National Association of
Retail Optical Companies
Professionalism Consumerism Education

February 14, 2024

Oklahoma State Board of Optometry
Suite 201
Oklahoma Agriculture Building
2800 N. Lincoln Blvd
Oklahoma City, OK 73105

Attn: Jessica Cobble, Administrative Assistant to the Board
Sent via email: Jessica.Cobble@optometry.ok.gov

RE: Board of Examiners in Optometry
Rule Proposal – 505:10-5-19

Dear Members of the Board:

We respectfully submit the following comments, proposed principles and draft regulation for the Board's consideration. We encourage the Board to amend the proposed telemedicine rule that was noticed in the Oklahoma Register, Volume 41, Number 9, p. 402 on January 16, 2024. We believe the proposed rule will unnecessarily restrict the professional discretion of Oklahoma-licensed optometrists to determine when and how to use ocular telehealth that meets the standard of care for the benefit of patients in the state. We encourage the Board to support a regulation that is thoughtfully constructed and avoids regulation that is unnecessarily onerous.

On behalf of NAROC, the National Association of Retail Optical Companies [formerly known as the National Association of Optometrists & Opticians (NAOO)], a national organization representing the retail optical industry, we write to comment on the proposed rule relating to telemedicine encounters in the practice of optometry. NAROC's members employ thousands of opticians and affiliate with optometrists at their many locations. NAROC members collectively operate nearly 9,000 co-located eye care offices and optical dispensaries throughout the United States.

The Board's proposal for regulation should be designed to improve patient access to ocular telehealth from optometrists in Oklahoma. We agree that such care should be held to the same standards as in-person care, including informed consent on the part of the patient, the ability to meet the community standard of care in diagnosis and, as appropriate, treatment. Additionally, we also agree that the privacy and security of patient communications and records should be properly maintained. We encourage the Board to use the regulation to establish reasonable (not burdensome) guidelines for

establishing the patient-provider relationship, obtaining informed patient consent to the use of ocular telehealth, and appropriate privacy, security, and record-keeping directives.

The rule should explicitly permit the optometrist-patient relationship to be formed through telemedicine[1]. The rule should not require an in-person examination when the standard of care can be met with telemedicine. The Board's rules should allow optometrists to use their professional judgment to determine when telemedicine is appropriate for a patient.[2]

We encourage the Board to adopt a regulation that addresses clearly identified and real problems[3] with the use of ocular telemedicine (not just speculative concerns), and to

- ensure that the regulation proposed alleviates the problems identified,
- determine that there are no less restrictive alternatives to address the problems, and
- confirm that the costs and restrictions imposed by the new laws and rules are meaningfully outweighed by the benefits that are obtained.

We request that our comments be made part of the public record for the hearing on February 16, 2024. Thank you for your consideration of the following comments.

Patient-Provider Relationship, Informed Consent and Patient Autonomy

The Board should revise its proposed rule to ensure that its proposed regulation does not disrupt the traditional understanding that the patient-provider relationship may be formed simply by mutual consent. There is no clinical basis or medical necessity to require an in-person examination to establish a patient-provider relationship.[4] Additionally, a comprehensive eye examination should not be required to establish every patient-provider relationship, as the doctor should have the professional discretion to determine what care is appropriate for the patient, subject to the patient's involvement in the determination and informed consent.

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[1] See Section 478.1 of the Oklahoma Statutes that makes clear that an allopathic or osteopathic physician may establish a valid physician-patient relationship through telemedicine. Optometrists should have the same ability in Oklahoma.

[2] See 59 OK Stat § 59-646.2 (2019), which states that the law that sets forth the conditions regarding how an optometrist may use an "assessment mechanism" in a telemedicine encounter does not limit the discretion of an Oklahoma-licensed optometrist to direct a patient to utilize any telehealth service deemed appropriate for any treatment and care of the patient.

[3] We are unaware of any evidence that Oklahoma patients have been harmed by the provision of a comprehensive eye exam through telemedicine by a remote optometrist. We also note that such eye care has been provided to millions of patients by optometrists and ophthalmologists and has been occurring for years in most other states.

[4] We encourage the Board to distinguish between "in-person" (when the optometrist and patient are physically together) and "face-to-face" (when the optometrist and patient are in real-time, synchronous audiovisual communication, which can be either through telemedicine or in-person.)

We understand that it is useful for an examination of the patient's ocular health to be connected to the prescribing of corrective eyewear. With careful drafting, patient health and well-being can be protected to ensure that patients understand the difference between a refraction and a comprehensive eye examination that includes evaluation of health. The Board will benefit the Oklahoma public by allowing optometrists to use telehealth to evaluate the patient's ocular health and to prescribe eyewear.

The American Optometric Association emphasizes the importance of patient autonomy in determining what care and treatment to receive.[5] It is appropriate for an optometrist to incorporate a patient's input relating to whether and when to perform an in-person eye exam, after the patient has been properly informed of the benefits and risks of both receiving that care and deferring it. This is consistent with the AMA Principles of Medical Ethics regarding the patient-provider relationship and obtaining informed consent from patients for care and treatment.[6]

Standard of Care

Broadly, the standard of care in health professions can be defined as:
1. A diagnostic and treatment process that a clinician should follow for a certain type of patient, illness, or clinical circumstance.
2. In legal terms, the level at which the average, prudent provider in a given community would practice. It is how similarly qualified practitioners would have managed the patient's care under the same or similar circumstances.

An optometrist should be permitted to perform a comprehensive eye examination or minimum eye examination (as defined by law or in properly adopted optometric regulations) via telehealth when such examinations meet the standard of care. All minimum exam steps for optometrists that are established by the Board rules[7] can be performed using telehealth protocols with current technology and equipment.

Ophthalmologists in Oklahoma do not face the restrictions on the use of telehealth that the Board has proposed for optometrists in the state. Optometrists in Oklahoma should

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[5] See the AOA Standards of Professional Conduct
https://www.aoa.org/AOA/Documents/About%20the%20AOA/Ethics%20%26%20Values/Standards-of-Professional-Conduct_Adopted-June-2011.pdf
A – Patient Autonomy ("self-determination")
The optometrist has the duty to involve the patient in care and treatment decisions in a meaningful way, with due consideration of the patient's needs, desires, abilities and understanding, while safeguarding the patient's privacy.
1. Patient Participation: Optometrists have a duty to respect the right of their patients to be active participants in decisions affecting their health care. This duty should be reinforced and supported through patient education and effective communication.

[6] https://code-medical-ethics.ama-assn.org/sites/default/files/2022-08/1.1.1%20Patient-physician%20relationships--background%20reports_0.pdf
https://code-medical-ethics.ama-assn.org/ethics-opinions/informed-consent

[7] Rules and Regulations of the Oklahoma State Board of Examiners in Optometry, Title 505:10-5-9, Required findings on examination of patient. https://optometry.ok.gov/2021%20Law%20(webpage).pdf

have the same ability to determine the appropriate level of care for each patient, as long as the community standard of care is met for the particular patient in the particular circumstances identified by the practitioner.

Additionally, optometrists, like all other health care professionals, have a responsibility to not provide unnecessary care or treatment. The clinical guidelines of the AOA state in several instances that a particular procedure should be performed "as indicated." The Board has recognized this by requiring the required findings in Rule 505:10-5-9 to be made during the initial examination of the patient, but not every following exam for the purpose of prescribing ophthalmic lenses. The proposed rule should not require a comprehensive visual examination for every instance when an optometrist intends to sign a prescription for ophthalmic lenses. The optometrist should be empowered to determine that an intermediate eye exam is adequate to renew or revise a prescription for a patient that has had a comprehensive eye examination previously.

The proposed regulation should be technology-neutral, allowing optometrists to choose the equipment, instruments and processes that allow the optometrist to make clinical decisions that meet the standard of care. With respect to examination procedures, the AOA Comprehensive Adult Eye and Vision Examination Evidence-Based Clinical Practice Guidelines state "*Clinicians should remain alert for new and emerging technologies, instruments and procedures, and incorporate them into the clinical examination, as appropriate."*

Ocular telehealth is a useful tool for the practitioner to triage patients; the intake of the patient to determine chief complaint, obtain a preliminary history and perhaps perform some preliminary tests enables the provider to then determine whether to proceed with a remote examination, and what tests to conduct. When an in-person visit is clinically appropriate, we agree that the provider must inform the patient and provide support including a referral for such care when appropriate.

Rule 505:10-5-9 states that an initial eye examination that includes all the required findings is necessary for issuing a prescription for eyewear. Once a patient has had that comprehensive eye exam, optometrists should have the ability to perform an intermediate eye examination on a consenting patient when that meets the standard of care, whether in-person or using telehealth. This will allow a patient to receive treatment for a diagnosis that can be made without a comprehensive eye exam. We agree that any examination should meet the following expectations:
- The diagnosis is made using accepted procedures and testing,
- The treatment is clinically appropriate,
- The patient has provided informed consent to such treatment, and
- The patient has been made aware if a comprehensive eye exam, other testing and/or an in-person visit for further diagnosis and care is appropriate.

In summary, optometrists should be able to use telemedicine to establish a patient-provider relationship, collect patient information, and conduct clinically appropriate testing to address eye and vision issues, including a comprehensive eye exam when such an exam meets the community standard of care.

Policy Principles

As the Board notes, the American Optometric Association (AOA) has published a position statement regarding telemedicine in optometry.[8] However, that position statement does not support the Board's assertion that "Some of the required findings [established in Rule 505:10-5-9] **must be based on an examination made in-person by an optometrist physically present with the patient**." [Emphasis added.]

In fact, "The AOA supports the appropriate use of telemedicine in optometry to access high-value, high-quality eye, health and vision care. Telemedicine in optometry can serve to expand patient access to care, improve coordination of care, and enhance communication among all health care practitioners involved in the care of a patient."[9]

While the AOA states that "in-person care … is the criterion standard for the delivery of a comprehensive eye exam", the definition of "criterion standard" does not preclude the use of other diagnostic or therapeutic modalities. Rather, that simply requires that new tests and protocols be compared to in-person care.

The tests used in telemedicine to establish the required findings in Rule 505:10-5-9 and the elements of a comprehensive eye exam have all been compared to the tests used in-person and have been determined to meet the community standard of care for eye care professionals.[10] The use of ocular telemedicine has been evaluated and found to be successful in over 140 peer-reviewed published research papers.[11]

There is no clinical or other basis for requiring the elements of a comprehensive eye exam or the required findings of Rule 505:10-5-9 to be performed by an optometrist in-person with the doctor and patient physically together. The Board's statement that current technologies "cannot replace or replicate a comprehensive eye exam provided by a doctor of optometry who is physically present with the patient" may have been true at one time, but that is no longer accurate. A remote optometrist working in a real-time synchronous audiovisual connection with an assistant who is physically present with the

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[8] https://www.aoa.org/AOA/Documents/Advocacy/position%20statements/AOA_Policy_Telehealth.pdf
[9] Ibid., p. 5.
[10] American Telemedicine Association - Ocular Telehealth Assessments and Disease Monitoring
Part One - Elements of a Remote Comprehensive Eye Exam
https://www.americantelemed.org/resources/ocular-telehealth-assessments-and-disease-monitoring-part-one/
Part Two - The Need for and Benefits of Ocular Telemedicine for Primary and Specialty Eye Care
https://www.americantelemed.org/resources/ocular-telehealth-assessments-and-disease-monitoring-part-two/
[11] https://marketing.americantelemed.org/hubfs/Ocular%20SIG%20-%20Reference%20List%20of%20literature_updated%202023.pdf

patient and who is using all the equipment listed in Rule 505:10-5-7 can provide a comprehensive eye exam that produces all the required findings.[12]

The NAOO (now NAROC) has published general policy principles related to ocular telehealth that we believe would be useful. See https://NAOOvision.org/wp-content/uploads/2020/10/NAOO-Ocular-Telehealth-General-Principles_1-2018-.pdf

We also think the board would find useful the Policy of the National Association of Vision Care Plans related to ocular telemedicine. See https://navcp.org/wp-content/uploads/2020/07/NAVCP_PPP_Telemedicine-Policy-Statement_FL_6-29-2020.pdf

We support the American Telemedicine Association (ATA) Policy Principles related to the use of telemedicine with respect to eye care.[13] Note the following (renumbered from the original):

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1. ***Ensure Patient Choice, Access, and Satisfaction****. The location of the patient receiving services or the clinician providing them should not be arbitrarily limited by geography and patients should be able to receive high-quality telehealth services anywhere, including the home.*
2. ***Enhance Provider Autonomy****. Telehealth plays an important role in delivering care across the continuum. Federal and state policy should treat healthcare services delivered remotely no differently than services provided in-person. The modality used to deliver care should be determined by the clinician, in consultation with the patient, and should meet the same standard of care as services provided in person. Telehealth should not be limited to any specific technology provided that it is safe, effective, appropriate, and able to be fully integrated into clinical workflows.*
3. ***Enable Healthcare Delivery Across State Lines****. Adoption of interstate licensure compacts, flexibility for professional second opinions, and other related licensure portability policies ensure that clinicians can treat patients safely across state lines. Policy barriers that impose undue administrative burden or restrictions that do not promote patient access, continuity of care, and quality medical services must be avoided. State and federal policy should ensure efficient licensure during public health emergencies.*
4. ***Ensure Access to Non-Physician Providers.*** *Healthcare providers at all levels must be able to participate effectively across care teams and leverage telehealth to reach patients where they are. Artificial regulatory barriers on non-physician*

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[12] We do not propose that all patients can be appropriately diagnosed and treated in a remote comprehensive eye exam. There may be instances where in-person care is required; we believe that optometrists, like ophthalmologists, are competent to decide whether telemedicine is right for a particular patient. The AOA's criteria for high quality telemedicine in optometry states "The decision to use telemedicine in optometry should be made by the doctor of optometry in consultation with the patient."

[13] https://www.americantelemed.org/policies/ata-policy-principles/

healthcare providers that do not contribute to quality, patient safety, or improved outcomes are unnecessary impediments to expanding the healthcare workforce, ensuring access to care, and reducing healthcare costs.

We also note that we disagree with the Board's current notice of proposed rulemaking where it states that "The proposed rules will not affect business entities." In fact, there are multiple business entities that will be harmed by the proposed rule, including practicing optometrists and ophthalmologists who work with optometrists in a group practice who wish to use telemedicine for initial comprehensive eye examinations, vision care plans, health insurers, employers who sponsor health and vision benefits for employees, optical retailers that affiliate with optometrists and others that care about access to eye care for consumers. Patients who own businesses and who will be denied the convenience of telemedicine for eye care will also be hurt.

The proposed rule will hurt competition in the eye care market in Oklahoma. It also will reduce access to care in rural and other underserved areas where patients must spend significant time and money to arrange schedules, travel some distance and often wait for the availability of an optometrist to provide an in-person eye exam. Delay in providing eye exams can lead to reduced productivity from improperly corrected vision, and in some instances, can mean delay in diagnosing and treating sight-threatening health conditions.

This concludes our comments. We appreciate the opportunity to participate in the consideration of the proposed regulation. A draft of regulatory wording and themes is attached below for your reference. We would be happy to work with the Board and other interested parties to revise the proposed rule to achieve the goals of ensuring that telemedicine in optometry meets the community standard of care, contributes to care coordination, promotes the doctor-patient relationship, maintains patient choice and self-determination, and protects patient privacy.

Thank you for your consideration of our comments and suggestions.

Very truly yours,

Joseph B. Neville

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Suggestions for Regulatory Language / Themes re Telemedicine in Optometry

1. Definitions:

a. "TELEHEALTH"

(1) “Telehealth” services" means health care services provided through the use of information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where either of the following is located:
(a) The patient receiving the services;
(b) Another health care professional with whom the provider of the services is consulting regarding the patient.

b. Nothing in this statute authorizes optometrists to deliver services outside their scope of practice.

c. “TELEHEALTH TECHNOLOGIES” means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location with or without an intervening healthcare provider. Such technologies include but are not limited to videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communication.

d. "DISTANT SITE" means a site at which a provider is located while providing optometric services by means of telehealth.

e. "ORIGINATING SITE" means a site at which a patient is located at the time optometric services are provided to him or her by means of telehealth.

f. “STORE-AND-FORWARD TRANSFER" means the electronic transfer of a patient's medical information or an interaction between providers that occurs between an originating site and distant sites when the patient is not present.

g. "SYNCHRONOUS INTERACTION" means a real-time interaction between a patient located at the originating site and a provider located at a distant site.

h. “PROVIDER” means an optometrist licensee regulated by the State Board of Optometry.

i. “PROVIDER-PATIENT RELATIONSHIP” is established when the provider agrees to provide services to a person to address health care needs, whether the service was provided by mutual consent or implied consent or was provided without consent pursuant to a court order.

2. Telehealth Services by Optometrists

a. Licensure

The practice of optometry occurs where the patient is located at the time telehealth technologies are used. Therefore, a provider must be licensed to practice optometry in the state where the patient is located to evaluate or treat the patient, whether utilizing telehealth technologies or otherwise.

b. Establishment of a Provider-Patient Relationship

Where an existing provider-patient relationship is not present, a provider must take appropriate steps to establish a provider-patient relationship. Provider-patient relationships may be established using telehealth technologies. The provider must use reasonable methods to verify the identity of the patient and must provide the patient with the ability to verify the provider’s identity and credentials.

c. Evaluation and Treatment of the Patient

Prior to providing treatment, including issuing prescriptions for drugs or devices, a provider must perform an appropriate medical evaluation and review of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided. Such evaluation and history need not be performed in-person if a telehealth encounter is sufficient in the provider’s professional judgment to establish an informed diagnosis. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in in-person settings. Treatment based solely on an online questionnaire, including issuing a prescription, does not constitute an acceptable standard of care. As conditions dictate, a provider in exercising their professional judgment may deny a patient telehealth services and, instead, refer the patient to another provider or require the patient to undergo an in-person visit.

d. Informed Consent

Providers must obtain appropriate informed consent for an initial telehealth encounter including those elements required by law and generally accepted standards of practice. Consent to telehealth may be presumed for future encounters and may be revoked by a patient in writing at any time. Such informed consent shall be documented in the patient’s medical record and may be maintained in digital or electronic form and must clearly disclose all material information relating to the use of telehealth for the services requested, including

i. any limitations of telehealth for the services requested,
ii. if the use of telehealth is related to prescribing corrective eyewear and the provider is not performing a comprehensive eye health examination, a statement of how the telehealth services differ from a comprehensive eye examination and information about why and when a comprehensive eye examination is appropriate,
iii. the location of patient records and how patients and their representatives may obtain copies of those records, and
iv. how to communicate with the provider.

e. Delegation to a non-licensed assistant

When delegating the provision of telehealth services to a non-licensed assistant, a provider must have systems in place and use them properly to ensure that the assistant is qualified, properly trained and appropriately supervised when providing such services. General supervision is typically appropriate for taking initial patient history, non-invasive testing and data gathering, and patient preparation. When conditions dictate, a provider in exercising their professional judgment may determine that real-time supervision of a non-licensed assistant is appropriate and that such supervision may be provided with synchronous audio-visual or audio communication. The provider must be able to consult with the assistant in a timely manner, particularly in the case of an injury or emergency.

f. Continuity of Care

Providers must adhere to generally accepted standards of optometric practice as it relates to continuity and coordination of care. When in-person care is medically appropriate, the provider shall provide the patient with a referral to the provider's in-state office near the patient's location or another Nevada-licensed provider whose office is reasonably accessible to the patient. The provider also shall provide a copy of the medical record on request to the provider that the patient chooses for in-person care.

g. Follow-up Care

Providers must provide or direct patients to appropriate follow-up care, as appropriate within the provider's professional judgment.

h. Referrals for Emergency Services

Providers must inform patients of the need for emergency services as applicable and be prepared to refer to appropriate emergency care when the care provided using telehealth technologies indicates that a referral to an acute care facility or emergency department for treatment is necessary for the safety of the patient. The provider shall document in the patient record when a patient is so informed and the details of any emergency referral.

i. Medical Records

The medical record must include, if applicable, copies of all patient-related electronic communications, including patient-provider communication, prescriptions, laboratory

and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies must also be maintained in the medical record. The patient record established during the use of telehealth technologies must be accessible and documented for both the provider and the patient, consistent with all established laws and regulations governing patient healthcare records.

j. Privacy and Security of Patient Records & Exchange of Information

Providers must meet or exceed applicable federal and state legal requirements of medical and health information privacy and security, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical record retention rules. Providers should maintain privacy and security policies and procedures for telehealth encounters that protect documentation, maintenance, and transmission of the records of the encounter at least as well as the records created for in-person encounters.

k. Patient Access and Feedback

Providers must allow patients who receive telehealth services the same access to review, supplement and amend personal health information, give feedback on the quality of the services and to register complaints as those patients who receive in-person services.

l. Prescribing

Prescribing medications and/or medical devices, in-person or via telehealth technologies, is at the professional discretion of the provider. The indication, appropriateness, and safety considerations for each telehealth visit prescription must be evaluated by the provider in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. Where such measures are upheld, and the appropriate clinical consideration is carried out and documented, providers may exercise their judgment and prescribe medications and corrective eyewear as part of telehealth encounters.

m. Parity of Professional and Ethical Standards

The ethical and professional standards applied to all aspects of a provider's practice are the same for in-person and telehealth encounters.