

Florida Jurisprudence

The Laws and Rules of Florida Optometry

Florida Optometric Association

2024

David Rouse, OD, FAAO, Dipl. ABO

Vice Chair, Florida Board of Optometry

Cope –Required
Disclosures



FINANCIAL
EMPLOYEE
FLORIDA
DEPARTMENT
OF HEALTH



NO CONFLICTS OF
INTEREST

David Rouse, OD,FAAO, Dipl. ABO

- Private practice for 30 years
- SECO Treasurer 2023
- BCOA Past President
- FOA Past President
- Vice Chair Board of Optometry
- AOA-Florida FAR
- NBEO Review Council
- HOA Past President
- Chairman, Planning & Zoning Board



Objectives

Comprehend the role of the Board of Optometry

Comprehend the Florida optometry rules and laws

Comprehend the requirements of initial licensure and new requirements for re-licensure

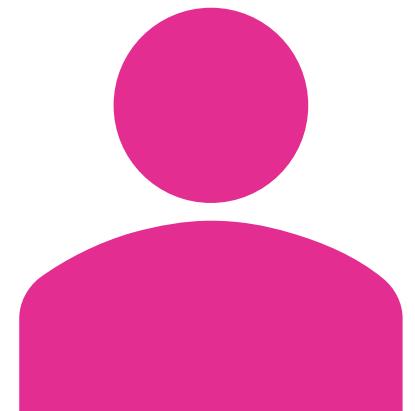
Comprehend the process on how rules can be amended

Recognize professional behaviors and actions resulting in disciplinary consequences

This course meets the two- hour Florida jurisprudence continuing education requirement.

How a person becomes a Florida board member

- Nomination by professional association
- Appointment questionnaire
- Appointed by governor
- Confirmed by Senate



Board of Optometry

463.003

The Florida Board of Optometry is comprised of 7 members

- 5 actively practicing licensed practitioners
- Serve a 4-year term but can be reappointed
- 2 Consumer members
 - Citizens of Florida
 - Non –optometrists
 - No connections with any practice of optometry or vision related business or profession
 - One must be over 60 years of age

Members of the Board



Stephen Kepley
OD
Chair
Vero Beach, FL
Term Ends:
10/31/2023
[Read More →](#)



David Rouse
OD
Vice-Chair
Cooper City, FL
Term Ends:
10/31/2025
[Read More →](#)



Katie Gilbert Spear
OD, JD, MPH
Pensacola, FL
Term Ends:
10/31/2026
[Read More →](#)



Denise Burns-LeGros
O.D., FAAO
Indialantic, FL
Term Ends:
10/31/2023
[Read More →](#)



Robert Easton, Jr.
OD, FAAO
Oakland Park
Term Ends:
10/31/2024
[Read More →](#)



John E. Griffin
JD
Consumer
Tallahassee FL
Term Ends:
10/31/2026
[Read More →](#)



Kevin Rollin
Consumer
Vero Beach
[Read More →](#)

Board Meetings

- Noticed
- Public book
- Agendas
- Meetings are recorded
- Via GoTo virtual meeting
- Will not count toward CE

Board of Optometry

- A regulatory body responsible for protecting the health and safety of the **public**.
- Enforces the laws regarding the practice of optometry.
- Cannot **independently** change Florida Statutes.

Florida Board of Optometry 463.001 – Purpose

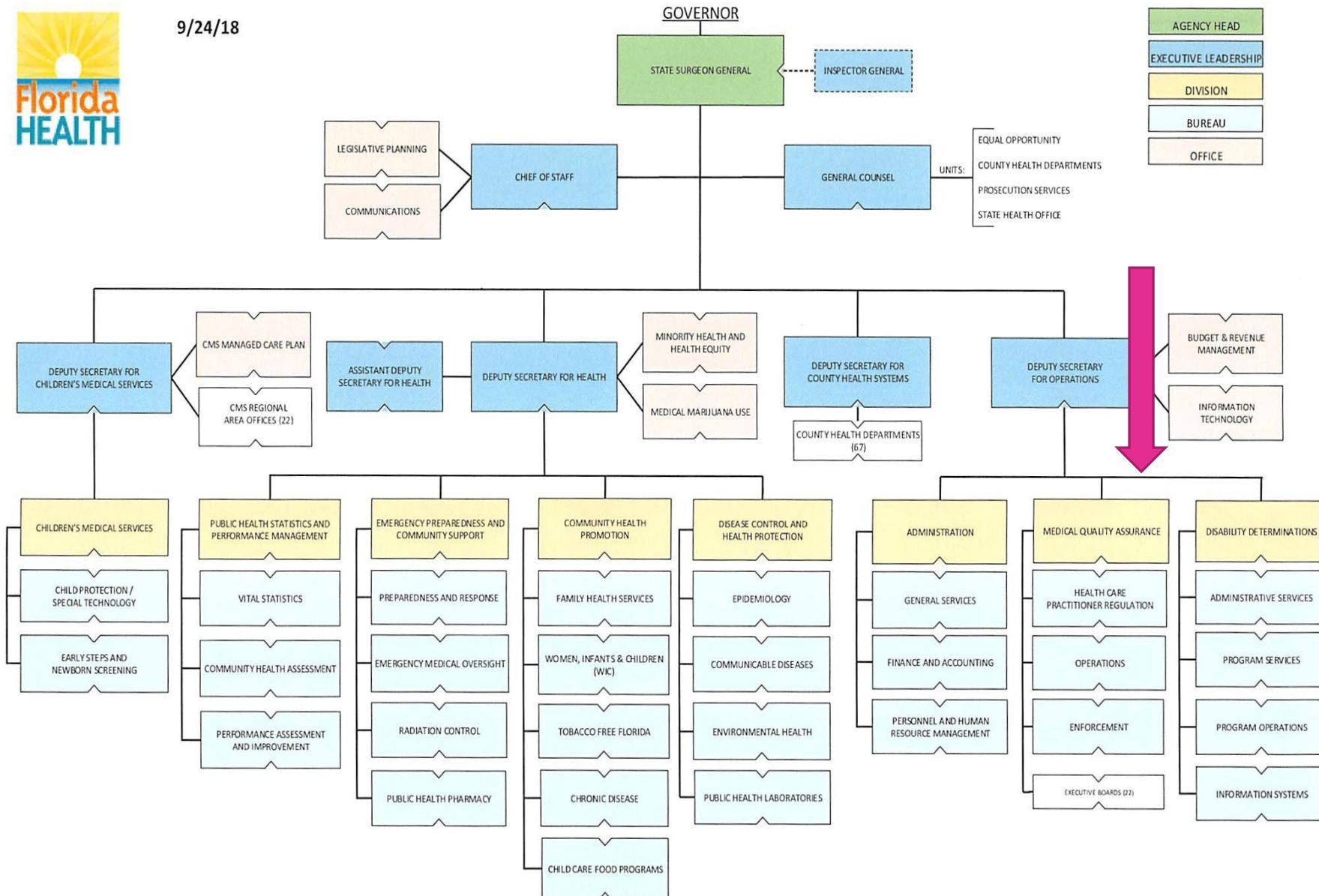
- * “To ensure that every person engaged in the practice of optometry in this state meets **minimum** requirements for safe practice.”
- * “It is the **legislative** intent that such persons who fall below minimum standards or who otherwise present a danger to the public shall be prohibited from practicing in this state.”

Board of Optometry

- Is **not** a membership organization for professionals
- Does **not** make or change regulations independently
- Serves as a “quasi judicial” entity



9/24/18



Who's Who in the Department of Health

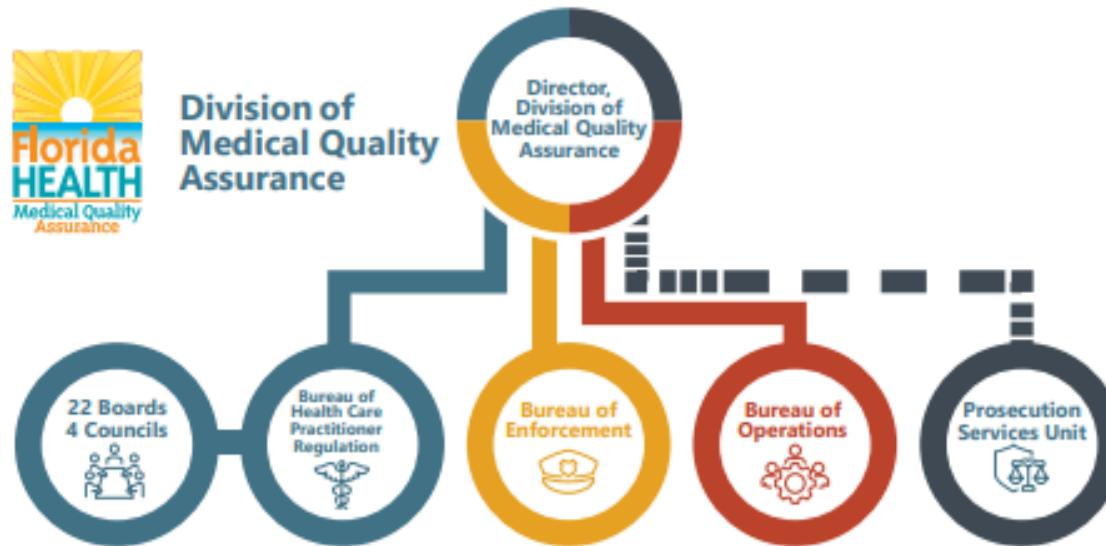
Joseph A. Ladapo, MD State Surgeon General



Jennifer L. Wenhold MQA Division Director



Functional Organizational Chart



The Prosecution Services Unit is a functional unit of the Department's Office of General Counsel

Purpose of MQA

It is the legislature's intent that health care practitioners should be regulated for the preservation of the health, safety, and welfare of the public.

Three Divisions (Bureaus) of MQA

Health Care Practitioner Regulation

Operations

Enforcement

Bureau of Health Care Practitioner Regulation

- Implementing rules into policy and procedures
- Works with 22 regulatory boards and 4 councils
- Advises boards on budget matters
- Reviews applications for licensure
- Organizes disciplinary hearings

Bureau of Operations

Provides operational and infrastructure support to MQA

- License maintenance and renewals
- Database management
- Consumer contact point

Phone

E-mail

Artificial Intelligence-powered
chatbot



Bureau of Enforcement

Compliance and investigative arm of MQA

Complaints received and investigated

Authority of the Board 463.005



Rulemaking



Protection

Protect the health, safety and welfare of
the public



Enforcement



Education



Disseminate information

Declaratory Statements

It is a board statement of the applicability of a specific statutory provision or rule as it applies to a person in his or her particular set of circumstances.

A means of resolving controversy.

Declaratory Statements

Is procedure, mode, technique or treatment within our scope or standards of practice?

Last one September 2014 –Use of Prokera biologic corneal bandage

Must be from a licensee requesting an opinion of the board as to the applicability of a specific provision or rule as it applies to that licensee's particular set of circumstances.

Prospective not retrospective

Opinion of the board may determine a new standard to other licensees

64B13-3.010 Standards of Practice

Any optometrist shall not use or perform any technique, function or mode of treatment which the optometrist is not professionally competent to perform.

Professional competence is acquired by the following:

- Formal education
- Supervised training and experience
- Continuing education approved by the board
- Combination of the above

Caveat Emptor (noun)

Definition:

1. the principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made.

Variances and Waivers:

Sometimes the strict application of a rule can lead to unreasonable and unintended results.

Ex Parte Communications:

A board member is prohibited from having unilateral communications concerning the merits of an issue before the board..

State Statutes

- * 456 Health Professions and Occupations: General Provisions"—LAW
- * 463 Optometry Practice Act--LAW
- * 64B13 "Board of Optometry"--RULE

State Statutes

Optometry Practice Act

Optometrist

A primary health care practitioner licensed to engage in the practice of optometry.

Also referenced as:

Licensed practitioner

Certified optometrist

Optometrist

Not as a physician

Optometry Practice Act Chapter 463.000

- 463.001 Purpose; intent.
- 463.002 Definitions.
- 463.003 Board of Optometry.
- 463.004 Board headquarters.
- 463.005 Authority of the board.
- 463.0055 Administration and prescription of ocular pharmaceutical agents.
- 463.0057 Optometric faculty certificate.
- 463.006 Licensure and certification by examination.
- 463.007 Renewal of license; continuing education.
- 463.008 Inactive status.
- 463.009 Supportive personnel.
- 463.011 Exhibition of license.
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- 463.018 Reciprocity.

Laws are not amendable by the board.

Rules are amendable and further define the law!

Rules further define the law

- a) Standards of practice, including, but not limited to, those provided for in s. 463.0135.
- (b) Minimum equipment which a licensed practitioner shall at all times possess to engage in the practice of optometry.
- (c) Minimum procedures which shall constitute a visual examination.
- (d) Procedures for the safekeeping and transfer of prescription files or case records upon the discontinuance of practice.
- (e) Supervision of supportive personnel.
- (f) Courses and procedures for continuing education.
- (g) Administration and prescription of ocular pharmaceutical agents.

OPTOMETRY463.0001

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What is the standard of practice and who decided what it is?

- Not one single standard
- Standards are variable and fluid
- Condition dependent (glaucoma, ARMD, PVD)
- Is it national or local?
- Does the majority rule? Respectable minority?
- Standards of practice are collectively determined by practice guidelines, regulatory boards, medical experts and current research

Standards of Practice

463.0135(1)

A licensed practitioner **shall provide** that degree of care which **conforms** to that level of care provided by medical practitioners in the same or similar communities.



Standards of Practice

463.0135

A licensed practitioner **diagnosing** angle closure, infantile, or congenital forms of glaucoma **shall refer** the patient to a physician skilled in diseases of the eye and licensed under chapter 458 or chapter 459.

Standards of Practice

463.0135(3)

When an infectious corneal disease condition **has not responded to standard methods of treatment** within the scope of optometric practice, the certified optometrist shall consult with a physician skilled in diseases of the eye and licensed under chapter 458 or chapter 459.

Standards of Practice

463.0135(4)

A licensed practitioner shall promptly advise a patient to seek evaluation by a physician skilled in diseases of the eye and licensed under chapter 458 or chapter 459 for diagnosis and possible treatment whenever the licensed practitioner is informed by the patient of the sudden onset of spots or “floaters” **with loss of all or part of the visual field.**

Visual Fields????

Standards of Practice

463.0135

A licensed practitioner who **believes** a patient may have glaucoma shall promptly advise the patient of the **serious nature of glaucoma**. The licensed practitioner shall place in the patient's permanent record that the practitioner provided such **advice** to the patient.

Standards of Practice

463.0135(10)

A certified optometrist is **authorized** to perform any eye examination, including a dilated examination, required or authorized by chapter 548 or by rules adopted to implement that chapter.

Standards of Practice

463.0135

Co-management of postoperative care shall be conducted pursuant to the requirements of this section and a patient-specific transfer of care letter that governs the relationship between the physician who performed the surgery and the licensed practitioner.

Co-Management 463.0135(11) Standards of Practice

CODIFIED IN 2012

PATIENT SPECIFIC TRANSFER OF CARE LETTER

PATIENT CHOOSES TO BE CO-MANAGED

PATIENT CONSENTS TO FEE ARRANGEMENT

MUST BE IN WRITING

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Requirements of Re-licensure

30 hours of CE courses every 2 years

6 hours of TQ courses

2 hours may be practice management

2 hours may be on-line approved opioid course

2 hours mandatory Florida jurisprudence

2 hours mandatory medical errors

1 hour of AIDS is optional for re-licensees

Human trafficking no longer required or approved

Exemptions

Armed Forces, Volunteers



Inactive Status 64B13-11.001

This is a request of the licensee.

Renew license at any time when the following is met:

- Pay the reactivation fee (\$300.00)
- Satisfy all CE requirements for each biennium
- Disclose any disciplinary action

Do not see patients if your license is inactive!

Delinquent Status 64B13-11.004

Definition:

Failure to renew the license or elect inactive status before the expiration date.

- Either apply for inactive status or active status within the same biennium when it went delinquent.
- Failure to change the delinquent status before the biennium expiration will cause the license to be null and void.

E-Licensing

Beginning mid-2023 electronic licenses will replace the current practice of mailing paper-based licenses.

- Licenses will be able to be retrieved through the MQA Online Services Portal.
- Licenses will be available 2 days after application approval
- Licensees must print out and display their new license according to the practice act
- Free of charge
- New licenses will have a QR code attached

Reciprocity or Licensure by Endorsement

HB 1273

Allows boards to deny application for licensure by reciprocity or endorsement if requirement for licensure in other jurisdictions are not substantially equivalent or otherwise insufficient.

Final orders are under review by the state

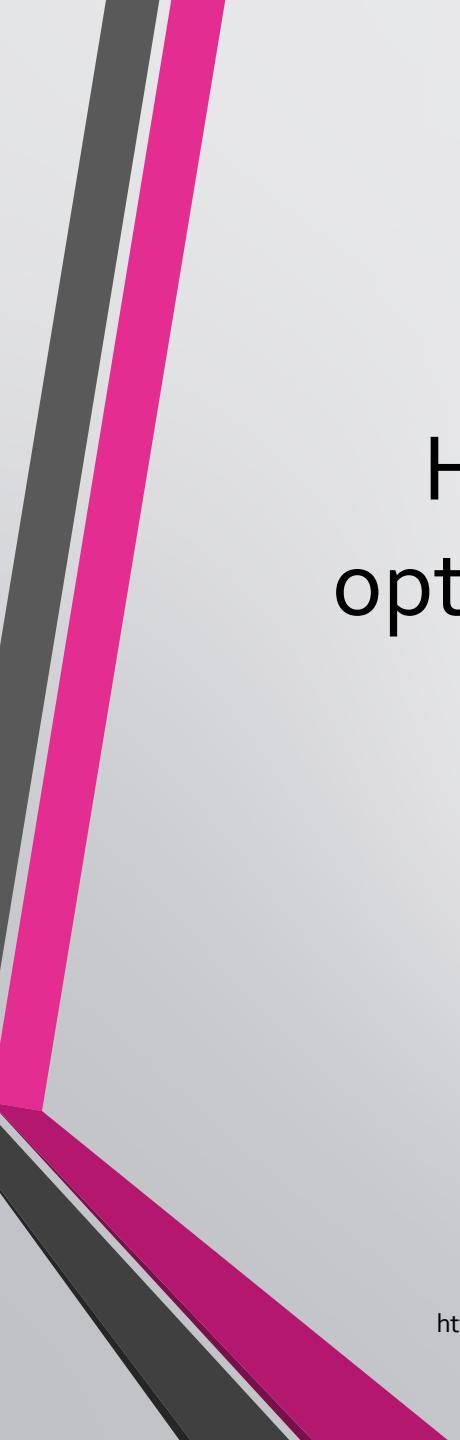
Optometric Faculty Certificates

463.057

Authorizes certificate holders to practice only in **conjunction** with their faculty position of the Florida based optometry school and its affiliated clinics.

Expires after relationship with the school ends OR after 2 years whichever comes first.

Must pass the oral drug course to prescribe oral medications



How many current categories of optometric licensure exist in Florida?

<https://www.floridaoptometry.gov> and <https://www.flhealthsource.gov>

1. Licensed practitioner
2. Faculty Certificate
3. Certified Optometric Physician
4. Certified Optometric Physician with oral prescriptive authority
5. Certified Optometric Physician with oral prescriptive authority and controlled substances
6. Dispensing Practitioner
7. Limited License

What is a dispensing practitioner?

Dispensing – is defined as selling medicinal drugs to patients in the office.

A practitioner who writes prescriptions or provides complimentary professional samples is not a “dispensing practitioner,” and therefore does not need to register with the department.

If in doubt, register!

Limited License (pending rule addition)

Retired persons in good standing

Provides services only to the indigent or critical need populations

Cannot receive monetary compensation

License is renewed every 2 years

HB 21

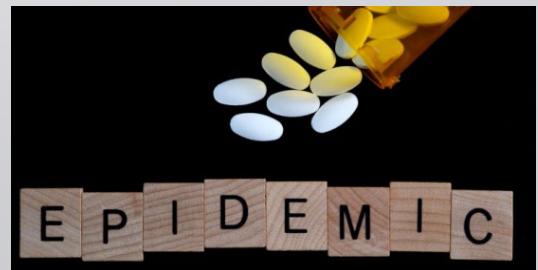
During the 2018 Florida Legislative session, HB 21 passed and mandated that all health care providers take a 2 hour continuing education course focused on the current opioid epidemic for that biennium only.

Any DEA registered optometrist must complete the on-line opioid CE course and certification test to renew their license every biennium .

You may access the course registration and materials by going to www.flhealthsource.gov/FloridaTakeControl and clicking on the Optometry Tab found beneath the picture.

An optometrist may complete the on-line opioid CE course for 2 hours of CE.

<https://www.floridaoptometry.gov> and <https://www.flhealthsource.gov>



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Summary of Oral Drug Bill

- Created a **5th** category of licensure
- Complete on-line course
- Created an oral drug formulary
- DEA numbers and requirements
- Removed TOPA Committee
- CLIA lab waiver
- Boxing form



Oral Drug Bill Summary

Need to complete on-line course

Satisfies a 20 hour CE requirement only once



Oral Ocular Medications Formulary

463.0055
Administration
and prescription
of ocular
pharmaceutical
agents

(7) Antibiotics

(2) Analgesics

(3) Antivirals

(2) Anti-glaucoma agents

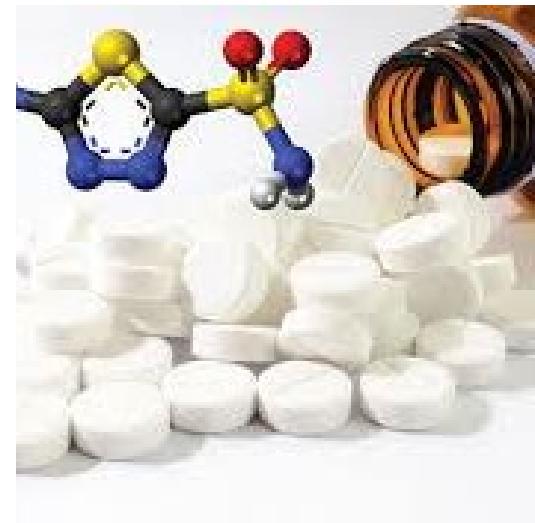
Oral Ocular Medications Formulary

463.055(3)(d) Administration and prescription of ocular pharmaceutical agents

- May not be administered or prescribed for more than 72 hours:

Acetazolamide

Methazolamide

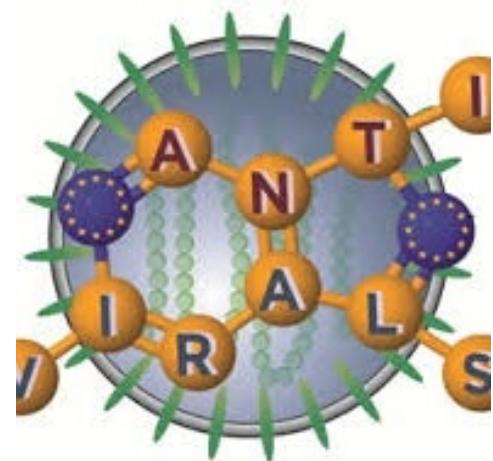


Oral Ocular Medications Formulary

463.055(3)(c) Administration and prescription of ocular pharmaceutical agents

Antivirals or their generic or therapeutic equivalents:

- **Acyclovir**
- **Famciclovir**
- **Valacyclovir**



463.055(3)(a) ADMINISTRATION AND PRESCRIPTION OF OCULAR PHARMACEUTICAL AGENTS

Analgesics or their generic or therapeutic equivalents

May not be administered or prescribed for more than 72 hours without consultation with a physician licensed under chapter 458 or chapter 459 who is skilled in diseases of the eye:

Tramadol hydrochloride (Schedule IV)

Acetaminophen 300 mg with No. 3 codeine 30 mg

- Tylenol #3 (Schedule III)



Schedule III

The drug or other substance has less potential for abuse than the drugs or other substances in Schedules I and II.

The drug or other substance has a currently accepted medical use in treatment in the United States.

Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

Anabolic steroids, codeine products with aspirin or acetaminophen, and some barbiturates are examples of Schedule III substances.

Oral Ocular Medications Formulary

463.055(3)(b) Administration and prescription of ocular pharmaceutical agents

(7) Antibiotics or their generic or therapeutic equivalents:

- Amoxicillin with or without clavulanic acid
- Azithromycin
- Erythromycin.
- Dicloxacillin
- Doxycycline/Tetracycline
- Keflex (Brand Name??)
- Minocycline



463.055(4) & 463.055(2)(a)(b) ADMINISTRATION AND PRESCRIPTION OF OCULAR PHARMACEUTICAL AGENTS

- Who can prescribe **oral ocular** medications in Florida?



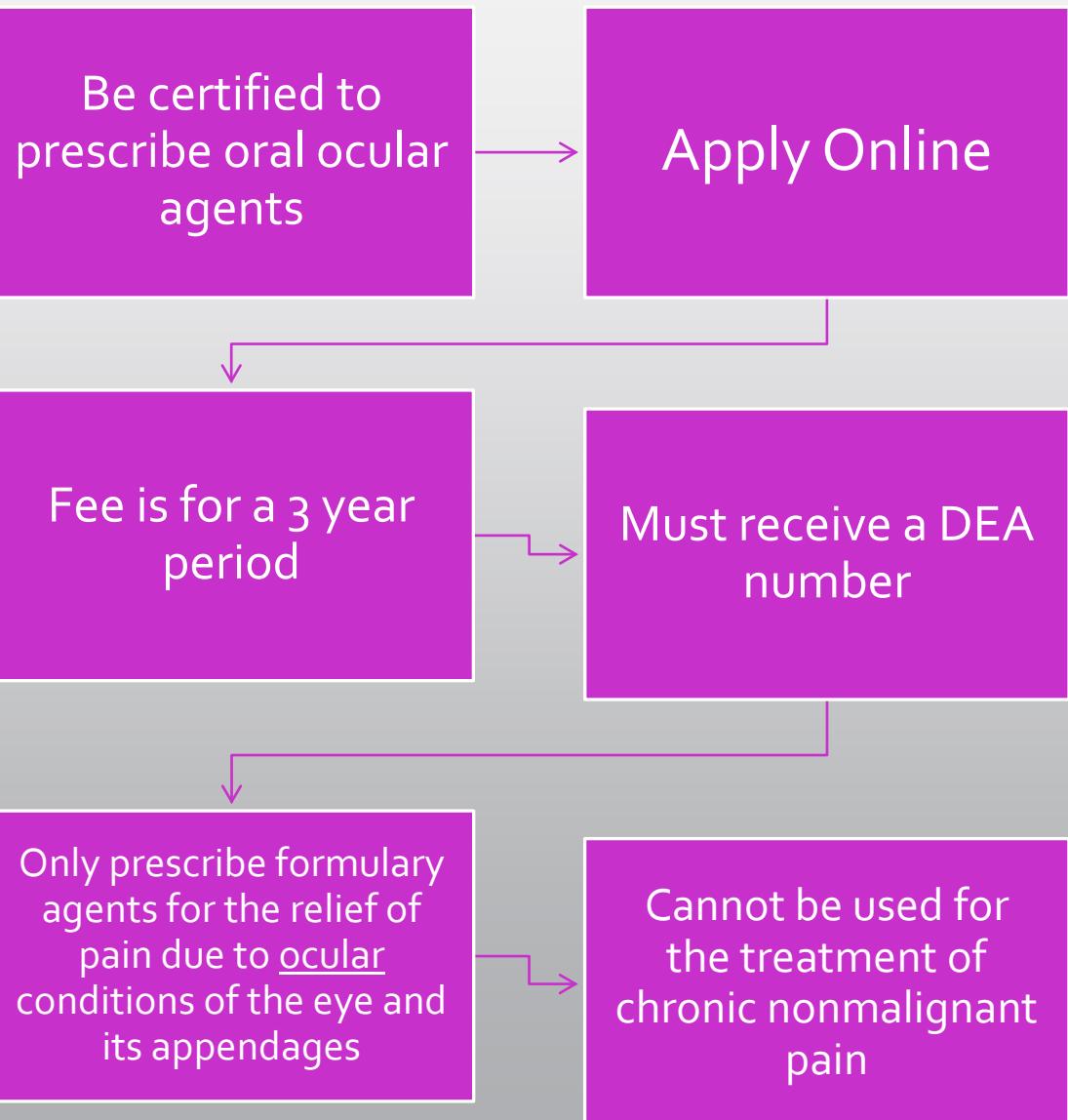
Who can prescribe oral ocular medications in Florida?

Before a certified optometrist may administer or prescribe oral ocular pharmaceutical agents, the certified optometrist must provide **proof** to the department of successful **completion** of a course and subsequent examination, approved by the board, on general and ocular pharmaceutical agents and the side effects of those agents.

The course shall consist of 20 contact hours, all of which may be **web-based**.



Who can prescribe oral ocular analgesics in Florida?



Can the formulary be changed?

- The formulary can be expanded? Yes...but,
- The oral formulary is determined by the Florida legislature.



Can the formulary be changed?

- The formulary can be **reduced!**
- Yes, If the United States Food and Drug Administration deems a drug to be **unsafe for administration or prescription**, it shall be deleted from the formulary of oral ocular pharmaceutical agents.

Topical Ocular Pharmaceutical

463.055(4) Administration and prescription of ocular pharmaceutical agents

CHAPTER 64B13-18 TOPICAL OCULAR PHARMACEUTICAL AGENTS

- Certified optometrists may **administer and prescribe ocular pharmaceutical agents** as provided in this section for the diagnosis and treatment of ocular conditions of the human eye and its appendages **without the use of surgery or other invasive techniques**.
- The board shall establish a formulary of **topical** ocular pharmaceutical agents that may be prescribed and administered by a certified optometrist.
- Changes in the topical formulary rule becomes prescriptive **60 days** from the adoption effective date .
- Any person who requests an addition, deletion, or modification of an authorized topical ocular pharmaceutical agent shall have **the burden of proof to show cause why** such addition, deletion, or modification should be made.

Recent additions to the topical formulary

64B13-18.002

New class Anti-Glaucoma agents

- Rho Kinase Inhibitors
 - netarsudil 0.02% Rhopressa
 - cyclosporine 0.09% Cequa
 - loteprednol etabonate 1.0% Inveltys
 - Oxervate 0.002%
 - Mebo **12/12/2023**
 - Xdemvy **12/12/2023**
- The topical ocular pharmaceutical agents in the formulary include the legend drugs alone or in combination in concentrations up to those specified, or any lesser concentration.
- Newer medication in the same or lower concentrations do not have to go through the 60 day period

Procedures Regarding Additions of Topical Ocular Pharmaceutical Agents

64B13-18.003

- Request for changes to the formulary must be filed with the Board
- Must be in writing
- Brand name, chemical name and concentration
- The FDA approved information sheet
- The date the FDA approved for sale
- Explanation of the usefulness

Any new
approved
medication
cannot be in
effect until
60 days after
adopted by
the state.

- 🚫 Rule approved by board
- ➡ Sent to OFARR
- ⚠ Unnecessarily restrict entry into a profession or occupation;
- ⚠ Adversely affects job creation or job retention;
- ⚠ Place unreasonable restrictions on individuals attempting to find employment;
- ⚠ Impose unjustified costs on business;
- ⌚ Rule Development published
- 📣 Notice Published
- 📝 Filed with the Secretary of State for adoption

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HB 7059 authorized the DOH to accept proof of passing scores within 3 years before or after the submission of application.

What exactly did HB 7059 do?

Established a 3 year lookback for all board scores

Allows 3 years to complete testing of Part II, III and laws

Eliminated the Part I requirement

Requirements for Initial Licensure

- Graduate from an accredited school or college
- Passage of NBEO Part I, II
- Passage of NBEO III Clinical Skills
- IV Florida Laws and Rules
 - Requires an 84% or better to pass

Old NBEO Part III

Classically known as Clinical Skills Examination

Given August –May each year in Charlotte, NC

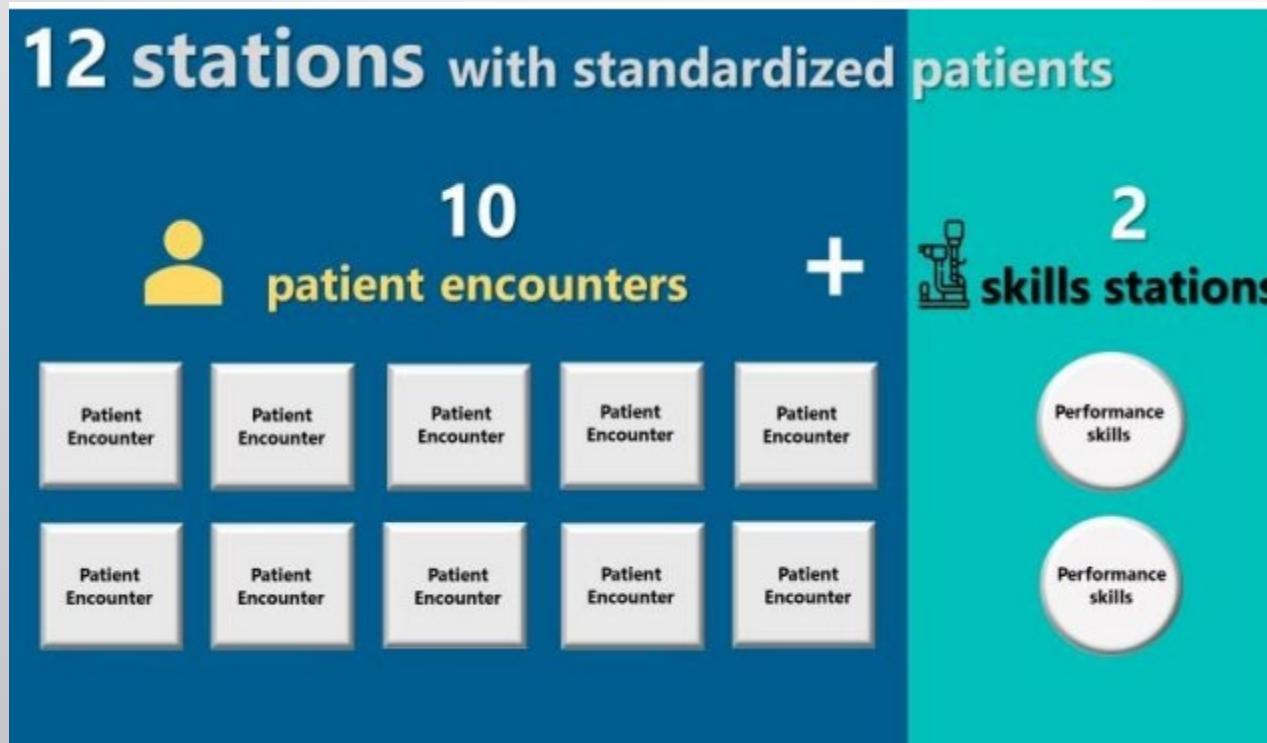
19 Skill items focusing on the physical performance of skills

REFRACTIVE STATUS/ SENSORY PROCESSES / OCULOMOTOR PROCESSES		40.08% Points: 400.84				
Ametropia						
Ophthalmic Optics / Spectacles						
Contact Lenses						
Low Vision						
Accommodative / Vergence / Oculomotor Anomalies						
Amblyopia / Strabismus						
Perceptual Function / Color Vision						
Visual and Human Development						
NORMAL HEALTH / DISEASE / TRAUMA		59.92% Points: 599.16				
Lids / Lashes / Lacrimal System / Ocular Adnexa / Orbit						
Conjunctiva / Cornea / Refractive Surgery						
Lens / Cataract / IOL / Pre- and Post-Operative Care						
Episclera / Sclera / Anterior Uvea						
Retina / Choroid / Vitreous						
Optic Nerve / Neuro-Ophthalmic Pathways						
Glaucoma						
Emergencies / Trauma						
Systemic Health						

New NBEO Part III

Newer Model is called PEPS (Patient Encounters and Performance Skills)

Starting in the Fall of 2024



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Two words with huge differences

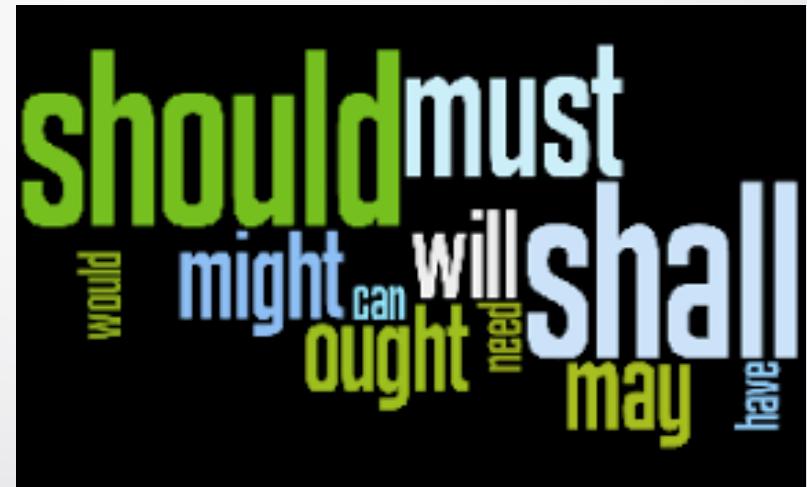
shall verb

a: will have to : MUST

may

modal verb: **may**

1. expressing possibility.





Example

A licensed practitioner may earn two (2) hours in Florida jurisprudence by attending a meeting of the Board at which another licensee is disciplined for no less than four (4) continuous hours or until the completion of the meeting.

As part of the thirty (30) clock hours, licensed practitioners shall be required to obtain two (2) hours in the area of Florida jurisprudence.

Certain Acts Prohibited

463.014

No licensed practitioner shall engage in the practice of optometry with any corporation, organization, group, or lay individual.

Corporate Practice Act (possible new legislation)

Certain Acts Prohibited

463.014

No rule of the board **shall** forbid the practice of optometry in or on the premises of a commercial or mercantile establishment.



Rule 64B13 Overview

- a) 64B13-3.002 Responsibility to Patient
- b) 64B13-3.003 Patient Records
- (c) 64B13-3.004 Minimum equipment.
- (d) 64B13-3.005 Entrance Signs
- (e) 64B13-3.007 Minimum Procedures for Comprehensive examinations
- (f) 64B13-3.008 Corporate Lay, and Unlicensed Practice of Optometry
- g) 64B13-3.009 False advertising
- H) 64B13-3.010 Standards of Practice
- I) 64B13-3.012 Prescriptions
- J) 64B13-3.015 Performance of Delegated Tasks by non-licensed personnel
- K) 64B13-3.019 Address of Record
- L) 64B13-3.100 Standards for prescribing controlled substances

64B13-3.004 Minimum Equipment Requirements.

The following shall constitute the minimum equipment which a licensed practitioner must **possess** in each office in which he or she engages in the practice of optometry:

- (1) Ophthalmoscope;
- (2) Tonometer;
- (3) Retinoscope;
- (4) Ophthalmometer, keratometer or corneal topographer;
- (5) Biomicroscope;
- (6) Phoropter or trial frame, trial lenses and prisms;
- (7) Standard charts or other standard visual acuity test;
- (8) **Field testing equipment (other than that used for a confrontation test).**



Make sure your equipment follows the standard of care, not just the minimum requirements!

Pachymeter?
OCT?

64B13-3.010(3)(c) Standards of Practice.

The certified optometrist shall have available, and be proficient in the use of, the following instrumentation:

1. Goldman-type applanation tonometer
2. Visual fields instrumentation capable of threshold perimetry.
3. Gonio lens
4. Fundus Camera or detailed sketch of optic nerve head
5. Biomicroscope
6. Binocular indirect ophthalmoscope and non-contact fundus lens to provide stereoscopic view of the optic nerve and fundus.

64B13-3.010 Standards of Practice.

Old language

(6)(a) To be in compliance with paragraph 64B13-3.007(2)(f), F.A.C., certified optometrists **shall** perform a dilated fundus examination during the patient's **initial** presentation, and thereafter, **whenever medically indicated.**

64B13-3.010(3)(c) Standards of Practice.

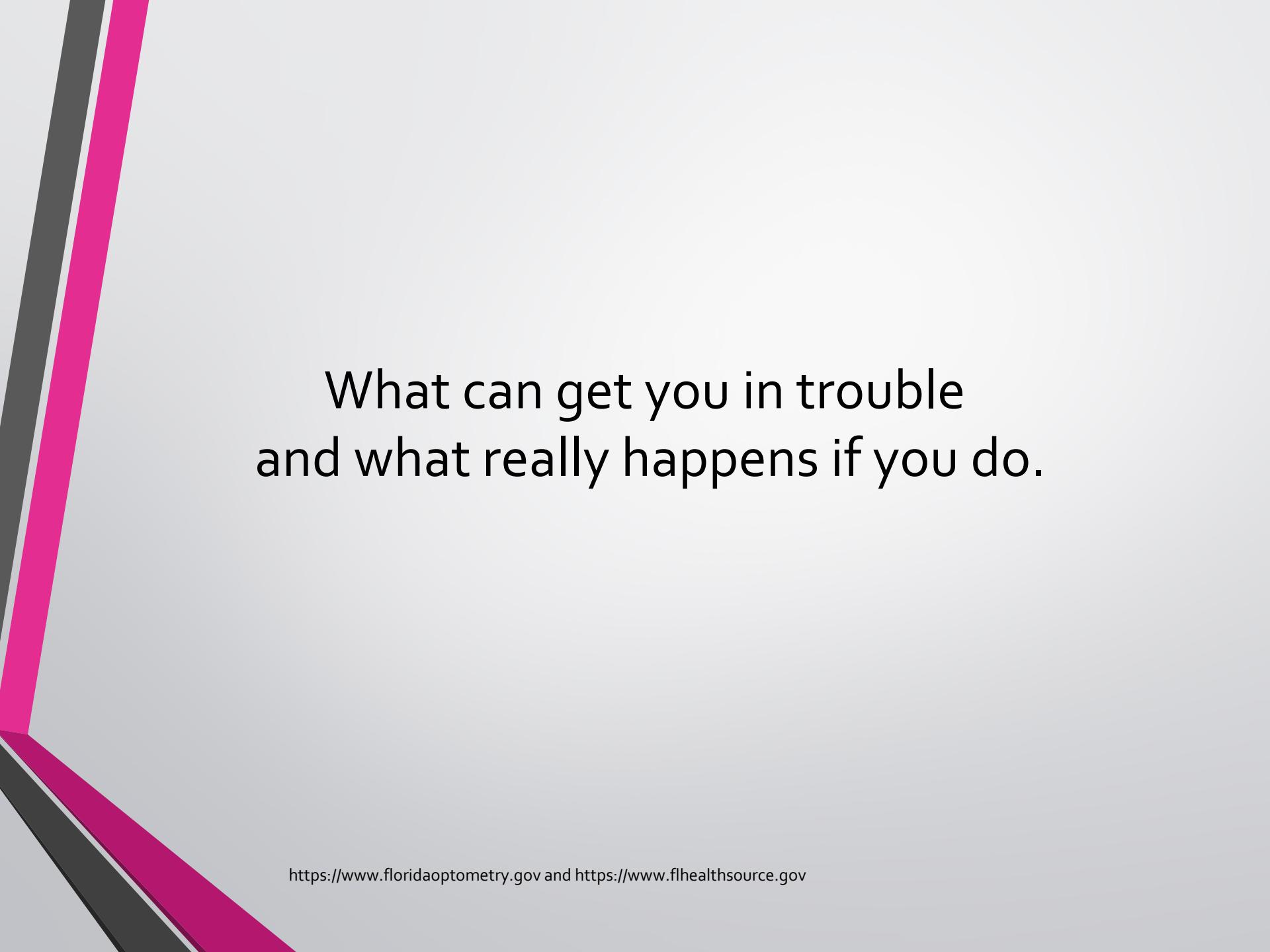
New Language

(6)(a)The certified optometrist shall perform a **pharmacologic**, dilated fundus examination during the patient's initial presentation, and thereafter whenever medically indicated.

Fundus imaging is not a substitute for a pharmacologic dilated fundus examination.

Language passed FSB 09/11/2020

If, in the certified optometrist's sound professional judgment, dilation is not performed because of the patient's age, physical limitations, or conditions, the reason(s) shall be noted in the patient's medical record.



What can get you in trouble
and what really happens if you do.

Types of complaints prosecuted

- Failure to dilate
- Failure to diagnose glaucoma
- Delays of care, failure to timely refer
- False advertising and free exams

Complaint Process

456.073, disciplinary proceeding

- Citizen files a complaint through the Florida Health Care Form
- DOH reviews complaint and investigation is started if:
 - The complaint is in writing
 - Signed by the complainant
 - Legally sufficient-anonymous





Health Care Provider Complaint Form

This information MUST be completed to investigate your complaint, as we correspond via U.S. mail. Incomplete forms CANNOT be processed.

Florida Statutes 456.073, Disciplinary proceeding: (1) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient.

If an investigation of any subject is undertaken, the Department will furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation.

Health Care Provider Information:

Name: _____ Last _____ First _____ M.I. _____ Profession _____ License Number _____

Address: _____ Number & Street _____ City _____ State _____ Zip _____

Phone number(s): _____ Website: _____

Complainant Information:

Your Name: _____ Last _____ First _____ M.I. _____

Address: _____ Number & Street _____ City _____ State _____ Zip _____

Home Phone: _____ Work Phone: _____ Best Time to Call: _____

Patient Information:

Name: _____ Last _____ First _____ M.I. _____

Address: _____ Number & Street _____ City _____ State _____ Zip _____

Phone Number: _____ Date of birth: _____

Your relationship to the patient:

Parent Son/Daughter Spouse Brother/Sister Friend Legal Guardian Other

Please provide documentation indicating your appointment as the Legal Authority/Guardianship or Personal Representative

The department does not investigate complaints regarding the amount charged for a procedure, broken or missed appointments, customer service, bedside manner, rudeness, professionalism or personality conflicts.

What is the reason for your complaint? Please check all that apply.

<input type="checkbox"/> Quality of care	<input type="checkbox"/> Unlicensed	<input type="checkbox"/> Misfilled prescription	<input type="checkbox"/> Patient abandonment/neglect
<input type="checkbox"/> Misdagnosis	<input type="checkbox"/> Abuse	<input type="checkbox"/> Impaired provider	<input type="checkbox"/> Failure to release patient records
<input type="checkbox"/> Substance abuse	<input type="checkbox"/> Sexual contact	<input type="checkbox"/> Inappropriate prescribing	<input type="checkbox"/> Other _____
<input type="checkbox"/> Advertising	<input type="checkbox"/> Insurance fraud	<input type="checkbox"/> Excessive test/treatment	

Date of Incident: _____

Who are the complainants

- Patients
- Family member of patient
- Ophthalmologists
- Optometrists #1

Documentation of findings
C/D ratio
IOP (type of instrument, time)
Legible charting
Clear and concise notations

Referrals

Follow-up on your referrals
Did the patient show up for their appointment?
What does not constitute a referral?

Additional testing
pachymetry
OCT
visual fields
photos

Starting therapy

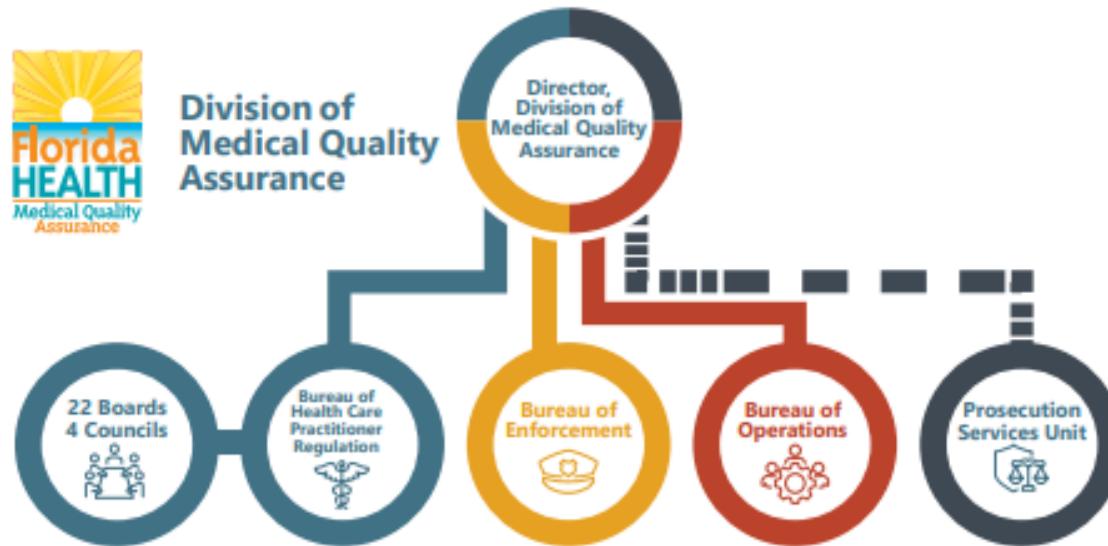
463.016 Grounds for disciplinary action; action by the board.

Willfully failing to report any person who the licensee knows is in violation of this chapter or of rules of the department or the board.

Is there a time limit for filing a complaint?

- Incidents occurring before July 1, 2006 - **no time limit**
- Incident occurring after July 1, 2006 - **six (6) years**
- If fraud, concealment or intentional misrepresentation of facts prevented the discovery of the alleged violation - **12 years**.
- If criminal actions, diversion of controlled substances, sexual misconduct, or impairment by a licensee - **no limit**.

Functional Organizational Chart



The Prosecution Services Unit is a functional unit of the Department's Office of General Counsel



What happens when a complaint is filed?

<https://www.floridaoptometry.gov> and <https://www.flhealthsource.gov>

Formal Complaint

Complaint is directed to the Consumer Services Unit



- It is the central intake for all complaints
- CSU includes investigators and analysts assigned to specific professions.
- Staff reviews each complaint for possible violations of laws and rules.

Consumer Services Unit

All complaints are assigned a computer-generated complaint number for tracking purposes.

Staff reviews each complaint for possible violations of laws and rules.

Only complaints that are legally sufficient are investigated.

CSU may investigate an anonymous complaint provided it is legally sufficient and CSU has reason to believe that the violations alleged in the complaint are true.

Consumer Services Unit

The complainant is notified by letter as to whether an investigation is initiated, additional information is needed

or

the complaint is determined not to be legally sufficient and is being closed.

Formal Complaint



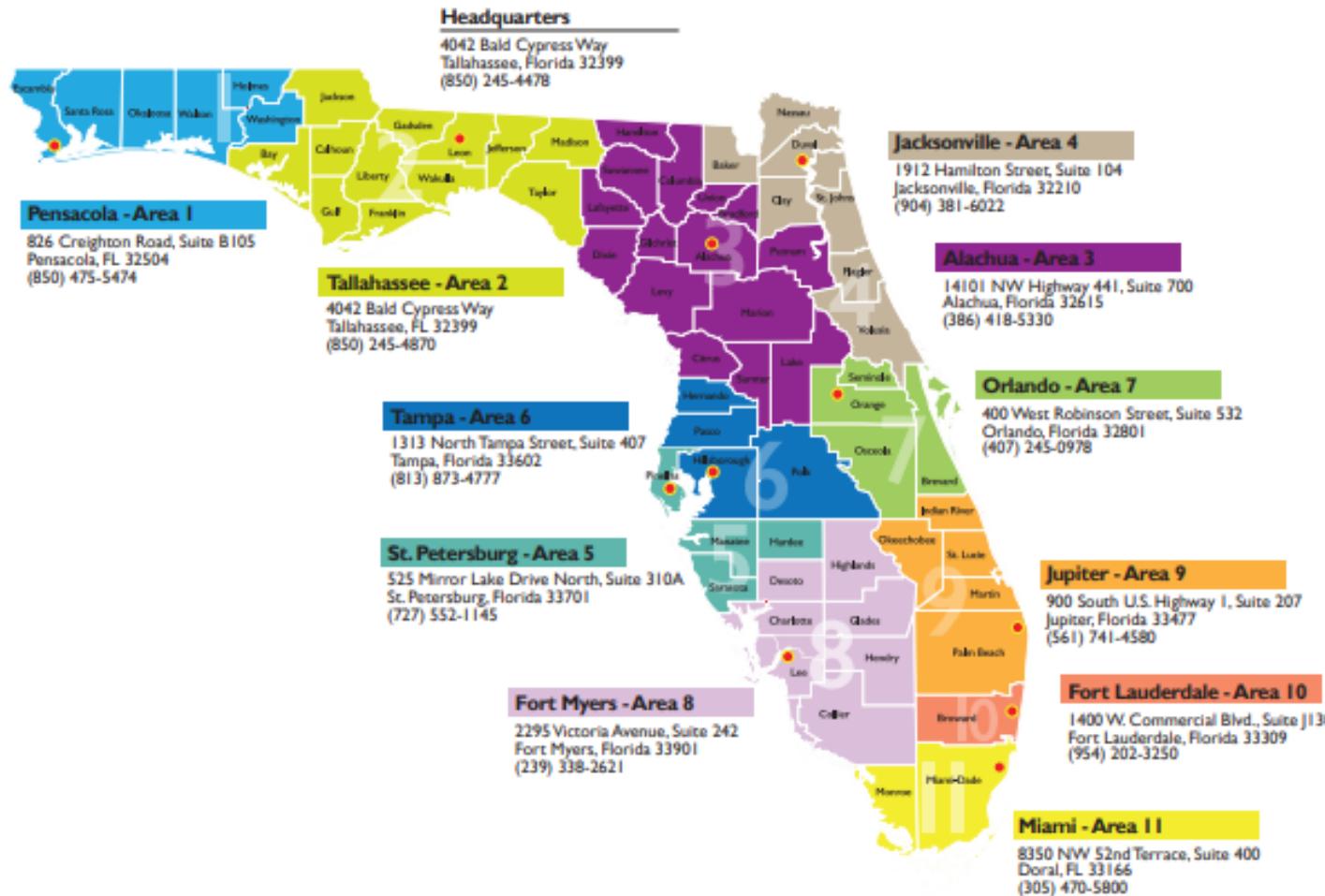
Consumer Services Unit



Investigative Services Unit

The Investigative Services Unit (ISU) investigates complaints against health care practitioners and facilities/establishments regulated by the Department of Health

Investigative Services Area Map



Investigative Services Unit

The Investigative Services Unit (ISU) investigates complaints against health care practitioners and facilities/establishments regulated by the Department of Health

Generally, the investigative steps include the following:

- Obtaining medical records, documentation and evidence related to the complaint
- Locating and interviewing the complainant, the patient, the subject and any witnesses
- Drafting and serving subpoenas for necessary information

Formal Complaint



Consumer Services Unit



Investigative Services Unit



Prosecution Services Unit

Prosecution Services Unit

Respondent is notified by certified letter from PSU of investigation.

Respondent schedules an interview with investigator in PSU.

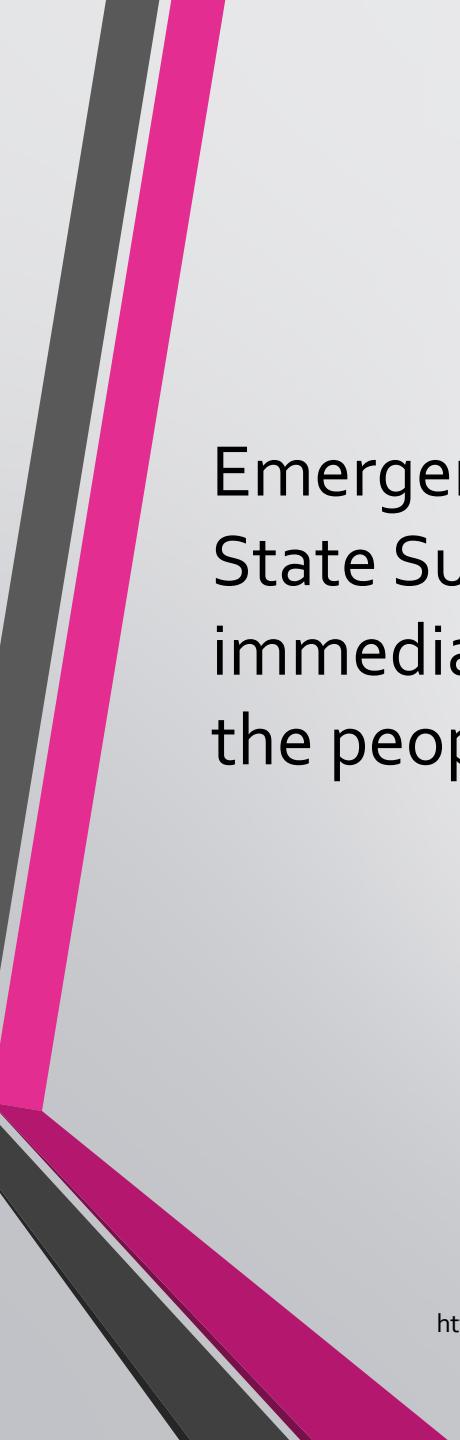
Records are requested from all parties.

PSU recommends a course of action.

Prosecution Services Unit

Attorneys review the investigative report to recommend a course of action which may include:

- Emergency Order
- Expert Review
- Closing Order
- Administrative Complaint



Emergency orders are issued by the Department's State Surgeon General against licensees who pose an immediate threat to the health, safety, and welfare of the people of Florida.

200 Emergency orders in 2022-23

- A **Closing Order** is recommended if the investigation and/or the expert opinion does not support the allegation(s). The subject and the complainant are notified of the results.
- The complainant may appeal the decision of the probable cause panel within sixty (60) days of notification by providing additional information for consideration.

Note: Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

An **Administrative Complaint** (AC) is recommended when the investigation and/or the expert opinion **supports** the allegation(s).

The subject is entitled to a copy of the complete case prior to the probable cause panel meeting.

Administrative Complaint Case

Example of Notification of complaint

Respondent committed gross malpractice from deviating from standard of care and violating 463.016(1)(g) by not dilating the patient's eyes at her initial appointment, and not dilating the patient when symptoms worsened and delay in the referral to an appropriate specialist.

Failure to provide degree of care which is full and complete within the scope of optometry.

Types of Violations

Administrative

- Minor
- Major

Patient Care

- Minor
- Major

Administrative Violation

- Does not involve the diagnosis or treatment of a patient
- May or may not directly endanger the public health safety, and welfare of the citizens of State of Florida.
- Direct endangerment is classified as a major violation

Patient Care Violation

- **Does** involve the diagnosis or treatment of a patient
- May or may not directly endanger the public health safety, and welfare of the citizens of State of Florida.
- Direct endangerment is classified as a major violation

How long must a healthcare practitioner maintain a patient's record?

According to Rule 64B8-10.002(3), FAC : A licensed physician shall keep adequate written medical records, as required by Section 458.331(1)(m), Florida Statutes, for a period of at least **five** years from the last patient contact;

However, medical malpractice law requires records to be kept for at least **seven** years.

Section 456.057, Florida Statutes, allows a health care practitioner to charge no more than the actual cost of copying, which may include reasonable staff time or an amount designated by rules provided by the regulatory board.

The reasonable costs of reproducing copies of written or typed documents are outlined in Rule 64B8-10.003, FAC.

PROBABLE CAUSE PANEL 64B13-2.008.

The determination as to whether probable cause exists shall be made by the probable cause panel of the Board.

The probable cause panel shall be composed of at least two (2) persons

At least one member of the panel must be a current Board member. The other member shall be a previous member authorized by the Chair.



When Probable Cause is found...

Hearings Involving Disputed Issues of Material Fact - The subject disputes the facts in the Administrative Complaint and elects to have a hearing before the Division of Administrative Hearings (DOAH). If this occurs, all parties may be asked to testify.

Consent/Stipulation Agreement - The subject enters into an agreement to be presented before the board or department. Terms of this agreement may impose penalties negotiated between the subject or the subject's attorney and the department's attorney.

Hearings Not Involving Disputed Issues of Material Fact - The subject of the complaint does not dispute the facts in the Administrative Complaint. The subject elects to be heard before the professional board or department. At that time, the subject will be permitted to give oral and/or written evidence in mitigation or in opposition to the agency action

Voluntary Relinquishment of License - The subject of the Administrative Complaint elects to surrender the license and to cease practice.

Formal Complaint



Consumer Services Unit



Investigative Services Unit



Prosecution Services Unit



Final Action before the Board of Optometry

Types of Mitigating or Aggravating Factors

- A danger to the public
- Length of time since the violation
- Previous discipline
- Length of time practicing
- Actual damage caused
- Any rehabilitation performed
- Any attempts to correct or stop the violation

Final Action

Cases (includes all of the above, as well as cases where the subject has failed to respond) are presented before the professional board or department for final agency action.

The subject may be required to appear before the board or department.

The complainant is notified of the date and location where the case will be heard and may attend.

If the practitioner is found to have violated the law, the board may impose one or more of the following penalties:

- Letter of guidance
- Formal notice (citation) on the national practitioner database
- Reprimand
- Fine
- Restriction of practice
- Continuing education probation (additional hours in a subject matter)
- License suspension
- License revocation

Formal Notice to the National Practitioner Database

- Practitioner is reported to database even with reprimand
- A formal report of action taken by the board

A notice may impact practitioner by:

Restricting licensure in other states

Reducing insurance panel participation

Raising malpractice rates

Restriction of employment

463.016 Grounds for disciplinary action;

Willfully submitting to any third-party payor a claim for services which were not provided to a patient.

463.016 Grounds for disciplinary action;

Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensed practitioner knows or has reason to know she or he is not competent to perform.

463.016 Grounds for disciplinary action;

Knowingly employing unlicensed persons in the practice of optometry, except as specifically authorized by this chapter.

Malpractice versus Board Action

Board Action

Medical board action is after a complaint is filed

Independent investigation

Formal hearing

Ruling

Primary function is the protection of the public by enforcing the standards of care

Malpractice Lawsuit

Civil procedure

Determines whether or not malpractice has occurred

Compensation determined

Generally has no bearing on licensure

Often settled out of court by insurance carrier

Not always an accurate measure of competence or violation of law

By the numbers in 2023...

In State	Active (3054)	Inactive (16)	Delinquent (63)
Out of State	Active (576)	Inactive (78)	Delinquent (101)
Military	Active (37)		
Retired	(187)		
Faculty certificate	(19)		
Total	4112		

Stay off the Radar!

- Practice good customer service
- Practice to standard of care
- Practice sober Professionals Resource Network www.flprn.org
- Maintain good patient records *Not documented=Not Done*
- Do your CE requirements!
- Thank You!