

Burgos, Alexander N

From: Ann Edmondson <Anne@ncrma.org>
Sent: Wednesday, June 19, 2024 10:07 AM
To: rrc.comments
Subject: [External] Objection to Board of Examiners in Optometry's proposed rule 21 NCAC 42D. 0102
Attachments: Optometric Assistant; Optometric Technician - Proposed Rule.pdf

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Resending to corrected address.

From: Ann Edmondson
Sent: Wednesday, June 19, 2024 10:05 AM
To: -rrc.comments@oah.nc.gov
Cc: Janice Peterson <janice@ncoptometry.org>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Elizabeth Robinson <elizabethr@ncrma.org>; Andy Ellen <andye@ncrma.org>
Subject: Objection to Board of Examiners in Optometry's proposed rule 21 NCAC 42D. 0102

Please find attached a letter from NCRMA President and General Counsel regarding NCRMA's Objection to Board of Examiners in Optometry's proposed rule 21 NCAC 42D. 0102.

Please let us know if you have any questions or concerns.

Thank you,
Ann Edmondson



Ann Edmondson
Vice President of Communications
Cell: 919.818.5806 – Office: 919.832.0811
anne@ncrma.org



June 19, 2024

Jeanette Doran, Chair
North Carolina Rules Review Commission
2012 Timber Drive
Raleigh, NC 27604

Dear Chairwoman Doran:

The North Carolina Retail Merchants Association (NCRMA) respectfully requests the North Carolina Rules Review Commission (Commission) object to the Board of Examiners in Optometry's (Board) proposed rule 21 NCAC 42D. 0102 entitled "Optometric Assistant; Optometric Technician." NCRMA requests that the Commission object to this proposed rule pursuant to N.C.G.S. 150B-21.9(4) in that the proposed rule was not adopted in accordance with Part 2 of Article 2A of Chapter 150B of the North Carolina General Statutes – specifically the failure to prepare or obtain a fiscal note as required under N.C.G.S. 21.2(2) and N.C.G.S. 150B-21.4(b1).

In this case, the Board has failed to prepare or obtain a fiscal note determining whether the proposed rule in question will have a substantial economic impact pursuant to N.C.G.S. 21.4(b1) which states "Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management." N.C.G.S. 150B-21.4(b1) also states that "Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4)" and it is appropriate under the circumstances provided below that the Commission object to this proposed rule until the Board prepares or obtains a fiscal note determining whether the proposed rule will have a substantial economic impact on optometric providers and the citizens of North Carolina.

N.C.G.S. 150B-21.4(b1) provides the framework for the analysis of what constitutes a substantial economic impact, and it is highly likely that the proposed rule will easily exceed the \$1,000,000 threshold contained in N.C.G.S. 150B-21.4(b1) and includes the following considerations:

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least one million dollars (\$1,000,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

- (1) Determine and identify the appropriate time frame of the analysis.*
- (2) Assess the baseline conditions against which the proposed rule is to be measured.*
- (3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.*
- (4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well*

as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.

(5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(b2) Content. - A fiscal note required by subsection (b1) of this section must contain the following:

- (1) A description of the persons who would be affected by the proposed rule change.*
- (2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.*
- (3) A description of the purpose and benefits of the proposed rule change.*
- (4) An explanation of how the estimate of expenditures was computed.*
- (5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.*

Costs Related to 21 NCAC 42D. 0102

The Board's proposed rule 21 NCAC 42D. 0102 will increase costs for both providers and health care for North Carolinians. To become a Certified Paraoptometric or a Certified Paraoptometric Assistant for Technicians, a candidate must pass an examination. Pursuant to the proposed rule, the required certification for these professions has been sole source and exclusively been delegated to the American Optometric Association (AOA). According to the AOA website examinations for these certifications range from \$290 to \$310. Please see the examination fee schedule in "Attachment A."

Additionally, the AOA recommends certain study resources in order to be successful in passing the examination. It should be noted that to access these study resources the candidate for certification will be charged a fee unless they are a member of the AOA both of which come with a cost. The AOA website states: *Majority of the AOA recommended study resources can be found in EyeLearn. To access EyeLearn you will use your AOA credentials. If you do not know your login credentials or need to have a login created, please reach out to our Member Services Department (memberservices@aoa.org). **Please note, EyeLearn is a member benefit which means non-member paraoptometrics will be charged a fee for any EyeLearn content they choose to access.*** See "Attachment B."

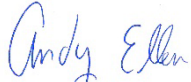
Based on these examination fees, costs to access study resources and/or join the AOA, the Board should have prepared or obtained a fiscal note to determine if there was a substantial economic impact under N.C.G.S. 150B-21.4(b1).

Additionally, it is customary practice that when an employee obtains a certification from an accreditation entity that the employee will expect to be compensated at a higher level. The Board creating and requiring these unnecessary certifications will increase costs to optometric offices throughout the state of North Carolina in the form of higher wages, higher payroll taxes and higher FICA. These are costs that will eventually be passed on to North Carolina consumers in the form of higher costs to visit their local optometric office for important eye care. This also comes at a time when there are more reimbursement pressures on all health care providers including optometric providers from third-party payors including private health insurance, Medicaid, and Medicare.

Finally, post-COVID it has been more difficult to hire and retain health care workers. The Board creating this regulatory burden of certification which may require an individual to pay for and pass a certification exam will make it more difficult for optometric offices to recruit or retain new staff when other competing employment does not require similar certification. This is especially the case for an individual currently working in an optometric office performing many of the duties listed in 21 NCAC 42D. 0102 who may simply seek other employment rather than pay for study materials and take and pass an examination to continue the same duties they are currently performing without the proposed certification. The Board's proposed rule could affect the ability to properly staff its offices, which could impact office hours and patient care with little to no benefit. These potential workforce challenges also come with an economic impact that should have been considered by the Board before adopting the proposed rule.

For the reasons stated above, the North Carolina Retail Merchants Association respectfully requests that the North Carolina Rules Review Commission object to the Board of Examiners in Optometry's (Board) proposed rule 21 NCAC 42D. 0102 entitled "Optometric Assistant; Optometric Technician" pursuant to N.C.G.S. 150B-21.9(4) in that the proposed rule was not adopted in accordance with Part 2 of Article 2A of Chapter 150B of the North Carolina General Statutes – specifically the failure by the Board to prepare or obtain a fiscal note as required under N.C.G.S. 21.2(2) and N.C.G.S. 150B-21.4(b1).

Sincerely,



Andy Ellen

President and General Counsel

Exam Details & Fees - 2024

Examinations are composed of objective multiple-choice questions. The number of questions on each exam is noted below. Pretest questions are randomly distributed throughout the examination and do not count towards or against a candidate's score as they are being evaluated to determine if they perform well enough statistically to be introduced as scored items on a future exam. Only scored items count towards a candidate's final score. Once the application has been received and eligibility is verified, the candidate will receive an email confirmation from support@ptcny.com at the candidate's email address shown on the application.

Examination	Application Fee	# of Scored Items on Exam	# of Additional Pre-test Items	Time Limit to Complete Exam
Certified Paraoptometric (CPO)	\$290	100	20	1.5 hours
Certified Paraoptometric Assistant (CPOA)	\$310	200	20	2.5 hours
Certified Paraoptometric Technician Written (CPOT)	\$310	225	25	2.5 hours
Certified Paraoptometric Technician Clinical (CPOT)	\$310	100	11	2 hours
Certified Paraoptometric Coder (CPOC)	\$290	125	0	2 hours
Late Application	\$50	Late fee is charged in addition to the exam application fee when application is submitted between the first application deadline and the late application deadline. This fee is <i>non-refundable</i> .		
Administrative Fee**	\$100	This portion of the exam fee is <i>non-refundable</i> .		
Application Transfer Fee	\$200	Applies when candidate requests to transfer to another testing period or is required to transfer to the next available testing period for failing to meet RPT requirements. See pages 19-22 for transfer and rescheduling information. A new application and fee must be submitted to PTC.		
Rescheduling Fee	\$50	Applies to candidates who need to move their appointment within their current testing period. (5-29 days prior to scheduled appointment) See pages 23-24. Payable directly to Prometric. Appointments may be rescheduled with Prometric online or by phone.		

Exam Fees & Refunds

- Examination fee must be made at the time of application by debit or credit card. **No checks accepted.**
- Examination fees are non-transferable among candidates.
- Refunds may be issued in cases of medical or family emergencies, or other special circumstances on a case-by-case basis as determined by the CPC. Documentation may be requested.
- Requests must be received in writing at cpc@aoa.org prior to the start of the testing period for which the candidate has applied. **Once the testing period has begun, no refunds will be approved.**
- Should your request for a refund be approved, the administrative fee** portion of the examination application fee (\$100) is non-refundable. The late application fee (\$50) is also non-refundable.
- If approved by CPC, refunds will be processed by Professional Testing Corporation within approximately three (3) weeks of the close of the testing period.
- No refunds will be issued for applying for the incorrect examination or testing period, for failing to make an examination appointment, or for failing to appear at your scheduled appointment.
- Ineligible candidates will be refunded their fees minus the administrative fee. Verify that you meet the eligibility criteria found on pages 14-15 of this handbook before applying.



AMERICAN OPTOMETRIC ASSOCIATION

AOA Paraoptometric Examination Study Resources

This document is a list of the recommended AOA study resources that any paraoptometric can use when preparing for a Commission on Paraoptometric Certification (CPC) examination. The listing of these resources does not constitute a CPC endorsement of these sources and does not imply a guarantee that candidates will be successful in passing any CPC examination, if they are used in examination preparation. However, these study materials are created based off the most current CPC Exam Outline.

Majority of the AOA recommended study resources can be found in EyeLearn. To access EyeLearn you will use your AOA credentials. If you do not know your login credentials or need to have a login created, please reach out to our Member Services Department (memberservices@aoa.org).

Please note, EyeLearn is a member benefit which means non-member paraoptometrics will be charged a fee for any EyeLearn content they choose to access.

The next few pages will outline the AOA study resources for each CPC certification level (CPO, CPOA, CPOT & CPOC). If you have any questions about the study materials, please reach out to the Education Center (educationcenter@aoa.org).



AOA EYELEARN
your professional development hub

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Available Courses in EyeLearn – Study Checklist

Certified Paraoptometric (CPO):

- ☐ Certified Paraoptometric Review Course (CPO):
 - 2024 Paraoptometric Candidate Handbook (PDF)
 - CPO Exam Outline (PDF)
 - 2020-2024 Certified Paraoptometric (CPO) Exam: Study Resources (PDF)
 - CPO Review Course (Webinar)
 - CPO Review Course Workbook (PDF)
 - Presentation Slides (PDF)
 - CPO Review Course Follow Up (Webinar)
 - Presentation Slides (PDF)
 - Optometric Terminology (PDF)
 - Test Taking Tips (PDF)
- ☐ Para Certification Study Halls (ALL)
- ☐ Basic Anatomy and Conditions of the Eye (Webinar)

Certified Paraoptometric Assistant (CPOA):

- ☐ Certified Paraoptometric Assistant Review Course (CPOA):
 - 2024 Paraoptometric Candidate Handbook (PDF)
 - CPOA Exam Outline (PDF)
 - 2020-2024 Certified Paraoptometric Assistant (CPOA) Exam: Study Resources (PDF)
 - CPOA Review Course (Webinars) Part 1 & 2
 - Presentation Slides (PDF) Part 1 & 2
 - Test Taking Tips (PDF)
- ☐ Para Certification Study Halls (ALL)

Certified Paraoptometric Technician (CPOT):

- ☐ Certified Paraoptometric Technician Review Course (CPOT):
 - 2024 Paraoptometric Candidate Handbook (PDF)
 - CPOT Exam Outline (PDF)
 - 2020-2024 Certified Paraoptometric Technician (CPOT) Exam: Study Resources (PDF)
 - CPOT Review Course (Webinar)
 - Presentation Slides (PDF)
 - Test Taking Tips (PDF)
- ☐ Para Certification Study Halls (ALL)

Additional Study Resources in EyeLearn

AOA Member Courses:

Topic	Course Title
Ophthalmic Dispensing/Contact Lenses	• Para Speaker Series: Optical Dispensing Gems Learned from Experience • Para Speaker Series - Contact Lenses and All Their Possibilities • Getting Paid for Fitting Contacts • Para Speaker Series: The Art of Frames and Lenses
Practice Management	• The Words to Improve Communication with Patients
Special Procedures	• Therapeutic Strategies in Clinical Eye Care • Clinical Grand Rounds • Para Speaker Series: Taking a Deeper into Diabetes • Para Speaker Series: Navigating Diabetes • Para Speaker Series – Ocular Surgeries and the Role Paraoptometrics Play
Paraoptometric Skill Builder®	• Beginner • Intermediate • Advanced

AOA Non-member Courses:

EyeLearn Course Title
Therapeutic Strategies in Clinical Eye Care
Clinical Grand Rounds

Certified Paraoptometric Coder (CPOC) Study Resources

This is an **open-book examination based on ICD-10**. Only the following bound textbooks will be permitted.

- CPT® (Current Procedural Terminology) Standard or Professional Edition (current edition recommended)
- Codes for Optometry (current edition recommended)
- ICD-10-CM International Classification of Diseases (current edition recommended)
- ICD-10-CM the Complete Official Codebook (may say “with guidelines”)

Additional CPOC Study Resources:

- 1) Current Procedural Terminology (CPT®) Standard or Professional Edition (current edition recommended) (not sold through the AOA)
- 2) Certified Paraoptometric Review Course (EyeLearn) – reference checklist under CPO
- 3) Insurance Processing Flash Cards (Marketplace- PS21)

Burgos, Alexander N

From: Joseph Neville <director@narocvision.org>
Sent: Wednesday, June 19, 2024 11:29 AM
To: Peaslee, William W; rrc.comments
Cc: janice@ncoptometry.org; Loper Johnny
Subject: [External] Optometry Board Rule Proposal 21 NCAC 42D .0102
Attachments: NC_Comment to OAH re Delegation_6-19-24.pdf

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Dear Mr. Peaslee and Members of the Office of Administrative Hearings,

Attached, please find our comments related to the Optometry Board's proposed changes to Rule 21 NCAC 42D .0102, which the Rules Review Commission is scheduled to consider on June 26, 2024.

We greatly appreciate your consideration and action on our comments. Please contact me with any questions.

Best regards,
Joseph Neville

Joseph B. Neville
Executive Director
National Association of Retail Optical Companies
director@NAROCvision.org
513-607-5153

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*National Association of
Retail Optical Companies*
Professionalism Consumerism Education

June 19, 2024

William W. Peaslee
Commission Counsel
State of North Carolina
Office of Administrative Hearings

Sent via email: rrc.comments@oah.nc.gov
bill.peaslee@oah.nc.gov

RE: Rule Proposal 21 NCAC 42D .0102 – Assistants and Technicians – State Board of Optometry

Dear Mr. Peaslee and Members of the Office of Administrative Hearings,

On behalf of the National Association of Retail Optical Companies (NAROC), a national organization representing the retail optical industry, which includes its members' thousands of employed opticians and affiliated optometrists, I write today to recognize the clarifications and revisions regarding the Optometry Board's proposed regulation relating to assistants and technicians who are working in the physical presence of the supervising optometrist, and to also raise other concerns about the revised rule proposal.

As we have previously informed the Board and your office in our April 29, 2024 comment letter, NAROC is consumer-service oriented, dedicated to the consumer's visual care needs in accessible settings, providing high quality products and services. NAROC members collectively represent nearly 9000 co-located eye care offices and optical dispensaries throughout the United States, serving millions of patients and eyewear customers each year, with over 250 locations in the state of North Carolina.

Despite our appreciation for the Board's revisions to the initial proposal, we are still concerned about the Board's proposal to require third-party certification of technicians when the examining optometrist is not physically present. There is no evidence that optometrists are not properly training assistants to work without the optometrist being physically present. The proposed certification is unnecessary to protect the public and would impose extensive training and knowledge requirements that are time-consuming, expensive and unrelated to the tasks delegated to assistants. If the rule is allowed to go into effect, it will have a negative impact on competition and on the public's access to quality eye care.

We encourage the Rules Review Commission to object to the revised proposed rules for the following reasons:

- Lack of statutory authority – the rule sections that require that technicians (as defined) must be certified as proposed are neither necessary nor proper for the regulation of the practice of optometry.
- Unclear or ambiguous – it is unclear when an optometrist is deemed to be physically

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(513) 607-5153

present with the technician.

- Unnecessary – the revised rule requires a level of certification that is more advanced than necessary and is unrelated to the duties and responsibilities that are being delegated.
- Fails to comply with the APA –
 - The proposed rule as revised is not necessary to serve the public interest.
 - It imposes a significant burden upon those persons or entities who must comply with the rule.
 - The rule is not reasonably necessary to implement State law.
 - The rule is not based on sound, reasonably available scientific, technical, economic, and other relevant information. The Board failed to include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
 - The rule as proposed is not cost-effective and the desired benefits cannot be achieved in a timely manner.
 - The Board failed to consider the costs and benefits to all parties of a proposed rule to the greatest extent possible.
 - Despite the significant costs of the proposed rule, the Board failed to prepare a fiscal note.
 - The Board should have determined that the proposed rule would have a substantial economic impact as defined in G.S. 150B-21.4(b1) and should have considered at least two alternatives to the proposed rule.

Discussion

The rule as revised requires that persons who are performing delegated support functions with a patient during an eye examination when an optometrist is not “physically present” must be certified as a Certified Paraoptometric Technician (CPOT) through the American Optometric Association (AOA) or as a Certified Ophthalmic Technician (COT) by the International Joint Commission on Allied Health Personnel in Ophthalmology (IJCAHPO) certification process.¹ These programs are considered “advanced” level training. Either program requires the applicant to go through a multi-step, multiyear program that requires both lengthy experience and a demonstration of competency in dozens of tasks that are typically not delegated by a remote optometrist. We provide details below.

We request that the North Carolina Regulatory Review Commission require the Board to revise

¹ The proposed rule, scheduled to be effective July 1, 2024, has been revised to read:

(d) A certified optometric technician [defined in subparagraph c as a person certified under the AOA paraoptometric certification process] shall be in the physical presence of the patient during any patient examination where there is no optometrist physically present during such examination. The optometrist conducting the patient examination is responsible for ensuring the physical presence of a certified technician during that examination. The Board will also accept certified ophthalmic technicians certified through the International Joint Commission on Allied Health Personnel in Ophthalmology as satisfying this requirement so long as such persons register with the Board.

(e) The Board will allow until January 1, 2025, for licensees to comply with the requirement in subsection (d).

the proposed rule by eliminating subparagraph (d) and (e).

Should the Board in the future identify clear evidence that there are so many optometrists that are using assistants who are not properly trained to work when the optometrist is not physically present that individual enforcement disciplining the optometrist for failing to properly train technicians is not workable or sufficient, a new proposal for a rule at that time should give optometrists the option to either

- self-certify to the Board, with written records, to demonstrate that assistants who work when the optometrist is not physically present have been trained to perform the delegated tasks, or
- use certification by a third-party approved by the Board to be qualified to perform the delegated tasks. Third-party certification should not be limited to the AOA or IJCAHPO programs. The Board should establish guidelines for certification of training programs that are reasonably related to the tasks being delegated.

The Board should allow optometrists who are not physically present with an assistant the same discretion to train assistants as optometrists who are physically present with assistants. We support the voluntary third-party certification of assistants and technicians by optometrists, including the use of either AOA or IJCAHPO programs that meet the needs of the supervising optometrist, but see no need to mandate it for any doctor. The Board has not presented any evidence that assistants working with patients when an optometrist is not also physically present are not properly trained, or that the public's health and safety are at risk because optometrists do not properly train assistants who are with patients when the optometrist is not physically present.

As we noted in our previous comment, optometrists have been training assistants and technicians for decades with no apparent risk of harm or actual harm to the public. If individual cases of harm are identified, the Board is empowered to prosecute them as violations of standard rules of professional conduct. To our knowledge there have been no such prosecutions or enforcement efforts that have been made public; we continue to conclude that no need exists for these new requirements.

We also note while the proposed rule may be intended to apply only to the use of assistants at an originating site by remote optometrists, as written, it will impact all forms of practice, including in-office. Optometrists working in an office with assistants are often not "physically present" (which term is not defined in the proposed rule) with the patient and assistant when the support staff person is interacting with the patient. This is true for both clinical and non-clinical tasks. In fact, an optometrist who is with another patient in a different exam room or on a break is less present than a remote optometrist who is conducting an exam with a real-time synchronous audiovisual connection with the assistant and patient while not physically in the exam room. The proposed rule would apply to both these circumstances, requiring a CPOT or COT to be with the patient when the doctor is not.

This proposal in paragraph (d) ignores that optometric practices vary on what tasks and functions the doctor's support personnel perform during a telehealth encounter. Some are minimal non-clinical tasks, others are clearly not within the scope of the practice of optometry, and many do not rise to the level of defined technician services. The choice of what functions support personnel provide and, therefore, the necessary level of training needed for such

personnel, should be left to the optometrist. The Board's proposed rule requires a level of skill and expertise that is unrelated to the tasks that are delegated to assistants, particularly those performed at an originating site under the supervision of a remote optometrist connected to the patient and the assistant in a real-time, synchronous audiovisual interaction.

The AOA has three levels of paraoptometric certification related to the tasks being delegated and the knowledge and competency of the support staff.² The proposal to require certification at the technician (advanced) level goes far beyond what is delegated to staff in a telemedicine encounter. There are dozens of elements in each of the AOA paraoptometric certifications that have nothing to do with the tasks and functions that are delegated to the support staff working with a remote optometrist. When a remote optometrist is working with a patient and assistant at an originating site, the delegated tasks are typically limited to a narrow set of tasks. The Board should not require certification of knowledge and skills beyond those that are delegated to an assistant.

The typical ocular telemedicine encounter for a patient seeking an eye health exam and refraction is straight-forward. First, there may be conditions that will lead to the patient not being a good candidate for a remote eye exam. If the patient identifies such conditions in an initial medical questionnaire, the process stops, and the patient is informed that they should have an in-person eye exam. Once a patient has been initially qualified, the on-site assistant will help the patient understand how to complete the medical, ocular and social history questionnaire, the consent forms related to telemedicine, privacy notices and general medical release information. The digital forms are standardized by the optometrist or the medical director of the group in which the doctor practices. The support personnel have no discretion to vary from the required documentation process and procedures, and supervision of the task is simple, based on record reviews by the optometrist.

Once the digital paperwork has been completed by the patient, the on-site assistant then joins the patient in the exam or pre-test room and begins to collect the same test data as would an assistant in any optometric office. This may include usual pre-test functions such as autorefraction, lensometry (if the patient wears corrective eyeglasses), non-contact tonometry, color vision testing, stereopsis assessment, visual field testing and fundus photography.

We agree that the support staff should be properly trained on these functions. We agree that these functions are included in each of the three levels of AOA paraoptometric certification, but many other tasks and functions that are not related to the typical role of assistants working with a remote optometrist in teleoptometry are also included unnecessarily. Even the simplest CPO certification requires competencies in tasks that will typically not be performed by an ocular telemedicine assistant at the originating site with the patient. CPOA and CPOT require even more than the CPO certification.

The CPO is an entry level certification designed for work in a dispensing optometrist practice

² The three levels are Certified Paraoptometric (CPO), Certified Paraoptometric Assistant (CPOA) and Certified Optometric Technician (CPOT). In order, each level requires additional study, expertise and testing; the proposed rule requirement for CPOT certification is the most extensive. There is a fourth certification for support staff that codes the billing for services, Certified Paraoptometric Coder (CPOT) that is not relevant to this discussion. See <https://www.aoa.org/education/paraoptometric-certification-exams?sso=y>

where eyeglasses and contact lenses are sold. It requires that the assistant be knowledgeable about tests and procedures that they likely won't use in ocular telemedicine, including: Dry eye testing and treatment; Ocular coherence tomography; Macular pigment optical density; EOG/ERG (Diopsys); Specular microscopy; Aberrometry; Low vision; Record and transmit prescribed medications (e.g. E-prescribe, dispense prescribed samples, transmit authorized refill requests); Use and maintain inventory of diagnostic/therapeutic medications used in office; Understand purpose of each medication; Diagnostics such as mydriatics, etc.; Medications for emergency use such as closed angle; Instill drops and properly record use in patient record; Provide patient education for relevant concern, diagnosis, or surgery; Assist with surgical procedures; Ophthalmic optics and dispensing; Contact lenses; Office management.

These elements of the CPO examination make up well over 50% of the 100 questions. Additionally, a person may not even take the CPO exam until they have worked full-time in eye care for at least 6 months. Optometrists who do not delegate tasks requiring these competencies should not be required to have assistants certified under this program.

The intermediate level is the CPOA. To take the CPOA exam, the assistant must be either a graduate of or close to graduating in an approved program, be CPO certified and have worked as such for at least 6 months, or seek advance approval to bypass the CPO, based on at least three years of experience.

The advanced level, the CPOT certification, requires significantly more – both a clinical and a written exam after either another 6 months of work as a CPOA or graduation from or in the final semester of an approved program.

In summary of the above, it is important to note that one does not just become a CPOT, one must achieve CPO and then CPOA status before being eligible to seek CPOT certification – it is a cumulative process that typically takes years and multiple tests.

As noted above, much of the CPO certification is unrelated to the ocular telemedicine assistant role, and the added requirements for the CPOA and CPOT are even more unrelated, unnecessary and unwarranted. For example, there is no need for every assistant working when an optometrist is not physically present to understand the use of lasers for posterior capsulotomy, peripheral iridotomy or selective laser trabeculoplasty.

Given the inappropriateness of the AOA CPOT and IJCAHPO COT certification programs for use with assistants working outside the physical presence of the optometrist, the Board should continue to allow optometrists who are not physically present to use assistants who are not certified. Each optometrist is currently responsible to train and supervise assistants for the specific tasks that are delegated. Optometrists can and should be trusted to do this with remote as well as with in-office assistants. Those who fail to properly train assistants can be disciplined under the existing laws and regulations.

Not every optometrist will delegate the same tasks; the Board should not require optometrists who are not physically present to certify assistants at the highest level of AOA or IJCAHPO certification. If the proposed rule goes into effect, it will significantly reduce the ability of optometrists to use assistants and will certainly reduce access to care for patients. The proposed rule not only will harm patients who need eye care services, it is anticompetitive,

protecting in-office practitioners from competition with optometrists who are ocular telemedicine providers.

Should the Board someday demonstrate that there is significant evidence (not mere speculation) that there is a meaningful risk of harm to the public from delegation to personnel who are not certified, the level of the certification and the proposed timeline for implementing the requirement are extremely harsh, unnecessary and unworkable. There are, no doubt, many optometrist-trained individuals who have been serving as either assistants or technicians for optometrists. Such individuals should be grandfathered from the rule as of its effective date, based on attestation by a supervising optometrist that the person has served in that role effectively for at least 6 months in the past three years.

The rule is proposed to go into effect on July 1, 2024. There is no opportunity for completion of any certification program for assistants not already in such a program, and only one testing date for the CPOT with an application deadline after the proposed effective date and before the January 1, 2025 deadline for certification. As a result, an unknown number of assistants will lose their jobs or be relegated to lower-level positions within their firms because of this proposal. This will also disrupt the livelihood of the optometrists currently using these assistants, even though the optometrist has been working with properly trained support staff, will require much more presence of optometrists with patients even when delegating the simplest of tasks in-office, and likely end the use of telemedicine in many practices.

This will have a significant economic effect on optometric practices and those who work in these practices, particularly those practices using ocular telemedicine. The examinations required to obtain the AOA CPOT cost \$1220 per applicant. Training materials add several hundred dollars. The applicant needs to have been employed for at least a year or have completed an approved course. Assuming 500 to 1000 technicians will need to be certified, the costs for North Carolina technicians would likely be \$1 to \$2 million just for current employees, and an ongoing cost of \$1500 to \$2000 for each future technician. Furthermore, optometrists will lose revenue associated with the telemedicine aspect of their practice.

The added costs to such practices by requiring unnecessary training, testing, certification and recertification will of course lead to higher costs to the public that takes advantage of such services. Additionally, because of the cost and time that it will take for assistants and technicians to be certified, patients will see a substantial reduction in the availability of eye care. In contradiction to the Board's role to protect the health and welfare of the citizens of the state, the overall health and welfare of the residents of the state will decline due to the reduction in available care.

In the alternative, the board, if it develops evidence to justify adopting a rule requiring third-party certification of assistants who work with optometrists who are not physically present, should lower the required certification level. One alternative is to allow self-certification. Another is to develop a specific set of criteria for assistants and technicians who are not physically present with the supervising optometrist. A third alternative, but one that is likely still overly restrictive, is to require CPO certification or its IJCAHPO equivalent. Any new rule requiring certification should make its effective date at least one and preferably two years into the future to allow existing personnel to prepare for and take the required test(s).

We also recommend that if the board determines that a rule requiring certification is needed in the future, the board make clear that many of the functions that may be delegated do not require certification. At a minimum, these would include all the functions identified as "Other Duties" in 21 NCAC 42D.0102(a)(3) and 21 NCAC 42D.0102(b)(2). As none of these duties fall under the definition of the practice of optometry in the underlying statute, there should be no doubt in the minds of those regulated that such acts may be performed by non-licensed or non-certified personnel, even when an optometrist is not "physically present".

Finally, training and certification of those wishing to be assistants and technicians, whether in a voluntary or mandatory certification scheme, should not be limited to the IJCAHPO and AOA programs. There are other firms and organizations that have their own established, formal training and certification programs for assistants in ocular telemedicine. Upon presentation of the curricula for such programs, and an unbiased process of review, those programs should be able to be approved by the Board.

Thank you for the opportunity to comment.

Very truly yours,

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