



NATIONAL BOARD OF EXAMINERS IN OPTOMETRY

Response to the Kentucky Board of Optometric Examiners’ Testimony Before Kentucky Legislative Committees

Released May 22, 2026

On May 12, 2026, the President of the Kentucky Board of Optometric Examiners (KBOE), along with the General Counsel of the Office of the Kentucky Attorney General, testified before two state legislative committees. **The KBOE’s testimony included numerous inaccurate and misleading statements.** Their combined testimony also, for the first time, shed light on one reason why the KBOE has repeatedly manufactured loopholes to enable invalidly waived-in optometry graduates to avoid having to pass the same licensing exams that all other licensed optometrists in the Commonwealth must pass.

Different agenda items prompted the KBOE’s appearance at the Government Contract Review Committee in the morning and at the Administrative Regulation Review Subcommittee in the afternoon, but the underlying need for the KBOE to testify was the same: **the KBOE violated Kentucky law in granting optometry licenses to applicants who did not qualify for them and, in response to public attention to that problem, has been issuing multiple rounds of flawed emergency and proposed regulations at substantial legal expense to the Commonwealth.**

The National Board of Examiners in Optometry® (NBEEO®)¹ is issuing this statement to correct the false statements in the KBOE’s testimony and to shed light on the troubling reason that the KBOE is failing to prioritize consistent standards and patient safety.

Although NBEEO will not publicly identify the invalidly licensed graduates in this statement, NBEEO’s policies and candidate agreements do not restrict NBEEO from publicly sharing information relating to the number of individuals who apparently have been licensed by the KBOE despite not passing one or more parts of the required NBEEO examination series or from sharing, without identifying the individuals, data about their exam performance records. In light of the KBOE’s misleading and evasive testimony before the legislative Subcommittee, NBEEO believes it has an obligation to provide this information now.

¹ NBEEO was founded in 1951 to establish the legitimacy and credibility of the optometry profession. The NBEEO is an independent, 501(c)(3) tax-exempt nonprofit organization. The mission of the NBEEO is to protect the public through competence assessment.

Background

For context, a brief recap of how we got to this point may be helpful.² The KBOE’s regulations on initial licensure as an optometrist in Kentucky currently require and, with one short-lived exception, have required for decades that applicants for initial licensure in Kentucky pass Parts I, II, and III of the licensing exam series developed and administered by NBEO.³ As is now well-known, on at least six dates the KBOE granted optometry licenses to individuals from optometry school graduating classes of 2020 – 2023 who had not passed one or more parts of the NBEO examination series. On October 1, 2025, the Attorney General issued a formal opinion (OAG 25-13) that found that the KBOE had “acted beyond its authority in waiving licensure requirements” and that the waivers were “null, void, and unenforceable.”⁴ The Attorney General directed the KBOE to “review the licensure of those optometrists who were licensed under the waiver and alternative testing measures to ensure they have met the licensure requirements as established in 201 KAR 5:010.”

Over seven months have passed since the Attorney General issued that directive, but the KBOE has continued to allow the invalidly licensed graduates to practice independently without passing the NBEO exams. The KBOE has also refused to identify which licensees – or even how many – have been granted waivers, effectively blocking patients from the information they need to make informed decisions about their own health and treatment. Instead, the KBOE has issued a series of proposed and emergency regulations, withdrawing or amending some of the regulations along the way, that create new special loopholes that apply only to the invalidly licensed graduates – and that do not enforce any corrective actions until March 2027. To advise it on its actions in response to the Attorney General’s Opinion, the KBOE retained an outside law firm under a contract authorizing up to \$200,000 in legal fees for the period of March 10 – June 30, 2026. It is this contract that received scrutiny from the Government Contract Review Committee at its May 12th hearing.⁵

The special loophole currently in the KBOE’s emergency regulation, [201 KAR 5:201E](#), and its proposed ordinary companion regulation permits the invalidly licensed graduates (and only those individuals) to bypass the NBEO Part III Patient Encounters and Performance Skills (PEPS®) exam. The NBEO Part III exam is an in-person examination requiring candidates to demonstrate safe and competent performance of essential optometric clinical skills and appropriate management of clinical scenarios on professional standardized patients; it functions as a crucial “road test” before candidates can earn an optometry license. Just like the Department of Motor Vehicles would not let someone skip the road test to get a driver’s license, KBOE should not let any optometrist skip the practical clinical exam. Presumably, because the

² NBEO’s written testimony submitted for the KBOE’s April 24, 2026, public hearing provides a detailed description both of the NBEO’s three-part examination series and of the KBOE’s actions. See https://optometry.org/wp-content/uploads/2026/04/NBEO_testimony_to_KBOE_for_-4.24.2026_meeting_on_201_KAR_5_021_proposed_ordinary_regulation.pdf.

³ See 201 KAR 5:010, <https://apps.legislature.ky.gov/law/kar/titles/201/005/010/>. The KBOE briefly experimented with permitting applicants to substitute passing scores from the Optometry Examining Board of Canada (OEBC) exam for the NBEO Part I exam but ended the OEBC option by filing an emergency regulation on April 15, 2026.

⁴ See <https://www.ag.ky.gov/Resources/Opinions/Opinions/OAG%2025-13.pdf>.

⁵ The May 12, 2026, Government Contract Review Committee hearing can be viewed at: <https://vimeo.com/reviews/95adb9c3-e2ac-4961-af38-5be3281b5437/videos/1191984734>.

invalidly licensed graduates have been engaged in independent practice for years, it should be easy for them as experienced optometrists to pass NBEO Part III, unless they still lack baseline competencies and skills. Nonetheless, the KBOE has instead taken the unprecedented step of allowing these individuals to substitute a computer-based, multiple choice exam developed by the American Board of Optometry (ABO) which was not designed for and has not been psychometrically validated for initial licensure and does not test the practical clinical skills that are essential for safe and effective diagnosis and treatment of patients.

KBOE's False and Misleading Testimony to the Legislative Subcommittee

The emergency regulation providing for the ABO loophole was the subject of the KBOE's Administrative Regulation Review Subcommittee testimony on May 12th. NBEO testified in opposition to the emergency regulation at that hearing, as did the Association of Regulatory Boards in Optometry (ARBO) and a Kentucky optometrist who works with the Kentucky School for the Blind Charitable Foundation.⁶ The testimony in opposition demonstrated that **the KBOE's invalid waivers have allowed individuals to practice optometry who may be responsible for jeopardizing the health and vision of multiple Kentuckians**. The Kentucky optometrist testified about two children who are now her patients at the Charitable Foundation due to experiencing severe vision loss. She described those children as having experienced "appalling" harm from delayed referrals, misdiagnoses, or inadequate care from their optometrists, and she testified that she learned that both optometrists were on the list of 21 invalidly licensed graduates that a WAVE news report had published. The ARBO representative testified about a pending lawsuit against an invalidly licensed graduate who at the time of licensure had not passed any parts of the NBEO exam series; the lawsuit alleges that the optometrist caused permanent eye injury to a patient during laser surgery.

In contrast, the KBOE's testimony contained multiple falsehoods or misleading statements:

- *False Assertion #1*: "The Attorney General found that ... the board has clear authority in statute to ... provide waivers."
 - *Actual Fact #1*: Citing KRS 13A.130, the Attorney General's Opinion stated that a licensing board never has authority to grant waivers of regulatory requirements: "The General Assembly has expressly prohibited an administrative body from 'modify[ing] a statute or administrative regulation' via its own 'internal policy, memorandum, or other form of action'" and that therefore "any such modification "is null, void, and unenforceable."
- *False Assertion #2*: "[The Attorney General found that] because the regulatory process was not followed, the waivers or alternative tests were null, void and unenforceable, not the licenses themselves, but the tests that were used to approve the licensure."

⁶ The May 12, 2026, Administrative Regulation Review Subcommittee hearing can be viewed at: <https://vimeo.com/reviews/f02672bd-641d-48ff-a37b-e86ceb4b2323/videos/1191950557>.

- *Actual Fact #2*: The Attorney General found that the KBOE’s “attempt to use [resolutions] to change the exam requirements was invalid.... [T]he waiver and allowance for alternative testing were without the force and effect of law. It is further the opinion of this Office that any person who applied for a license to practice optometry using the waiver and alternative testing did not comply with the relevant regulations.” Given that the waiver granting the license was null, void, and invalid, the licenses themselves were invalid. The KBOE’s response is akin to asking the public to treat dollar bills that the board printed on copier machines without the legal authority to do so as if those invalidly printed dollars were legally authorized U.S. currency printed by the U.S. Mint.
- *False or Misleading Assertion #3*: In response to a question from a member of the Subcommittee about how many people received licenses through waivers, the KBOE claimed that “our board is still in the process of the review and investigation, so ... I can’t tell you a definitive number.”
 - *Actual Fact #3*: The KBOE knows that it granted waivers to materially more invalidly licensed graduates than the initial list of 21 that WAVE news obtained, and it should have readily been able to provide a “definitive” number. The purported “investigation” the KBOE references is of its own official actions in granting licenses and waivers of exam requirements. Although the KBOE has declined to provide personally identifying information on licensees in response to Open Records Act Requests, the KBOE has those records.

Moreover, the NBEO wrote to the KBOE on May 23, 2025, identifying an initial list of 21 individuals the KBOE had licensed who had not passed all parts of the NBEO exam series; and on January 15, 2026, NBEO sent another list to the KBOE listing 9 additional Kentucky licensees whom NBEO had identified as not passing all parts of the NBEO exam series.⁷ NBEO provided the KBOE another update on May 22, 2026 on these 30 individuals.

Of the thirty individuals identified by NBEO thus far to whom the KBOE evidently granted licenses in violation of its own regulations, 7 had never attempted one or more parts of the NBEO exam series at the time of their apparent licensure. The remaining 23 had score reports reflecting that they had attempted but failed to pass at least one part of the NBEO exam series at the time of their licensure, with most of them failing the exams multiple times: the Part I *Applied Basic Science* (ABS®) examination on foundational biomedical science concepts, the Part II *Patient Assessment and Management* (PAM®) examination on clinical thinking and decision-making; and/or the Part III live simulated patient encounters exam.

⁷ Four of the individuals identified by NBEO in these letters have subsequently passed all three parts of the NBEO examination series; **the remaining 26 individuals who received invalid waivers still have not passed one or more parts of the NBEO exam series.** In addition to the thirty individuals who may have received invalid waivers, NBEO’s letter to the KBOE Executive Director dated May 22, 2026, noted one additional optometrist for whom NBEO has not been able to locate license information, but who appears to be practicing optometry in Kentucky despite only passing two of the three NBEO initial licensure exams.

Given that the NBEO has provided the KBOE these lists⁸ and that the KBOE is required by law to maintain records of its own actions, the KBOE's claim is simply not credible that it cannot answer how many individuals it granted waivers.

Moreover, to NBEO's knowledge, the KBOE has not corrected the public narrative that the KBOE waivers occurred only during the 2020-2023 timeframe. **Six optometrists who did not pass the full examination series at the time of their licensure appear to have been granted licenses by the KBOE in 2024 or 2025.** Based on the timing of the apparent grants of a license and on the NBEO exam the candidates did not pass, only one of these license grants (which occurred five days after the issuance of the Attorney General's Opinion) could potentially have been compliant with the initial licensure regulation in effect from July 30, 2025, through April 15, 2026; that short-lived regulation permitted applicants to substitute passing scores from the Optometry Examining Board of Canada ("OEBC") exam for NBEO Part I. The other five, if not all six, were evidently provided waivers of the KBOE's examination requirements after 2023.

- *False or Misleading Assertion #4:* The KBOE considers the multiple-choice, computer-based test developed by the American Board of Optometry (ABO) "an acceptable pathway as an additional option [serving as an alternative to the NBEO Part III] to be able to determine that these licensees are, in fact, competent" because the ABO exam "does go above minimal clinical competency."
 - *Actual Fact #4:* The ABO certification program as a whole requires more training hours and/or clinical experience hours than initial licensure regulations do, as part of ABO's process to earn Diplomate status, but the ABO examination component of that program has not been shown to assess higher level competencies than are tested by NBEO's initial licensure exam services. The ABO exam also does not purport to evaluate the safe performance of physical skills or how optometrists engage with and diagnose patients in live encounters, unlike NBEO Part III; there is no need for ABO to seek to assess that, given that licensed optometrists seeking ABO certification would already have been regulatorily required to pass a practical skills exam.

Unfortunately, even if the invalidly licensed graduates pass the ABO exam, that provides no assurance that they can safely and competently perform the clinical practical skills that are part of baseline competencies for practicing optometrists. In fact, NBEO has identified that **four of the invalidly waived-in optometrists took and failed the NBEO Part III Patient Encounters and Performance Skills (PEPS®)**

⁸ NBEO's Candidate Agreement provides that NBEO may always share with state regulatory boards any individual candidate's results or scores on an NBEO examination. In addition, NBEO has an exam verification process that enables employers, with an NBEO Release Form signed by the candidate, to receive verification of the NBEO exams taken by the candidate, the month and year the examinations were taken, and whether the candidate passed or failed each examination. See <https://optometry.org/request-score-report/exam-verification/>. Patients, however, must rely on an optometrist's state-issued license as proof that the optometrist passed the required competency exams. **Through its invalid waivers and lack of transparency, the KBOE has been complicit in enabling the invalidly licensed graduates to practice without any notice to the public that they have not satisfied the regulatory requirements for initial licensure.**

exam in December 2025 or March 2026, *after* they had received their licenses – and, for three of them, years after licensure. As the KBOE President testified to the Subcommittee on May 12th, “the people that we are reviewing, the doctors that we are reviewing are already licensed and practicing. They are seeing patients every day.” NBEO finds it alarming that practicing optometrists are unable to pass the Part III “road test” exam; it is an abdication of the KBOE’s public protection responsibilities that the KBOE seeks to permanently exempt the invalidly licensed graduates from having to demonstrate these essential competencies.

- *False Assertion #5:* One reason the KBOE is offering the invalidly licensed graduates the ABO exam as an alternative to NBEO Part III is because “the [Part III] test is only administered a few times a year.”
 - *Actual Fact #5:* The NBEO Part III exam is offered from August through May each year, and a testing date can be scheduled up to 30 days prior to the exam date.⁹ During the 2025-2026 exam administrative year, NBEO offered 2,896 administration appointments over 139 days for the Part III exam. **There is no scheduling availability problem with requiring passage of the NBEO Part III exam.** As one legislator on the Subcommittee pointed out, it was perplexing for the KBOE to cite the availability of the Part III exam as the reason for offering the ABO as a substitute, because the KBOE’s emergency regulation provided the waived-in individuals a year to satisfy the Part III requirement, and, as the lawmaker noted, “new graduates have to do the same thing.”

However, there is another potentially pertinent difference between the NBEO Part III exam and the ABO certification exam that the KBOE did not mention in its testimony. NBEO’s policies set a six-attempt limit for each of the three parts of the NBEO initial licensure series. The policy includes some flexibility for the NBEO Board of Directors Judicial Committee to approve a seventh attempt if the candidate has a sponsor from an accredited optometric institution who will assist the candidate in creating a remediation plan and support the candidate in the candidate’s next attempt if granted, but a candidate who fails one of the NBEO initial licensure exams on a seventh attempt is ineligible to take the exam again.¹⁰ Indeed, this is the situation for two of the invalidly licensed graduates: after the NBEO Board of Directors Judicial Committee granted these two individuals a seventh attempt at the Part I ABS exam, both individuals again failed that examination. The KBOE, however, has apparently granted these individuals a license to independently practice optometry in the Commonwealth.

It is common for licensure exams for physicians and other healthcare clinical professions to set a maximum number of exam attempts in order to protect the

⁹ See <https://optometry.org/exams/part-iii-peps/>.

¹⁰ See <https://optometry.org/exams/exam-policies-eligibility/>.

integrity of the exam and safeguard the public from unqualified practitioners.¹¹ The ABO exam, however, is not a licensure exam. It is a part of a voluntary certification program that is open only to optometrists who already hold an active license to practice optometry. Given the different nature and purpose of that voluntary credential, the ABO's exam policies include no cap on the number of times an eligible candidate can attempt the exam. Lawmakers may wish to hear testimony from the KBOE as to whether the absence of a limit on attempts for the ABO exam was a consideration in the KBOE's decision to adopt it as an alternative to passing NBE Part III. If so, that would suggest that the KBOE is prioritizing career access for the invalidly waived-in graduates over patient protection.

The Conflict of Interest Undermining the KBOE's Patient Protection Responsibilities

The testimony of the General Counsel of the Attorney General's Office at the May 12th hearings also provides evidence that **the provisions of the emergency regulation reflect the KBOE's interest in prioritizing career access for the invalidly licensed graduates over requiring reliable and validated demonstrations of competence and safe patient practices.**

At the Administrative Regulation Review Subcommittee hearing, the Attorney General's Office explained why the Attorney General did not direct the KBOE to immediately rescind the licenses that had been granted due to invalid waivers:

"To dictate the specific cure, ... you don't want to create a [KRS] 13B [statutory] or due process problem while fixing your [KRS] 13A problem. And what I mean by that is, while the board acted illicitly in issuing this license, they still gave people licenses and these people went back to the communities.... Now [the invalidly licensed graduates] have an expectation interest and reliance interest that may give rise to due process issues... So there has to be some sort of, I think, reasonable process to allow those people to cure the defect."

Earlier that day, the Attorney General's Office testified to the Government Contract Review Committee about why the Attorney General supported the KBOE engaging other lawyers to advise the board:

"There are times when [having the Attorney General's office provide legal services to the board] complicates both our mission and the board's mission by creating actual or perceived conflicts.... I think all the members of the Committee are well aware of the fact that we issued an advisory opinion just last year, finding that the board – different composition, many, not all the same members¹² – acted improperly by waiving, without going through the administrative process, part of the exam requirements. Again, we were

¹¹ For example, the United States Medical Licensing Exam (USMLE) sets a maximum of four attempts per Step of the exam (<https://www.usmle.org/common-questions>); the COMLEX-USA exam for licensure of osteopathic doctors also has a limit of four scored attempts (<https://www.nbome.org/assessments/comlex-usa/bulletin-of-information/eligibility/>); and the NAPLEX licensure exam for pharmacists has a limit of five attempts (<https://nabp.pharmacy/programs/examinations/naplex/take-the-naplex-exam/>).

¹² Based on the KBOE's minutes, three of the five currently serving members of the KBOE served on the licensing board during KBOE meetings at which the invalid waivers were issued.

asked that question, issued the advisory opinion, and had we been in the role of providing them advice at the time and giving advice again, that would have complicated our ability to be – and certainly the appearance of – objectivity and neutrality when we issued the opinion; you know, they have an administrative regulation that I think is going to be on review this afternoon.”

Despite this acknowledged conflict or apparent conflict, the General Counsel of the Attorney General’s Office has served as Board Counsel for the KBOE at least since its April 14, 2026, meeting. At that meeting, the KBOE, despite comments opposing the ABO alternative to NBEO Part III for the cohort of invalidly licensed graduates, voted for an amended after comments version 201 KAR 5:021E that retained the ABO alternative. Whether or not the Office of Attorney General is correct as a matter of law that KRS Chapter 13B could give rise to claims by the invalidly licensed graduates if they are restricted from continuing to practice optometry,¹³ it appears that the Attorney General’s Office and the KBOE are concerned that applying the initial licensure requirements to the invalidly licensed graduates could result in claims or even potential liability for the Commonwealth, the KBOE, or members of the board.

None of these considerations, however, should take priority over protections for patients. Moreover, there are straightforward measures that the KBOE could and should take if it seeks to ease the transition for the invalidly licensed individuals without compromising protections for patients or creating perpetual loopholes from consistent licensure standards:

1. Provide an easily accessible online license verification function, as most other states do,¹⁴ and include information on whether the licensee passed all NBEO exams, passed the temporary alternative to the NBEO Part I exam, or obtained a license through a waiver – and has not since then provided passing scores on all parts of the NBEO exam. This would allow the public to make informed choices about their healthcare.
2. Withdraw 201 KAR 5:021E and its companion ordinary regulation, putting an end to the ABO alternative.
3. File an emergency regulation providing that any individual issued a license through a waiver may only practice under direct supervision of a validly licensed optometrist until the earlier of March 1, 2027, or the date they provide the KBOE proof of having obtained passing scores on all exams required for an initial license to practice optometry independently.

This cohort of invalidly licensed graduates has been on notice since at least October 2025 that the KBOE waivers were not valid. The approach NBEO has outlined would, in the words of

¹³ KRS 13B.020 provides that the provisions of the chapter “apply to all administrative hearings conducted by an agency,” with certain exceptions. It is unclear why a licensing board notifying recipients of a null and void license that they cannot rely on the license for lawful practice would be considered an “administrative hearing.”

¹⁴ See, for example, Alabama (<https://www.optometry.alabama.gov/Search.aspx>), Maryland (<https://mdbnc.health.maryland.gov/optverification/default.aspx>), Tennessee (<https://internet.health.tn.gov/Licensure/>), Virginia (<https://dhp.virginiainteractive.org/lookup/index>), West Virginia (<https://optometry.wv.gov/licensing/license-verifications>), and many more.

the KBOE’s Board Counsel/General Counsel to the Attorney General’s Office, provide a “reasonable process to allow those people to cure the defect.”¹⁵

NBEO urges the KBOE to prioritize patient protection over special treatment of this cohort of individuals, to hold all Kentucky optometrists to the same competency standards, and to take prompt action to eliminate the ABO loophole.

For more information, contact NBEO at media@optometry.org.

¹⁵ If any of the invalidly licensed graduates fails an NBEO examination seven times, they would not be eligible for a Kentucky license under this process. However, no candidate for an optometry license would be eligible in those circumstances.