

ARBO's comments on 201 KAR 5:021

I am Dr. Patrick O'Neill. I am a past president of the Minnesota Board of Optometry and a board member on the National Board of Examiners in Optometry, and I am speaking today to share public comments in my capacity as a Board member for the Association of Regulatory Boards of Optometry, commonly known as ARBO.

Since 1919, ARBO has provided resources to our member boards as they regulate the practice of optometry in their respective jurisdictions to keep patients safe every day. Currently, ARBO has 61 member boards, which in total regulate approximately 70,000 optometrists.

I am here today to share with you deep concerns about this emergency regulation as amended. This emergency regulation allows licensed optometrists who graduated optometry school between 2020-2023 to renew their optometrist license for 2027 if they pass either the American Board of Optometry (ABO) certification exam or the NBEO Part III exam.

Outside of this special group, all individuals seeking an optometry license in Kentucky were required to take and pass the NBEO Part III exam. According to the Kentucky Attorney General, the Kentucky Board of Optometric Examiners improperly granted initial licensure between 2020 and 2023 to certain optometrists who did not pass the NBEO exams as required by law, and declared those licenses null, void unenforceable.

How can KBOE now renew an invalid optometry license through emergency regulation, allowing optometrists to bypass an important examination that they were legally required to pass to obtain initial licensure? KBOE must prove that this emergency regulation is needed to meet an imminent threat to public health, safety, welfare, or the environment. KBOE's own failure to follow the administrative regulation process when they granted waivers between 2020 and 2023 cannot be the basis for finding an emergency now. The alleged emergency is simply an attempt to band aid over the issues created by the issuance of improper waivers.

The emergency and threat to public health and safety should be redressed by the KBOE requiring these individuals to meet existing regulatory requirements to earn a valid license before they engage in any more independent practice.

This emergency regulation does not help protect the citizens of Kentucky. ARBO and others have explained how passage of the ABO examination does not provide an appropriate metric for competency in the practice, and that comparing the NBEO exams to ABO is an apple to oranges comparison. This emergency regulation, if allowed to stand in its current form, will have a direct economic impact on patients and a financial impact on KBOE

through increased disciplinary actions and adverse patient outcomes by practitioners who have not had to demonstrate their competence in performing essential clinical skills — neither of which are properly considered in the Fiscal Impact Statement presented by KBOE with the proposed emergency regulation.

This is not a hypothetical claim:

A Louisville TV station reported that one of these invalidly licensed optometrists, who had not passed any parts of the NBEO exam series, is currently being sued for allegedly causing permanent eye injury to a patient during laser surgery.

In summary, we urge this subcommittee to find the emergency regulation deficient. Three bases for deficiency exist. First, the regulation does not adequately redress the imminent threat to public health and safety.

Second, it does not provide an adequate cost analysis; it does not consider the financial impact of allowing optometrists to practice below nationally recognized minimum competencies. Third, KBOE exceeds its authority to establish a renewal option for optometrists who currently are practicing optometry on an invalid license.

Thank you for your time.