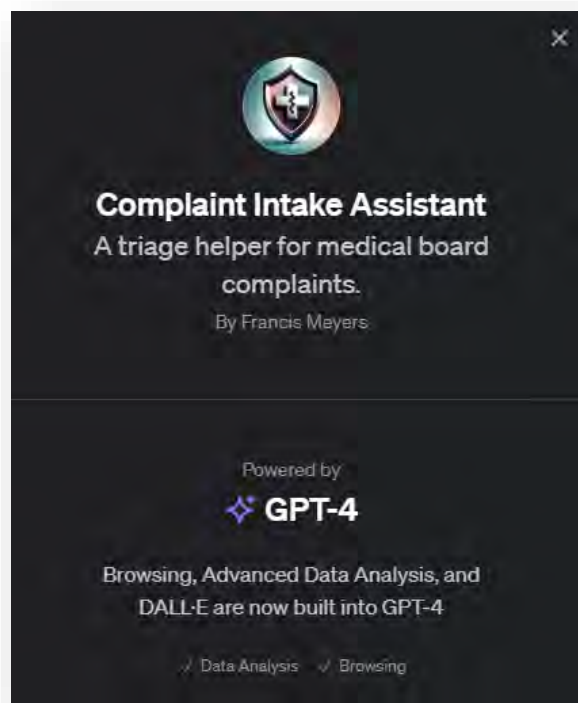
 Collaboration is key.



Future of AI



What makes the Empathic Voice Interface (EVI) special?



You
 "On 11-15-22 I went in for spinal cord surgery at yavapai regional Medical Center main campus in Prescott, Arizona. When I arrived the intake nurse somehow put me in as on no medications and I was not aware that I was not taking my prescriptions for over 5 days. I have been on pain management for the past 5 years with multiple medications. When I am in pain I am not able to remember much or talk well. I needlessly spent 2 days in the most horrific, excruciating pain I had ever experienced in my life! I have been suffering from a permanent spinal cord injury for 5 years and dealing with the feeling of intense pins and needles coupled with the sensation of submerging my right hand into a salty ice bowl 24/7 and I thought it couldn't get much worse. I was very wrong. I was told by my first nurse that they did not have access to my history of medications and the hospital had no way, other than my confused word, to know what medications I was currently prescribed. This same nurse also told me I was a high maintenance patient. I was hitting the help button over and over saying I was in so much pain and I was ignored or told that the nurse was already informed. The sensations that I have experienced before had horribly mutilated from cold pins and needles into what I can only describe as white hot needles and knives slicing my skin with any slightest touch. I was able to text my wife who called in and then I was told by the nurse that she did not appreciate being called by my wife, and being told that I was in such extreme pain. It all happened again the next day with the same nurse and her assistant, and a friend of mine spoke with the head nurse. Then a wonderful night Nurse actually took time to listen to me between my pain fueled haze. She gave me iv pain relief so I was able to talk and she told me they do have full access to my home meds list and that the intake nurse for surgery must have dropped the ball. For what seemed like endless hours over 2 days I thought I was becoming completely paralyzed due to the overwhelmingly intense pain in my hands and feet as they curled up and locked in place. This put me into the most embarrassing emotional breakdown of my life. I am not one that could exist as a paralyzed man. I cried like a baby in front of that wonderful nurse who helped me. I also had tears of pain running down my face during the many hours the previous nurses were supposedly taking care of me. The head nurse was contacted and the nurse and her assistant who ignored my obvious distress were removed from my care but they continued to care for the man laying next to me. This was a scaring experience that has now put me in total fear of the upcoming 2 more surgeries that I require.
 Please help me make sure this doesn't happen to anyone ever again.
 I do not know if there is any recourse possible. My thoughts are still confused and could use some help and advise from someone I could trust if possible."

Tony Bones"

Complaint Intake Assistant
 Let's approach this step by step.

Step 1. Determining Jurisdiction
 Analyzing the complaint location and details.
 Determining: The incident occurred in Yavapai Regional Medical Center, Prescott, Arizona.
 Therefore, the relevant jurisdiction for this complaint is Arizona. Since I do not have the Arizona statutes in my knowledge base, I am unable to apply them to this case. If you wish to proceed with the analysis using the statutes from Missouri, DC, or Idaho, please let me know. Otherwise, I recommend seeking advice based on Arizona's medical statutes and regulations.

Step 2. Identifying Relevant Parties
 Reviewing the complaint to identify all parties.
 Parties identified are:
Complainant - Tony Bones
Licensee - Unknown (Intake Nurse at Yavapai Regional Medical Center)
Other - First Nurse (Unknown), Nurse's Assistant (Unknown), Head Nurse (Unknown), Night Nurse (Unknown)

Step 3. Summarizing the Complaint
 Extracting key points from the complaint filed by Tony Bones.
 Summary: The complaint describes an incident where Tony Bones underwent spinal cord surgery at Yavapai Regional Medical Center in Prescott, Arizona. The complainant alleges a lapse in medication management, leading to severe pain and distress. The intake nurse is said to have failed to record his ongoing medications, resulting in a lack of pain management. The complainant also reports a lack of responsiveness and empathy from the nursing staff, with an eventual intervention by a night nurse who provided relief and rectified the situation. This experience caused significant emotional and physical distress to the complainant.

Step 4. Analyzing Applicable Statutes

As the relevant Arizona statutes are not in my knowledge base, I am unable to match the complaint details with specific Arizona statutes. For a proper analysis, the statutes and regulations governing medical practice in Arizona would need to be reviewed.

Step 5. Investigation Recommendations

Considering the complaint's nature:


- Further investigation could involve interviewing the involved medical staff, including the intake nurse, the first nurse, the nurse's assistant, and the night nurse.
- Reviewing the hospital's medication management policies and procedures, especially regarding surgery intake.
- Examining the hospital's records of the complainant's stay, focusing on medication administration and staff-patient interactions.
- Assessing the training and qualifications of the involved medical staff.
- Investigating the hospital's protocol for handling patient complaints and distress during postoperative care.

This recommendation is based on the details provided in the complaint and would need to be adjusted based on the relevant statutes and hospital policies.

DC Health Virtual Agent

Who should I reach out to about my medical license?

24 Apr - 3:05 pm



To get information about your medical license in Washington D.C., you should reach out to the Health Regulation and Licensing Administration (HRLA) Processing Center.

The context indicates that the HRLA Processing Center handles health professional licensing and renewals. To check on the status of a pending application or submit documents, you can:

- Call the HRLA Processing Center at 1 (877) 672-2174
- Email the appropriate Health Licensing Specialist:

Type your questions here

DC Health Virtual Agent

pharmaceutical detailer, and pharmacy technician licenses:

- Ms. Karin Barron: karin.barron@dc.gov
- Ms. Luanne Greenaway: luanne.greenaway@dc.gov

For controlled substance registrations (new):

- Ms. Leatrice Lee: leatrice.lee@dc.gov

For controlled substance registrations (renewals):

- Ms. Karin Barron: karin.barron@dc.gov
- Ms. Luanne Greenaway: luanne.greenaway@dc.gov
- Ms. Sabrina Lewis: sabrina.lewis@dc.gov
- Ms. Leatrice Lee: leatrice.lee@dc.gov

References: <https://dchealth.dc.gov/pcd>
<https://dchealth.dc.gov/service/health-professionals>

Type your questions here

? Questions & Answers

 fmeyers@fsmb.org

 <https://www.linkedin.com/in/frankbmeyers/>

National Board Examination Review Committee

2024 ARBO Annual Meeting Report

NATIONAL BOARD EXAMINATION REVIEW COMMITTEE (NBERC)

2023 NBER COMMITTEE MEMBERS :

- Carey A. Patrick, OD, Chair (TX)
- Wayne Cannon, OD (SC)
- Evan Kaufman, OD (VA)
- Gerard Lozada, OD (KS)
- Lisa Wallace-Davis, OD (VA)
- Lillian Wang, OD (CA)
- Terri Haley, OD, Board Liaison
- Ron Cassel, Lisa Fennell, Jessi McVean (ARBO staff)

NATIONAL BOARD EXAMINATION REVIEW COMMITTEE REPORT

The full NBERC report can be found on your meeting app. It was also distributed to all member boards prior to the meeting.

NBERC PROCESS

- Evaluate the content of the NBEO Examinations as they relate to scope of practice.
- Review changes at NBEO including policies and procedures that impact the validity and reliability of the Examinations.
- Ensure that the NBEO website, candidate materials and content outlines, properly present the examinations to potential candidates and practitioners.
- Generate specific recommendations for continuous quality improvement of the National Board Examinations.

NBERC FINDINGS

- ▶ The Councils for Parts I and II of the Examination reviewed all current and new Exam items.
- ▶ Expanded use of psychometrics in the analysis of exam items appeared to greatly expedite the item review process and improve the efficiency of the Councils.
- ▶ NBERC was pleased to see the individual Councils all referring to the provided psychometrics as they review previous exam items and develop new exam items.

NBERC FINDINGS

- ▶ The new Part III Patient Encounters and Performance Skills (PEPS) will center on clinical decision making in the evaluation of live patients.
- ▶ The exam focuses on the candidate's ability to formulate a diagnosis and treatment plan for a test patient based on baseline health information provided in the item scenario and supplementary testing ordered by the candidate.
- ▶ PEPS is divided into 12 stations. 10 stations follow this model, and 2 stations are hands-on skills evaluation.
- ▶ The initial administration of the exam will take place in August 2024.
- ▶ Exam scores for the initial cohort of candidates are planned to be released in December 2024.

NBERC FINDINGS

- ▶ NBEO is continuing to expand the case database for the PEPS exam. This ensures an ever-changing field of exam items, thereby ensuring NBEO's current high level of exam security.
- ▶ NBEO remains vigilant and responsive to changes in the exam security environment. The present level of exam security is excellent, meets best practices, and is recommended to be maintained at this high level.
- ▶ NBEO recently updated and expanded the use of psychometrics, which has improved the quality and reliability of Part I and Part II, and is anticipated to do the same for the upcoming Part III (PEPS) exam.

Why is NBERC Important?

- ▶ NBERC gives ARBO's members direct oversight of the NBEO Exams.
- ▶ The NBER Committee is made up of members from ARBO's member Boards.
- ▶ The goal of NBERC is to make sure the exams continue to meet your jurisdiction's needs.

Why is NBERC Important?

- ▶ State audits and sunset reviews often ask how you review the licensing exams to make sure they are meeting your jurisdiction's and constituent's needs.
- ▶ The primary need of all of our jurisdictions' is to protect the public.
- ▶ NBERC's report is distributed every year and can be provided as a response from your licensing agency to your governing body confirming the relevance and rigor of the examinations to meet that primary purpose of protecting the public.

Volunteer for NBERC

- ▶ Want to know more about the NBEO Exams?
- ▶ Volunteer for the NBER Committee!
- ▶ The next committee meeting will be October 25-27, 2024, in Charlotte, NC.

NBERC Annual Meeting Report

Questions?

OE TRACKER Committee

2024 ARBO Annual Meeting Report

ARBO 2023–2024 OE TRACKER Committee

- Eric Bailey, OD, MN, Chair
- Obinna Akano, OD, NY
- Kim Bugera, OD, AB
- Dori Carlson, OD, ND
- Dan Hennessey, OD, AR
- Lisa Johnson, OD, DC
- Joseph Maycock, OD, WY
- Jan Murray, ED, Kansas
- Lisa Wallace–Davis, OD, VA
- Lillian Wang, OD, CA
- ED Margaret Whelan, ED, AZ, Board Liaison
- Jeffery Yunker, OD, *Ex–Officio*
- Brittany Howard, MBA, Staff
- Lisa Fennell, Staff

Why is OE Tracker Important to ARBO?

- ▶ OE Tracker is a highly utilized ARBO product
 - ▶ Used by ODs throughout their careers
 - ▶ A primary ARBO “marketing / awareness” opportunity
 - ▶ On EVERY OD’s mobile phone
 - ▶ Nexus of the optometric educational ecosystem
 - Links ODs to ARBO, Regulators and CE Providers*
- ▶ OE Tracker provided 35% of ARBO revenue in 2023

Why is OE Tracker Important to State Boards?

- ▶ OE Tracker optimizes the CE confirmation and licensing process
 - ▶ Board Level OE Tracker Dashboard
 - ▶ Seven CE Tracking Reports – Marco Level + Individual Level
 - ▶ OE Tracker API can “talk” directly to Board licensing systems
 - ▶ Board Auditing Functions = *Fast and Cost Effective*

Board Auditing = Protecting the Public Health

Why is OE Tracker Important to the Licensee?

Constitutionally, the States have power to license

Bill of Rights, Tenth Amendment ~ 1791

In 1901, Minnesota passes first licensure law.

Your license to practice optometry is one of the most valuable assets you possess and **maintain**.

OE Tracker's primary function is to assist the licensee maintain their license in good order which protects the Public Health while assuring the licensee's ability to practice optometry.

The Basics

- ▶ Virtual solution to organize all CE credits
- ▶ Designed for Boards and Licensees
 - ▶ Multi-Platform access: **Desktop + Mobile**
 - ▶ Certification Ready: **COPE and Non-COPE**
 - ▶ All CE Formats: **Synchronous / Asynchronous**
 - ▶ Topic Specific: **CPR/ JP / Board Required**

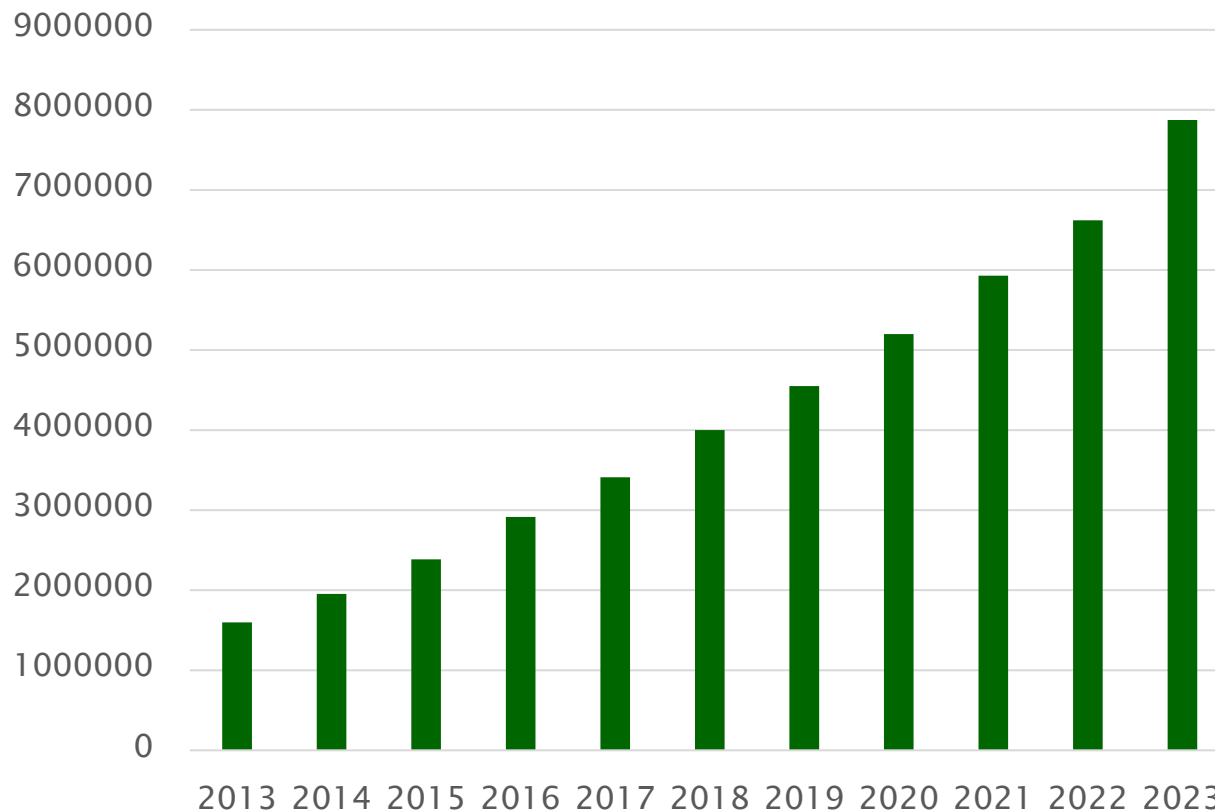
OE TRACKER Statistics*

- ▶ Active Optometrists (*in OET*) – 68,304
- ▶ Optometrists with CE Data – 65,649 (96%)
- ▶ Total records of attendance – 8,194,168

**As of June 4, 2024*

Growth Over Time

OE TRACKER continues to grow with over **7.8 million** course records (in 2023) for over **68,000 ODs** in the US and Canada.

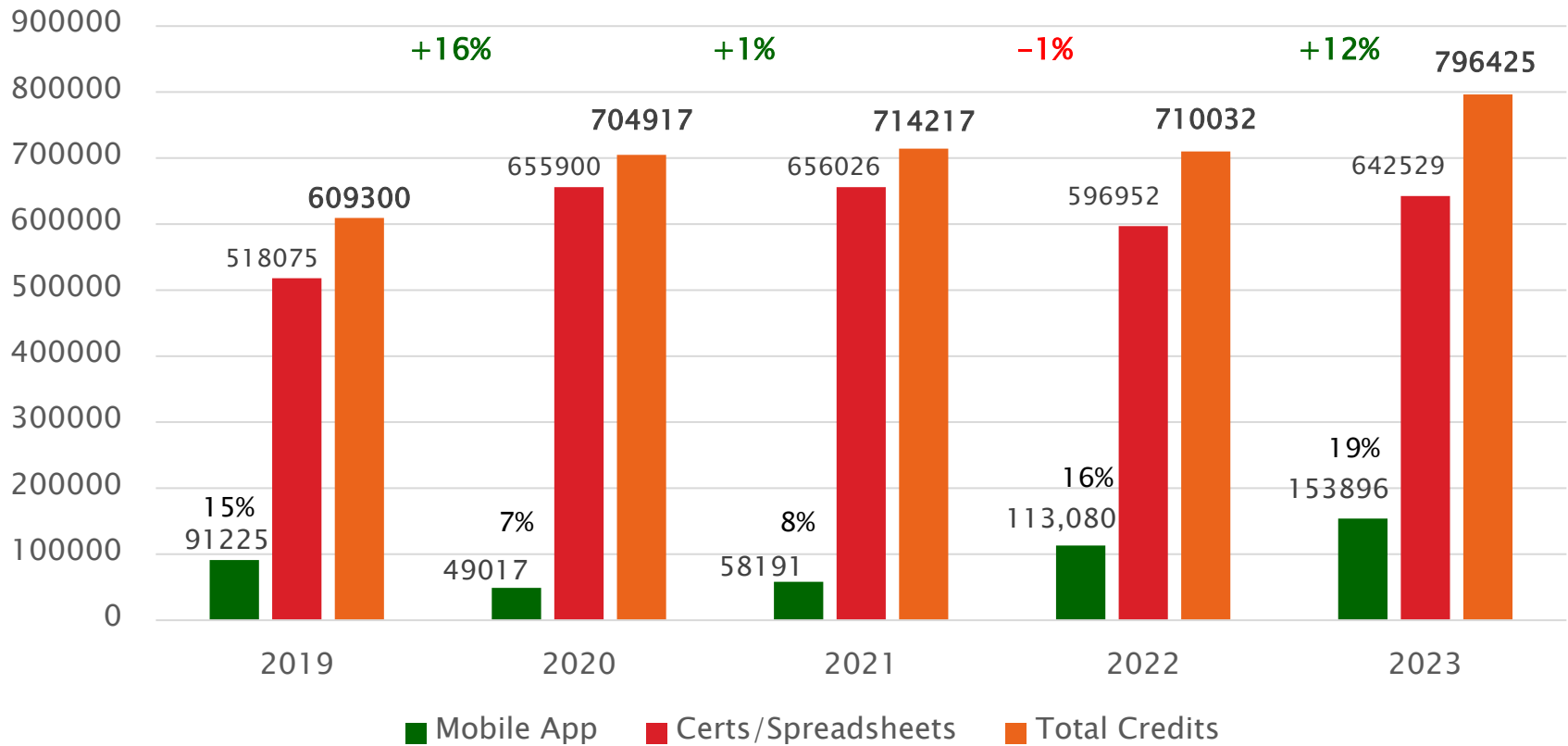


Data Submission

- **796,425 courses were uploaded in 2023**
- Multiple Submission Opportunities
 - Excel spreadsheet ~ *CE Provider, 30 day window*
 - Certificates of attendance faxed/emailed ~ *Licensee, 5 days*
 - OE TRACKER mobile app ~ *Licensee, Instant with QR Code*
 - Duplicate entry error detection built-in

Data Submission

Credits Uploaded by Method of Submission



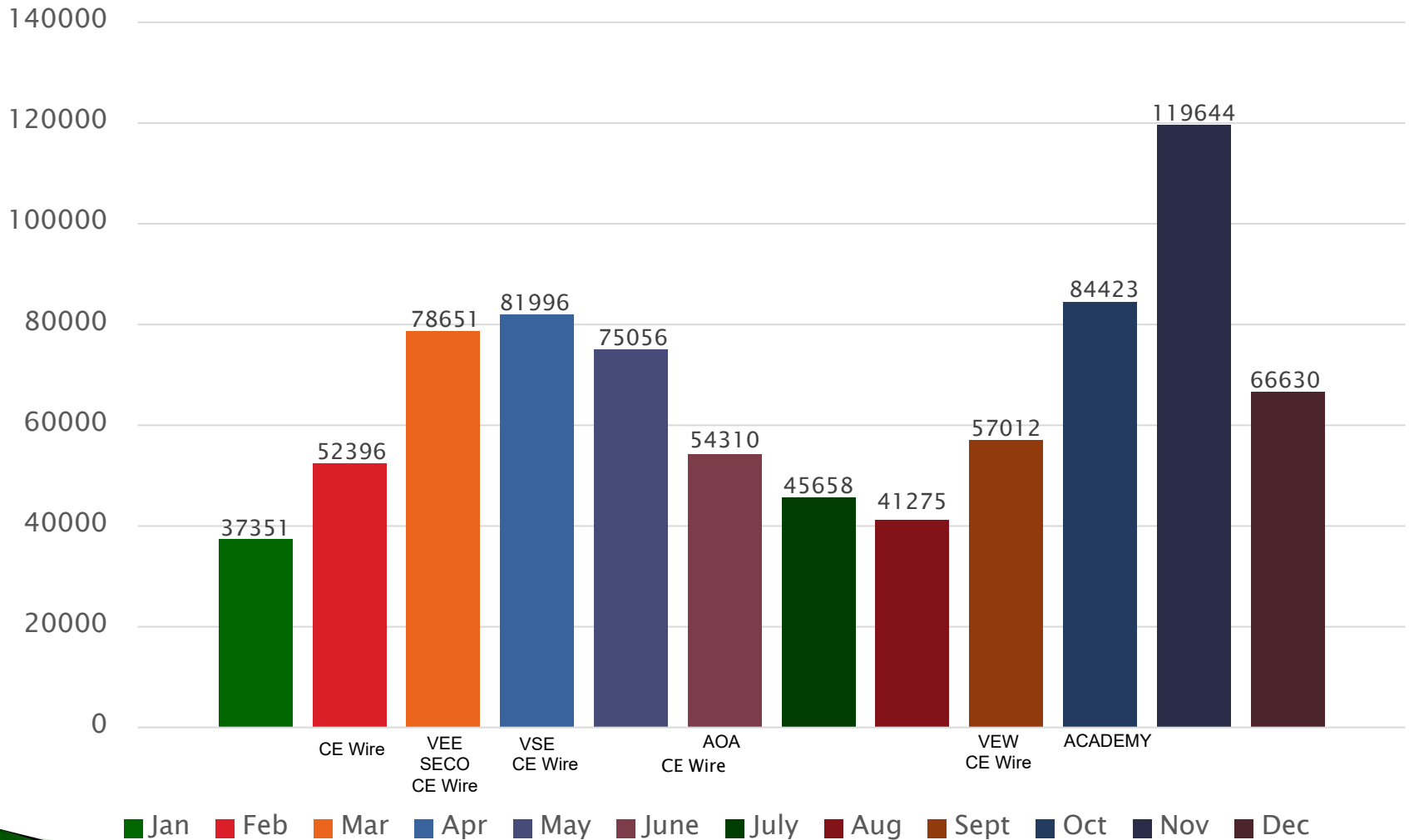
Data Submission – Licensee

- ▶ CE certificates submitted by email or fax usually take 3–5 business days to be uploaded.
- ▶ CE credits recorded by the mobile app and QR codes occur in real-time with e-mail confirmation of credit. **QR Code Preferred.**
- ▶ All credits are reviewed by the ARBO staff to verify they are correct before uploading.

Data Submission – CE Provider

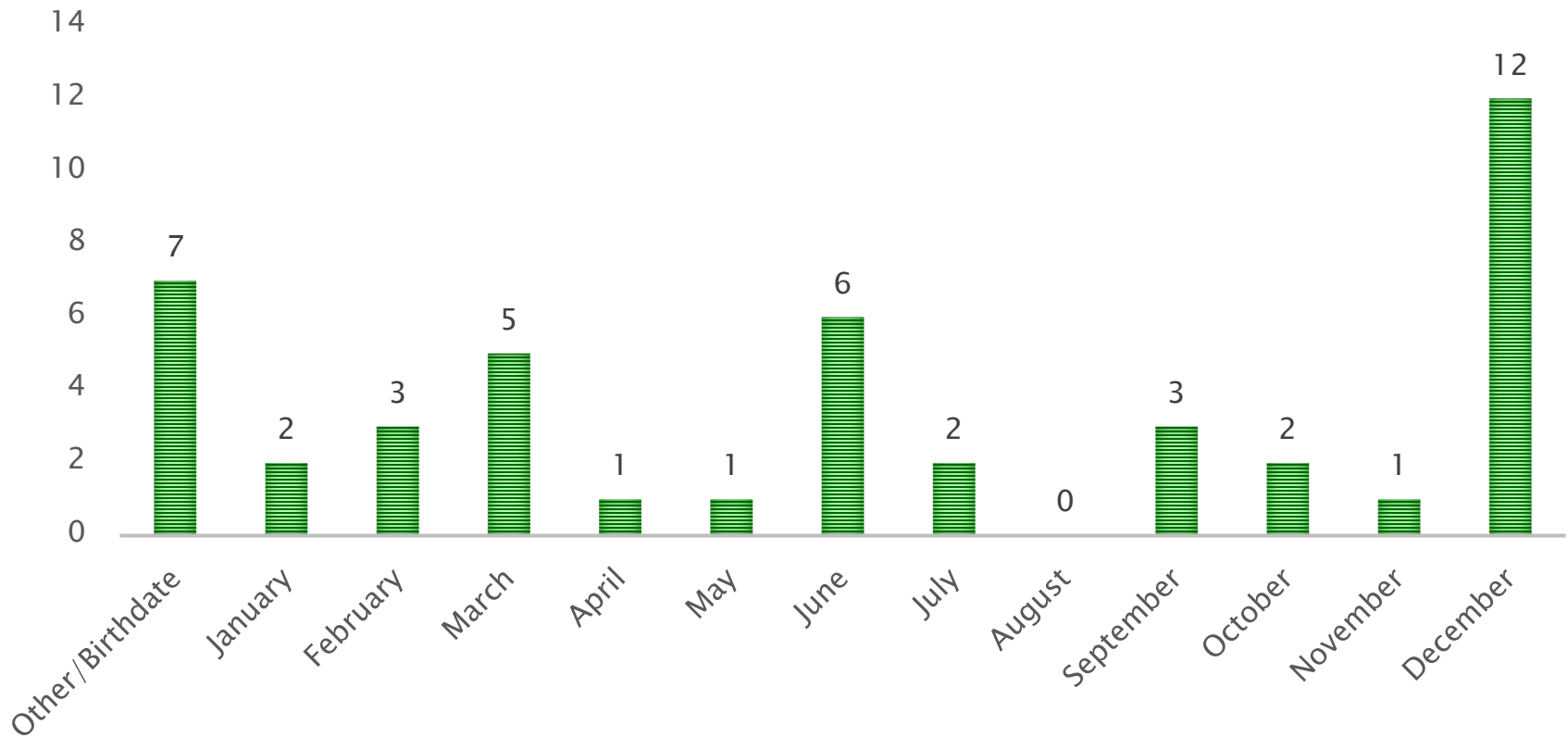
- CE providers have 30 days after their event to submit data. Spreadsheets can take up to 2 weeks to be uploaded.
- **CE Provider submission execution varies**
- **25–30% of spreadsheets have errors**
- Uploading erroneous data slows the process
- ARBO staff audit of spreadsheets is required to assure accurate CE transcripts

Data Submission by Month 2023



State/Provincial Renewals

NUMBER OF STATE/PROVINCES RENEWING



Kudos to the OET Staff at ARBO!

- ▶ Kalimah Bayne
- ▶ Hope Cole
- ▶ Brittney Esquilin
- ▶ Brittany Howard
- ▶ Jessi McVean
- ▶ Audrey Vazquez
(part-time)



Accelerating Data Submission

“Never leave till tomorrow that which you can do today” – Benjamin Franklin

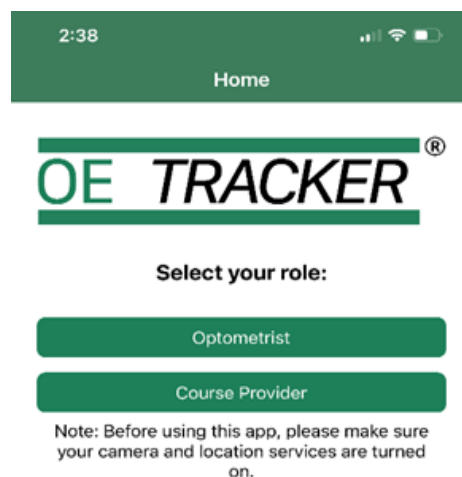
Question:

- Can the credits be uploaded faster?

► Answer:

- Yes! CE providers can use the **Mobile App** to instantly give their attendees credit.

NEW OE TRACKER Mobile App Demonstration



Want to volunteer for the *OE TRACKER* Committee?

*Fill out a volunteer form or contact Lisa
Fennell at LFennell@arbo.org*

Any Questions?

Thank you!

drericbailey@icloud.com
bhoward@arbo.org

Patient Communication

Regulatory Issues & Social Media

Peter J. Cass, O.D.

Peter J. Cass, OD - Disclosures

- Vice President, [Practice Compliance Solutions](#)
- Adjunct Faculty, [University of Houston College of Optometry](#)
- Chairman of the Board, [Elevate Digital Optics Lab](#)
- Optometrist, MyEyeDr [Beaumont Texas](#)
- Past President, [Texas Optometric Association](#)
 - Chair TOA HIT Committee, Chair AOA Nominating Committee, TOA COVID-19 Taskforce, TOB COVID-19 Taskforce, AOA Health Information Exchange Workgroup, TOA Third Party Committee, TOA Legal & Legislative Committee, Key Contact, Medicaid MU Auditor
- [Consultant/Speaker](#) for [ophthalmic companies](#):
 - Micro Medical, Alcon, Bausch & Lomb, Crystal Practice Management, Diopsys, Optos, Solution Reach, Katena, Tear Science, Shire, BioD, Weave
- [Lecturer](#) for
 - [Professional groups](#): Vision Source, Vision West, ECPN, PERC, Vision Trends, Vision West, TSO, and others
 - [Universities](#): RSO, UAB, UHCO, and others
 - [State associations](#): TOA, and over 20 others
- [Working relationships](#) with Cleinman, CodeSafePlus, EyeCode Education, Power Practice
- [Shareholder](#) PCS, EDO labs, EKKDA, MED



Why it matters

- **Protection of PHI** under HIPAA
- **Patient access** to data
- **Communication** with Patients
- **Human Resource Issues** for Providers

Regulation

MIPS, Cures, HIPAA

MACRA

- Medicare And Chips Reauthorization Act of 2015 made three important changes to how Medicare pays providers:
 1. **Ends** the Sustainable Growth Rate (SGR) formula
 2. Establishes a new framework that **rewards** health care providers **based on quality** of care, not quantity of care
 3. Combines existing quality reporting programs into a **single new system**
- The new system, named the Quality Payment Program, replaced a patchwork system with **the Merit-Based Incentive Payment System (MIPS)**

MIPS

- Providers must participate in MIPS if they:
 - **Bill more than \$90,000** for covered professional services, and
 - See **more than 200 patients**, and;
 - Provide **more than 200 covered professional services**

MIPS Scoring

- MIPS grades the “quality” of care provided based on 4 measures, and a total grade on a scale of 0 to 100 is given:

1. Quality	30%
2. Promoting Interoperability	25%
3. Improvement Activities	15%
4. Cost	30%

- A MIPS Composite Score above the CMS threshold will get you a bonus (pay increase) ↑
- A MIPS Composite Score below the CMS threshold will get you a penalty (pay reduction) ↓

Getting started:

- **60%** of MIPS **score** is based on **Quality measures and Cost**
 1. **Cost** is calculated automatically
 2. **Quality measures** can be **somewhat easily reported on Medicare claims**
 - Can add appropriate quality codes (CPT codes) to claims.
- By doing that, providers can get up to **60 points**
 - **Minimum for no payment adjustment** (no penalty)

1. MIPS Quality Measure Data



- Submit **collected data for at least 6 quality measures**
- In simple terms, **for certain ICD codes**, you can **add a special CPT code** to the claim to indicate that you provided quality care:
 1. **Diabetes**: Hemoglobin A1c (HbA1c)
 2. **Body Mass Index** (BMI) Screening and Follow-Up Plan
 3. **Primary Open-Angle Glaucoma** (POAG): Reduction of IOP
 4. **Falls**: Plan of Care
 5. **Tobacco** Use: Screening and Cessation Intervention
 6. **Controlling High Blood Pressure**
 7. **Screening for High Blood Pressure** and Follow-Up Documented

2. Promoting Interoperability



- Promotes patient **engagement and electronic exchange of information** using CEHRT
- **Submit measures**, and
- Provide your EHR's CMS identification code and **attest** to:
 - Prevention of **Information Blocking**
 - **Direct Review** Attestation.
 - Performing a **Security Risk Analysis**
 - The Safety Assurance Factors for EHR Resilience (**SAFER**)

3. Improvement Activities



- **Participation in activities that improve clinical practice**
- Providers submit a combination of these activities:
 1. **24/7 access** (20 points)
 2. **Satisfaction data** (10 points)
 3. **Feedback Reports** (20 points)
 4. **Participation in a registries run by other government agencies** (10 points)
 5. **Timely communication of test results**(10 points)
 6. **Participation in a QCDR** (10 points)
 7. **Follow-up on patient experience** (20 points)
 8. **Use of QCDR patient experience data** (10 points)
 9. **Regularly assess the patient experience** (10 points)
 10. **Seeing new & follow-up Medicaid patients in a timely manner** (20 points)
 11. **Provide Medication Reconciliation with Transition of Care** (10 points)
 12. **Closing the referral loop** (10 points)

4. Cost



- Medicare uses **administrative claims data** to **calculate** cost-measure performance
 - Measures decided by CMS
 - Specialty specific
- Providers **evaluated and scored on each cost measure** where they meet or exceed the established case minimum

Payment Adjustments

Final Score Points	MIPS Payment Adjustment
0.00 - 15 points	<ul style="list-style-type: none"> Negative MIPS payment adjustment of -9%
15.01 - 59.99 points	<ul style="list-style-type: none"> Negative MIPS payment adjustment, between -9% and 0%, on a linear sliding scale
60.00 points (Performance threshold = 60.00 points)	<ul style="list-style-type: none"> Neutral MIPS payment adjustment (0%)
60.01 - 84.99 points	<ul style="list-style-type: none"> Positive MIPS payment adjustment, greater than 0% (subject to a scaling factor to preserve budget neutrality) Not eligible for an additional adjustment for exceptional performance
85.00 - 100.00 points (Additional performance threshold = 85.00)	<ul style="list-style-type: none"> Positive MIPS payment adjustment (subject to a scaling factor to preserve budget neutrality) AND Eligible for additional adjustment for exceptional performance (subject to a scaling factor to account for available funds)

Cures

- The CURES Act is a huge piece of legislation, **only two parts** of it have anything to do with most doctors, including **optometrists**
 1. **The No Surprise Act and**
 2. **Information Blocking**

Purpose

- **Interoperability** and the **exchange of information** (typically, through highly regulated APIs).
- **Goal** is to someday have **seamless** movement of **information** from:
 - **provider** to **payer**,
 - **provider** to **lab**,
 - **provider** to **provider**,
 - **Payer** to **patient**
 - **Provider** to **patient**

Patients

- The rules are designed to make it **easier** for them **to access claims data** from payers, and
- To make it **easier to get** copies of their records, or **information from their records**
- **Goal is UNRESTRICTED access to THEIR medical information**

Payers / Clearing Houses

- Regulations impose **interoperability standards on PAYERS**
- Many EHRs are starting to put that capability in their software.

Providers / EHR companies

- Regulations against Information blocking
- State that the **patient has total access to everything** in their medical record (as defined by HIPAA) and that EHRs cannot in any way block access to that information.
- In the full implementation, these rules will also be extended to the other entities.
- **Preferred method of communication is through the EHR portal.**

Provider responsibilities

- **Providers MUST ensure your patient has access to their medical information – their actual examinations and any testing results, lab tests, etc**
 - Providers with EHR **must ensure no information blocking**
If it is, must provide printed copies of whatever is blocked
 - Providers **without EHR, must provide ALL details** of their services **in whatever format the patient requests**
- Providers need to **check with EHR vendor**
- **HIPAA already requires** this



What is HIPAA?

- The **Health Insurance Portability and Accountability Act of 1996** defined how patient information should be standardized, protected, and transmitted
- HIPAA regulations of day-to-day practice all originate from a much larger piece of Federal legislation called the **Administrative Simplification Compliance Act of Title 11**.
- There are **4 parts** of the Administrative Simplification Act:
 1. **National Identifier Rules** - The unique health care identifier number or **NPI**
 2. **Transaction and Code Sets**
 - The actual **electronic code rules** that correlate to diseases, diagnoses, etc.
 - **defined** what the '**content**' of the medical record is calling this **PHI**.
 3. **Privacy** Rule - Standards and policies to protect the confidentiality of **IIHI**
 4. **Security** Rule – A **standardized way that records are transferred** by any means (Internet, FAX, written or oral) and maintained

Who Does HIPAA Apply To?

- “Covered entities” defined as:
 - ALL **Health Plans**
 - All **clearinghouses** for health care information
 - **ANY health care provider** who transmits health care information electronically (internet or computer FAX) for any reason and employs **more than 9 FTE staff** members
 - NOTE: any use of electronic communication / courts don't care about less than 9
 - **Business Associates** and their ‘sub-contractors’
- There are several classifications of covered entities.
Most doctors are an **Organized Health Care Arrangement**

Privacy & Security

- **PRIVACY** regulations apply to **EVERYONE**
- **SECURITY** issues apply to **anyone using EHR**, or to anyone transferring patient information by **any electronic means** (FAX, sending scanned documents through email, etc.).
- Apply even if not using electronic health records, the **definition is very broad**

Violations and Audit Projects

- HIPAA complaints have increased dramatically since 2010.
- The majority of complaints come from **whistleblower** action,
 - commonly disgruntled or **unhappy patients / staff** (90%).
- From 2012 thru 2023, the **number of complaints skyrocketed**,
- average breach settlement increased is now over **\$1 million**.
- Since 2017, targeting **small healthcare practices**
- Congress **authorized random HIPAA auditing** in the Hi-Tech Act
 - **Audit in 1998** found many w/ **no or incomplete** compliance.
 - A **2016** audit found **similar results**

Enforcement and Penalties

- There are various categories for HIPAA violations. Revised in 2019:
 1. No knowledge of violation or breach
 2. Lack of adequate oversight that created a violation or breach
 3. Willful neglect of violation or breach that was corrected
 4. Willful neglect of violation or breach that was not corrected (in 30 days)

LEVEL OF CULPABILITY	MINIMUM FINE PER VIOLATION	MAXIMUM FINE PER VIOLATION	ANNUAL PENALTY LIMIT
No knowledge	\$137	\$34,464	\$34,464
Lack of oversight	\$1,379	\$68,928	\$137,886
Willful neglect – corrected	\$13,783	\$68,928	\$344,638
Willful neglect – not corrected	\$68,928	\$68,928	\$1,919,173

- Note: that the MINIMUM fine for failure to demonstrate HIPAA compliance is now **\$13,785**.

Willful Neglect

- In response to a **70% increase in HIPAA caseloads** since 2017, in 2023 HHS announced 3 new divisions within the OCR:
 1. **Enforcement** (increase focus and efficiency in conducting HIPAA compliance reviews),
 2. **Policy** (develop new policies related to HIPAA and health privacy) and
 3. **Strategic Planning** (promoting regulations including public education).

Investigations

- Federal and state law allow **investigation and administration of penalties** by
 - The **Office of Civil Rights**,
 - Individual **state Attorney General's office** AND,
 - based on state law, the **harmed individual to file suit** against the 'violator'.
- The 'violator' can be the doctor but can also be a staff member.
- **Almost all** violations have been the **result of staff actions**, most commonly those not trained properly.
- The **2015 Yates Decision** makes it clear that employees (including employed
- Many **states** have **enacted** their **own laws** as well.
- **Cyberattacks** have become one of the most significant issues recently

What is privacy?

- The **obligation to protect PHI** both within the **office** and when **shared** with anyone
- When privacy is violated, we call that a **breach**.
- The most common causes of breaches are:
 - **NO COMPLIANCE**
 - Lost or **stolen laptops**, office backup tapes/drives
 - **Non-secured transmission** of PHI (emails, texts)
 - Lack of strong **username** and **password** policies
 - Lack of **secured networks**
 - Loose **mouths**
 - **Snooping**
 - Server 'hacks' or **true criminal activity**, especially ransom

What information is Private?

- “The Designated Record Set” which includes almost everything
- In addition to medical information, the designated record set specifically includes the following elements:
 - Name
 - All data elements
 - Email address
 - Medical Record #
 - License #
 - Biometric identifiers
 - Geographic subdivisions
 - Telephone and FAX #'s
 - Social Security #
 - Health plan #
 - Vehicle identification #
 - Photographs

Disclosure

- The transfer of patient information from one entity to another.
- There are **two types** of disclosure:
 1. **Routine disclosure** –day to day (communicating with patients, medical records, FAX, email, lab orders, etc.)
 2. **Non-traditional disclosure** – anything not routine (marketing, legal documents, info for life insurance, data in research)
- Routine disclosures **do not require patient consent** as long as the information is related to TPO
 - **T**reatment of the patient
 - **P**ayment issues
 - Healthcare/business **o**perations

Incidental Exposure

- Some individuals or groups may have **incidental exposure**
- Examples might be
 - **visitors** to a practice,
 - **vendor** reps
 - **cleaning services**
- If the likelihood of exposure to PHI is low, these individuals may sign a **Confidentiality Agreement**.

Steps to Comply with the Privacy Law

- There are **five main steps** in complying with the basics of the HIPAA Privacy Law.
 1. Designate a **Privacy Officer** and **Public Information Officer**
 2. Develop **policies and procedures** on how records are handled and transmitted (Privacy Manual)
 3. Meet all **documentation guidelines** (the NPP and ANPP)
 4. Provide **initial AND UPDATED training** to all employees.
MUST BE DOCUMENTED.
 5. Establish **systems to handle any breach** and establish sanctions for employees who violate policy

Employed doctors and Privacy

- HIPAA is focusing on the unique relationships between **private equity** groups and the doctors they employ
 - Employed doctors are **NOT business associates**, and
 - Are **personally responsible** for HIPPA and accountability

Security Rule Requirements

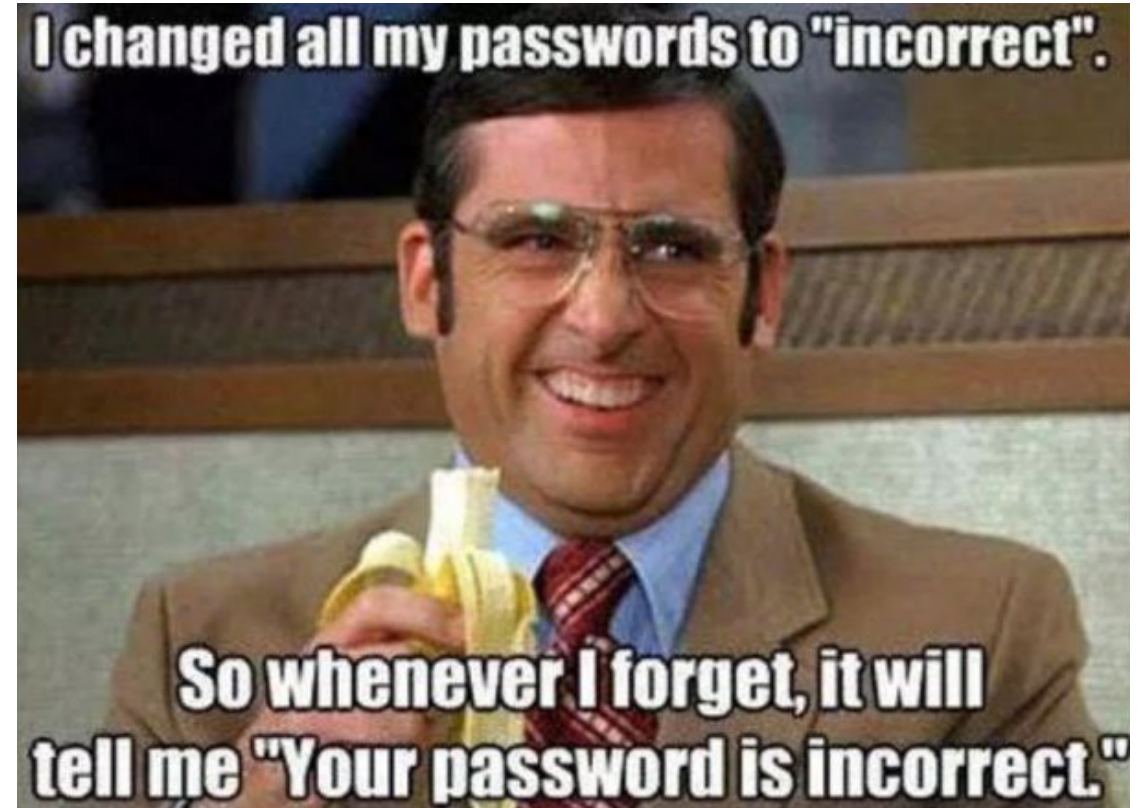
- Security is the 2nd part of HIPAA and rules are **independent from the Privacy Rules**
- There are **5 steps** to be compliant with the Security Rules:
 1. Appoint a **Security Officer** (someone familiar with tech)
 2. Conduct a risk assessment to **(Security Risk Analysis)**
 3. Complete the **Organizational Requirements** (required forms)
 4. Documented **policies and procedures** for complying with standards
 5. Security **risk management**
- Security Standards have no specific policy, software, action
 - “**flexibility**” of “approach” and
 - “**scalability**”
 - **Individual participation** expected

Risk Analysis

- Part of a comprehensive risk analysis is an eight-step process – eight questions you need to answer related to your individual office operations, location, and type of hardware/software environment you have in operation.
- It need not be a novel. It is simple, concise answers to the eight questions that serve as the main basis for how you will develop your Risk Management Plan, which is for the most part your compliance with the Security standards.
- It is also incorrect to assume that security and risk analysis involves only or mainly computers, your EHR and your internal network.
- A risk analysis is a comprehensive look at your practice from the front door to the back door.
- It involves thinking about the neighborhood your practice is in, the type of employees you have, how secure your building is, how likely it is you could be the victim of a natural disaster such as a flood or tornado.

3 Types of Communication

1. **FROM** the patient
2. **TO** the patient
3. **Third Party** (anyone else OTHER THAN the patient)



Communications FROM the Patient

- The HIPAA Privacy and Security Rules **do NOT apply to communications FROM the patient.**
But... as soon as the provider receives the information, it now **must be protected by the provider**
- For any communication BACK we are now referring to...

Communications TO the Patient

- “The Security Rule **does not expressly prohibit the use of email** to communicate with a patient. However, the standards require certain procedures to restrict access, protect the integrity of and guard against unauthorized access to PHI.”
 - Defined in 2015 as “**reasonable precautions... equivalent to encryption**”
- Best that all communications are encrypted.
 - HHS suggests email communication be limited to only **secure patient portal** systems

Communications TO the Patient

- If using **non secure transmission**, required to **inform the patient**:
 - The communication **may not be secure**
 - The potential **consequences** of that
 - Patient **must confirm** they understand the risks and confirm they wish to continue.
- HHS does not state HOW patient confirms but anything less than **written authorization** would be foolish

Communications TO Third Party

- **No stated exception** to the encryption criteria and **no authority** for the patient **to “waive”** security measures
 - In fact, court rulings to the contrary
- **Specifically includes text and email communication**
(but not FAX – can’t encrypt or decrypt FAX)
- This is **EVERYONE else – including referral letters!**

Are there secure email svstems?

Email & Office

Overview

Add-Ons

My Brand

Admin

Deals **NEW**



Set up accounts

35/36 accounts used



Sign in to email

Select an account to sign in



Set up devices

Get email and Office apps on your devices



Download Office

Sign in to the new **Microsoft 365 Hub** and find tools to grow your business.

Users

Search

Restore deleted users

Live Oak

ADMIN

itadmin@practicecompliancesolutions.com



powered by Proofpoint

Upgrade

Manage

Peter Cass

ADMIN

peter@practicecompliancesolutions.com



powered by Proofpoint

Upgrade

Manage

Alicia Montez

alicia@practicecompliancesolutions.com



powered by Proofpoint

Upgrade

Manage

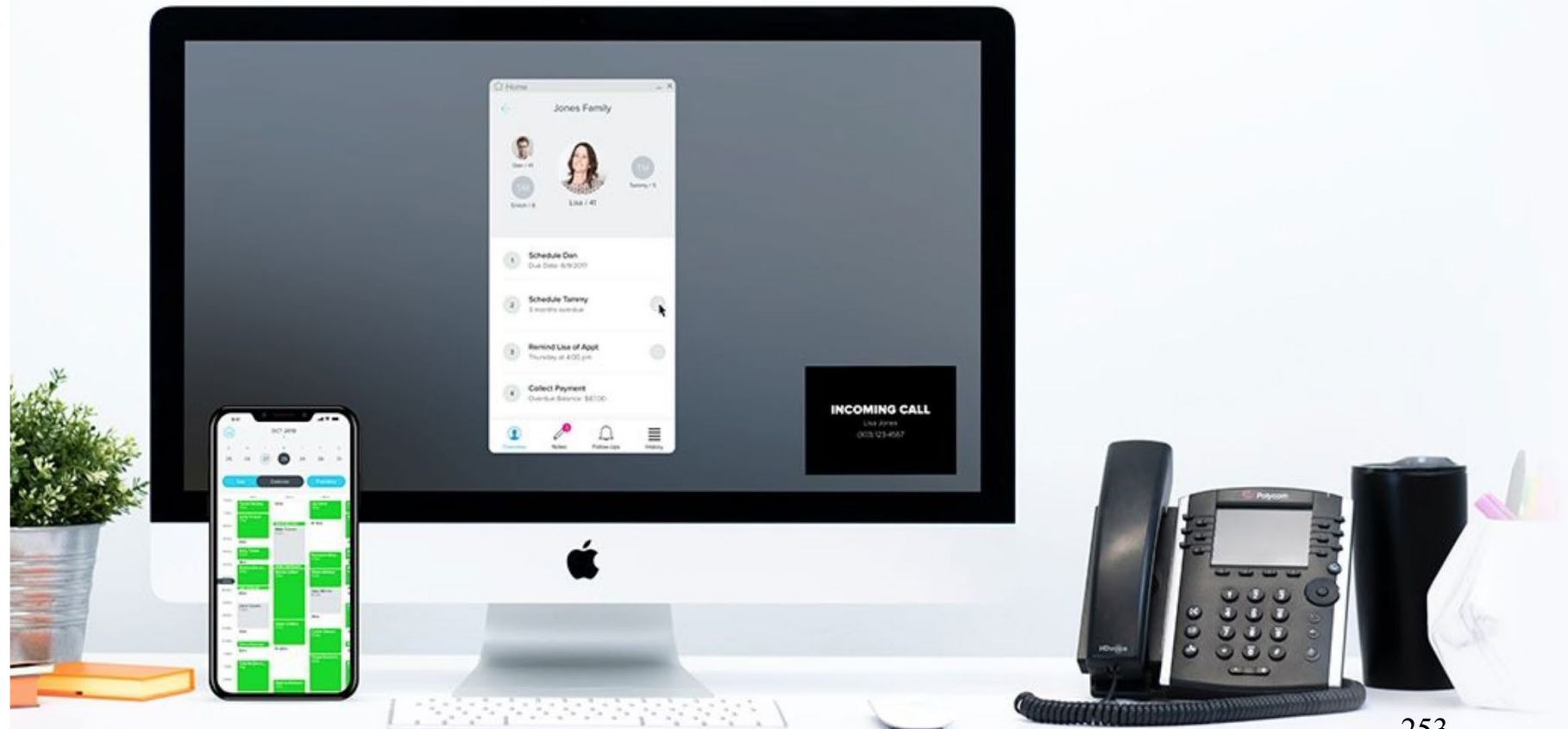
LEARN MORE

What about texting systems?

[Features](#)[Industries](#)[Partners](#)[Contact](#)[Blog](#)[Schedule Demo](#)

Making your
phones your
smartest business
tool

The Weave phone system is smarter because it connects and shares information seamlessly with communication software. It's kind of like a smart phone designed specifically for your business.

[Learn more](#)

Summary of Text & Email

- For ALL text or email correspondence to EVERYONE (including the patient) – use only **secured**, **encrypted** text or email or a secured **patient portal** system
- While we cannot say anything less is illegal, we can definitely say it is a bad idea

Well maybe we can say that...

Children Hospital, Texas settled with OCR for \$2.3 MILLION for failure to encrypt communications with patients

Social Media



Social Media

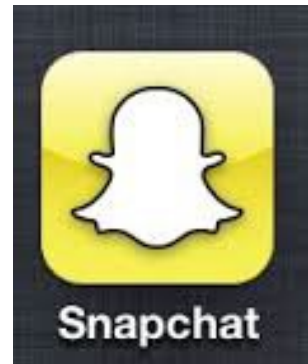
AFFLUENCE
Make life better.



Instagram



ryze
Business Networking



foursquareTM

Google

Social Media & HR

- “Any medium that allows for communication in the open”.
- **Challenge** lies with the concept of “in the open”.
- This involves **normal operation in the business** as well as **employee use** of personal social media **on and off the clock**.
- Dozens of **Federal and State statutes** have been written to address employer-employee relationships and social media
- Social media in **marketing** activities is common

Employees and Social Media

- PROBLEM: In US, average employee spends **1.72** hours of paid time online with **41%** of that time spent on social media sites (ouch!)



AND
NOW...



Social Media Issues in HR

1. Social media for **background checks**
2. “**On duty**” employee communication on social media
3. “**Off duty**” employee communications on social media
4. Employer **liability** for employee postings on social media

Employer Policies on Social Media

- If the social media is part of the practice, **may formulate policies**
 - **Restrict what** may or may not be posted
 - **Restrict who** may post.
 - Even a list of **prohibited topics**
 - **View any and all** postings of employees
- As long as the following conditions are met:
 - Conducted **during normal business hours**
 - Using communication **devices owned by the business**
 - The devices are **intended for use for routine business** reasons
- Employer can **counsel and/or terminate** for posts that could be harmful to practice, patient, another employee, or other business

Employee Use of Personal Devices

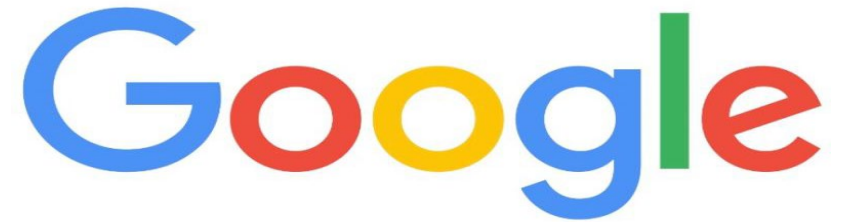
- Employer **may formulate policies regarding personal time spent** on the internet, phone, text, social media, etc.
- **Should allow for necessary communications** with family, children, etc.
- In general, **risky to access and view communications made by employees on their own devices** during normal business hours
- Employer can **counsel and/or terminate** for posts that could be harmful to practice, patient, another employee, or other business

Employee Social Media Use Off Duty

- **In general** employers should consider these activities to be the **personal right of the employee**
- Employees can post negative comments about their job.
 - The law gives employees the **right to post** comments about the **“conditions of their employment”**
 - Employees **cannot post** comments **with the intent is to harm** the business
- An **endorsement or “like”** regarding something related to the business is **legally considered to reflect the opinion of the employer** unless a disclaimer is made
- When dispute exists, **courts often side with employee**

The OD & Social Media

The Big Ones



Social Media and Marketing

- **Commonplace** in health care practice
- Numerous **opportunities for violation** of privacy
- Providers should be very cautious
- Social media postings have definitely **caught the eye of the OCR** with numerous fines, the lowest being **\$10,000**

Social Media & Patients

- **Can ask patients to participate** in website, Facebook, etc.
- Best to **have patients post** information
 - Somewhat implied consent
- **NEVER post any PHI** EVEN if patient authorizes
 - Courts have upheld **that individuals do not authority to give up privacy rights**
- Use **caution when posting** pictures of the patient in new frames or as a new patient (even with authorization)

Responding to reviews / posts

Debated....three potential answers:

1. **Don't do it** – call the patient to discuss / resolve
 - Technically best answer...
2. **Answer in NON-SPECIFIC terms** then call the patient to discuss / resolve
 - Probably OK answer – good recommendation
3. **Go off on them** – they started it
 - You might as well get your checkbook out

Communications on Blogs / Websites

- **CANNOT**, without patient authorization, Post anything that could **POTENTIALLY** identify the patient
 - The obvious – names, patient numbers, SS#, DL#, address, occupation, too much history information etc.
 - HIPAA describes a violation as “any combination of information that could potentially identify”
 - **Identifying pictures** – full or partial facial photos or “any mark, irregularity or pathology that could identify the patient”
- “**Private**” or “**restricted**” affords **no legal protection**
- Some courts have ruled that this practice constitutes a **violation** of privacy **even if no other person viewed** the information

Billing & Coding Issues

- Doctors often post questions about coding to social media
 - Many different conflicting answers given
 - OPs often takes the answer they like
- But **References matter!**
 - www.cms.gov (Medicare)
 - <https://www.local-carrier.com> (novitas-solutions.com)
 - www.whomever-medicalpayor.com
 - CPT and ICD-10 Manuals

Anti Trust Issues

- Under federal and state laws it is illegal to conspire" with others to "restrain trade."
- illegal for a **group of competitors** or others **to get together** and agree to **restrain trade**
- "Restrain trade" is a very **broad term**, but courts have found that several actions are automatic violations:
 1. **Agreements to fix prices**, and
 2. **Group boycotts**

Questions

Outreach: With Whom Do “We” Communicate?

Tuesday June 18, 2024
9:30am – 10:30am



Dale Atkinson, Esq.

dale@atkinsonfirm.com

- ARBO
- FSBPT
- AAVSB
- ASWB
- ASPPB
- FSMTB
- ICFSEB
- NMTCB
- LEARN
- JRCERT
- NWRP
- JFCFS



That's not really me...



Minds Shared

Topic

- ▶ Underrated
- ▶ Misunderstood
- ▶ Perhaps not discussed enough
- ▶ Important to the recognition and understanding of what Boards do

We = Government Board

- ▶ Government operates in the public eye.
- ▶ Open is the rule
- ▶ Closed is the exception
- ▶ ARBO is a private entity not subject to open meetings/open records laws.

2 minutes

- ▶ Write a two-sentence elevator speech/description of your Board.....

With whom do you communicate?

With whom do you communicate?

- ▶ Students
- ▶ Applicants
- ▶ Licensees
- ▶ Academia
- ▶ Trade
- ▶ CE providers
- ▶ Legislators/committees
- ▶ Executive branch
- ▶ Media
- ▶ Others...

With whom do you communicate?

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 - ▶ Applicants
 - ▶ Licensees
 - ▶ Academia
 - ▶ Trade
 - ▶ CE providers
 - ▶ Legislators/committees
 - ▶ Executive branch
 - ▶ Media
 - ▶ Others...
- **Move the meetings around**
 - **Free CE for attending**
 - **Questions on renewal applications**
 - **Board meetings at trade association meetings**
 - **Invite, invite, invite.....**

How do you communicate

How do you communicate

- ▶ Meetings
- ▶ Minutes
- ▶ Website
- ▶ Social media
- ▶ Written correspondence
- ▶ Media
- ▶ Declaratory rulings (if required)
- ▶ Position statements
- ▶ Litigation
- ▶ Others....

Minutes....

Board Minutes

- ▶ What information should be read into the record at every Board meeting? Thoughts? Ideas? What is read into the record in your jurisdiction? Think about what the minutes should say.

- **Composition of board, terms, vacancies**
- **Mission, vision, strategic plan**
- **Notice & Citation to statutes & rules/regulations**
- **Relevant reference to policies**
- **Notation to last meetings minutes**
- **Annual applications, # granted/# denied, average time from completed app to issuance, # pending**
- Annual renewals...same
- Annual complaints, # resolved, average time to resolution,
 - # pending
 - # of phone calls
 - # of visits to website
- Newsletters
- Outreach to.... community/academia/legislature/executive branch...

Social media presence

- ▶ Does your Board use social media?

Invite, Invite, Invite....

- ▶ Executive branch
- ▶ Legislators
- ▶ Licensees
- ▶ Applicants
- ▶ Students
- ▶ Media
- ▶ Academia
- ▶ Trade
- ▶

Sunset & Annual Reports

- ▶ Make it the norm
- ▶ Minutes are the ticket



You Are A Regulator

The less I say, the better.....



Who is here?





Create
Explore
Learn
Have
FUN!
Join in

Participate

Dale Atkinson, Esq.

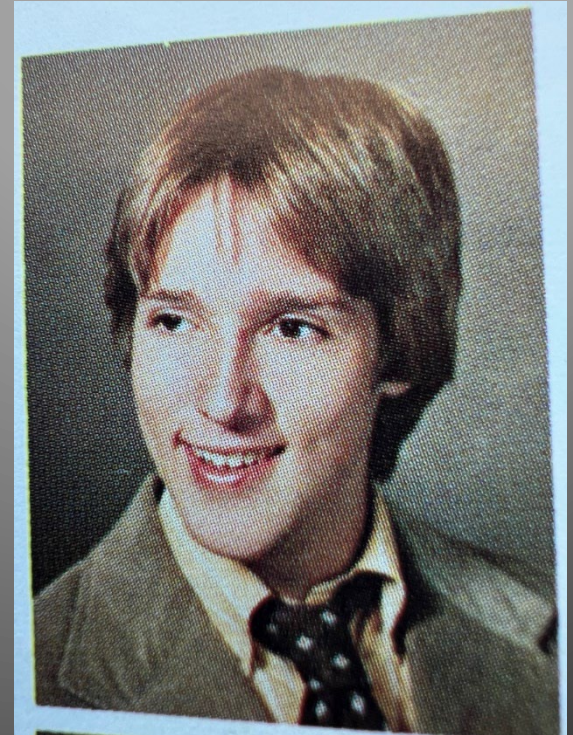
dale@atkinsonfirm.com

THE ATKINSON FIRM

LEGAL & CONSULTING SERVICES

Minds Shared

- ARBO
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- AAVSB
- ASWB
- ASPPB
- FSMTB
- ICFSEB
- NMTCB
- LEARN
- JRCERT
- NWRP
- JFCFS



You are a regulator.....



Who's going to win the
Stanley Cup?

What is a regulator?

What do regulators do?

What do regulatory boards do?

Why?



Two Volunteers!!

A veteran and a new Board Member



Ask each other a question?

Name of “your” Board?

Tell us about “your” Board.

(I am a legislator asking....)

Tell us about “your” Board.

(I am a legislator asking....)

Name of Board

Composition

Term & term limits

Stand alone/composite/department

How often you meet/length of meetings

Number of licensees/applications/renewals

Complaints

Outreach/communications

What is good about the practice act?

What about the practice act needs to be changed?

How does one become licensed as an optometrist?

How long does it take for the Board to issue a license?

What are the costs to become
licensed? Renew?

Attendee ask a question....

Why are there both education and examination components to initial licensure eligibility?

What is an accredited optometric
education program?
Who accredits?

What is an optometrist?

What is a license?

What is “board certified”?

What is title protection?

What is due process and what does that have to do with conflict of interest?

What is due process and what does that have to do with conflict of interest?



**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: DSPS		2) Date when request submitted: <div style="background-color: #f0f0f0; padding: 2px; border: 1px solid black;"> Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting </div>	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 7/11/2024	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Review of 2025 Board Goals to Address Opioid Abuse and Delegate Department to File Wis. Stat. s. 440.035 (2m) Report to Legislature	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if applicable: N/A	
10) Describe the issue and action that should be addressed: <p>The Board will review the following proposed goals to address opioid abuse and if acceptable, make a motion to adopt them for 2025, and delegate the Department to file the report to the Legislature.</p> <p>Goal 1: Evaluate Continuing Education Relating to Prescribing Controlled Substances Wis. Admin. Code OPT 8.02 (1m) required 2 hours of continuing education on the topic of responsible prescribing of controlled substances for the biennial registration period commencing December 15, 2019 and ending December 14, 2021. The Board will continue drafting an administrative rule requiring 1 hour of CE on opioid prescribing for optometrists that hold a DEA permit.</p> <p>Goal 2: Take Enforcement Action When Appropriate The Board's goal is to proactively investigate optometrists whose prescriptive practices with opioids may be inconsistent with the standard of minimally competent practice. In addition, the Board will exercise its disciplinary authority when appropriate to hold practitioners accountable for opioid diversion and abuse.</p> <p>Goal 3: Track and Monitor Optometrist Prescribing of Controlled Substances The Program Lead for the ePDMP annually delivers a report to the Board that includes data on annual dispensing of monitored prescriptions by drug classes, ePDMP registration and usage, prescribing of monitored drugs and opioid prescribing changes (opioid prescriptions/number of licensees).</p> <p>The OEB will continue to explore ways to leverage the expertise of the ePDMP to effectively track and monitor optometrist prescribing of controlled substances and to identify opioid abuse trends. This may include discussions at Board meetings with ePDMP staff and review of CSB referrals, PDMP and CSB data and reports.</p> <p>Goal 4: Review and Update the Opioid Prescribing Guidelines as Necessary The OEB will continue to monitor its Opioid Prescribing Guideline.</p> <p>Goal 5: Educate Licensees Registered with the ePDMP The OEB will work with ePDMP staff as necessary to explore possible ways to educate opioid prescribers, including the relatively small number of optometry licensees who have a DEA Registration Number, on how to effectively use the PDMP as part of their prescribing practice. The Board will continue to rely on the OEB's website and other DSPS tools as educational resources.</p>			