



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**OAG 25-13**

*Subject:* Whether (1) the Kentucky Board of Optometric Examiners has authority to amend 201 KAR 5:010 to accept examination scores for licensure other than from exams administered by the National Board of Examiners; and (2) the Kentucky Board of Optometric Examiners exceeded its legal authority in waiving licensure requirements.

*Requested by:* Senator Stephen Meredith  
Kentucky Senate, District 5

*Written by:* Aaron J. Silletto, Executive Director  
Office of Civil and Environmental Law

*Syllabus:* It is (1) within the authority of the Kentucky Board of Optometric Examiners to accept examination scores from other jurisdictions, and (2) beyond its authority to waive licensure requirements absent proper regulatory procedures.

***Opinion of the Attorney General***

Senator Meredith has asked this Office to opine on the authority of the Kentucky Board of Optometric Examiners (the "Board") with respect to licensing. Specifically, Senator Meredith asks whether the Board has authority to (1) allow examination results from jurisdictions outside the United States and (2) waive licensure requirements without first amending the applicable regulation.

**I. The Board has authority to allow written exam results from non-U.S. jurisdictions.**

The Board has amended 201 KAR 5:010, which governs licensure requirements for the practice of optometry in Kentucky, to allow results from written exams administered by the Optometry Examining Board of Canada ("OEBC") in lieu of Part 1 of the National Board of Examiners in Optometry ("NBEO") results. 201 KAR 5:010

§ 1(1)(e). Previously, subsection (1)(e) stated, “A person wishing to apply for a license to practice optometry shall submit to the board . . . [n]ational board results.” The Board has not exceeded its authority in amending the regulation to accept OEBC scores for licensure.

*Through KRS Chapter 320, the General Assembly has given the Board broad authority.* The Board is directed to “promulgate reasonable administrative regulations and do any and all things that it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry.” KRS 320.240(4). Specifically, the General Assembly directed that “[t]he administrative regulations shall include the classification and licensure of optometrists by examination or credentials.” *Id.*

KRS 320.250 establishes eligibility parameters that must guide the Board’s regulations. Under KRS 320.250(1), “[l]icenses to engage in the practice of optometry shall be issued only to those . . . who successfully pass examinations conducted or approved by the board at a time and place fixed by the board.” Licensure examinations “may consist of written, clinical, or practical examinations and shall relate to the skills needed for the practice of optometry in this Commonwealth.” KRS 320.250(2). In administering the examination requirement, the Board may:

- (a) Prepare, administer, and grade the examination;
- (b) Accept the scores of the applicant from an examination prepared, administered, and graded by the National Board of Examiners in Optometry *or any other organization approved by the board as qualified to administer the examination*; and
- (c) Require passage of an examination on Kentucky optometric law.

KRS 320.250(2)(a)–(c) (emphasis added).

The plain language of the statute clearly entrusts the Board with authority to determine which examinations are capable of adequately testing the Commonwealth’s optometrists. The Board may accept scores from the NBEO, as had been the practice under the prior version of 201 KAR 5:010, but it may also accept examination scores from “any other organization approved by the board.” KRS 320.250(2)(c).

Where statutory language is clear, unambiguous, and expresses the legislative intent, “there is no room for construction and the statute must be accepted as written.” *Bell v. Bell*, 423 S.W.3d 219, 223 (Ky. 2014). Here, the statutory language clearly indicates the General Assembly has given the Board authority to accept scores from an examination administered by “any” organization the Board approves.

Opponents of the amendment to 201 KAR 5:010 § 1(1)(e) to allow OEBC scores argued the OEBC examination is deficient because it does not “relate to the skills needed for the practice of optometry in this Commonwealth” as required by KRS 320.250(2).<sup>1</sup> It is true that the Board cannot ignore the requirement in KRS 320.250 that “[t]he examinations . . . shall relate to the skills needed for the practice of optometry in this Commonwealth.” But the determination of what skills are needed for the practice of optometry in Kentucky is to be made by the Board.

The General Assembly has granted the Board the “sole authority to determine what constitutes the practice of optometry” in the Commonwealth. KRS 320.240(7); *see also* OAG 24-10. Therefore, it logically follows that the Board is the entity with authority to determine the “skills needed for the practice of optometry in this Commonwealth.” KRS 320.250(2); *see* KRS 320.240(6) (“Nothing in this chapter shall be construed as allowing any agency, board, or other entity of this state other than the Kentucky Board of Optometric Examiners to determine what constitutes the practice of optometry.”); KRS 320.240(7) (“The board shall have the sole authority to determine what constitutes the practice of optometry and sole jurisdiction to exercise any other powers and duties under this chapter.”). In amending its own regulations to accept scores from the OEBC, the Board has seemingly concluded that the OEBC *does* test those skills needed to practice optometry in the Commonwealth. It is not for this Office to question the Board’s conclusion.

Thus, it is the opinion of this Office that the Board has acted within the powers granted to it by the General Assembly in amending its regulations to accept OEBC examination scores for licensure.<sup>2</sup>

## **II. The Board acted beyond its authority in waiving licensure requirements without adhering to KRS Chapter 13A.**

As discussed in Part I of this Opinion, in 201 KAR 5:010, the Board has promulgated a regulation on licensure as the General Assembly instructed in KRS

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<sup>1</sup> *See* National Board of Examiners in Optometry, Letter to Interim Joint Committee on Health Services on the Proposed Amendment to Accept OEBC Scores, at 4 (July 25, 2025) <https://apps.legislature.ky.gov/CommitteeDocuments/366/35586/07%2030%202025%206.NBEO%20PreRead.pdf> [<https://perma.cc/W5BU-AQEV>]; *see generally* KY LRC Committee Meetings, *Administrative Regulation Review Subcommittee (4-14-25)*, at 3:20 (YouTube, Dec. 2, 2023), <https://www.youtube.com/watch?v=LVcS2kPOtew> [<https://perma.cc/L2BQ-JF7L>] (in which those in opposition to the amendment testified concerning the gaps between care in Canada and care in America and the Commonwealth).

<sup>2</sup> Nevertheless, should the General Assembly believe the Board has wrongly exercised the powers granted to it, the General Assembly still possesses the power to restrict or revise the Board’s authority by enacting further statutory guidelines. Ky. Const. § 29; *see also* *Legislative Rsch. Comm’n ex rel. Prather v. Brown*, 664 S.W.2d 907 (Ky. 1984) (emphasizing that the General Assembly is the *sole* legislative branch of government and that it has the right to withdraw delegation of that power).

320.240(4). The General Assembly requires applicants for licensure to “successfully pass examinations conducted or approved by the board.” KRS 320.250(1). In 2020 (and until August 2025), 201 KAR 5:010 § 1(1)(e) required an applicant for licensure to provide NBEO results. The regulation did not, at that time, allow an applicant to use any alternative examination results. *Id.*

Yet, apparently, the Board approved licenses for some applicants without receiving all parts of the applicants’ NBEO results. In response to a request for information, the Board explained to the Office that, during the COVID-19 state of emergency, the Board “temporarily waived the requirement that prospective licensees pass Part III of the National Board exam, which mandated completion of an in-person test at an out-of-state location.” To replace Part III of the exam, the Board “instituted alternative testing measures.”<sup>3</sup> These changes to the licensure requirements were made via resolutions presented at Board meetings on September 17, 2020 (initially authorizing the waiver) and November 4, 2022 (extending the waiver through 2023).<sup>4</sup> There is no evidence of the Board promulgating a regulation—emergency or otherwise—to effectuate the waiver or to allow the alternative testing.

The General Assembly has expressly prohibited an administrative body from “modify[ing] a statute or administrative regulation” via its own “internal policy, memorandum, or other form of action.” KRS 13A.130(1)(a). In fact, any such modification “is null, void, and unenforceable.” KRS 13A.130(2). Only “[d]uly promulgated administrative regulations have the ‘force and effect of law.’” *Sprouse v. Commonwealth*, 662 S.W.3d 304, 307 (Ky. App. 2023).

In waiving the requirement for Part III of the exam results and allowing alternative testing, the Board sought to “modify a[n] . . . administrative regulation.” Resolutions of the Board—like the ones passed at its 2020 and 2022 meetings—are internal actions that are not subject to notice and comment requirements or any of the statutory mandates in place for promulgating administrative regulations. *See* KRS 13A.270 (requiring a notice and comment period); KRS 13A.240 (requiring the promulgating agency to prepare a regulatory impact analysis); KRS 13A.290 (requiring review by the Administrative Regulation Review Subcommittee). Such resolutions, therefore, cannot modify a regulation, and the Board’s attempt to use them to change the exam requirements was invalid. *See Commonwealth, Educ. & Humanities Cabinet, Dep’t. of Educ. v. Gobert*, 979 S.W.2d 922, 926 (Ky. App. 1998) (holding that the Department of Education’s attempt to reclassify positions via memorandum was invalid).

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<sup>3</sup> It is unclear what the alternative testing measures were, as they are not available on the Board’s website, nor were they included in the Board’s response to the Office’s request for information.

<sup>4</sup> Meeting minutes for these meetings are not available on the Board’s website, and this information comes only from statements made by the Board in response to the Office’s request for information.

As such, the waiver and allowance for alternative testing were without the force and effect of law. It is further the opinion of this Office that any person who applied for a license to practice optometry using the waiver and alternative testing did not comply with the relevant regulations.

In our request for information, the Office asked the Board whether “there are any optometrists currently working based on a waiver” and whether those who were licensed under the waiver have since complied with the full licensure requirements provided in 201 KAR 5:010. In response, the Board stated that, “[i]n the Board’s opinion, no Kentucky-licensed optometrist is providing services based upon a blanket waiver of testing requirements; all licensees have either passed Part III of the National Board exam, or successfully completed the alternative testing measures instituted by the Board during the Covid-19 state of emergency.” But, as discussed above, the “alternative testing measures” were and are invalid as a matter of law under KRS 13A.130. Accordingly, the Board must review the licensure of those optometrists who were licensed under the waiver and alternative testing measures to ensure they have met the licensure requirements as established in 201 KAR 5:010.<sup>5</sup>

**Russell Coleman**  
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<sup>5</sup> The Board has advised the Office that the waiver only extended “through the 2023 testing year” and that “[t]he alternative testing measures were discontinued following the conclusion of the state emergency . . . and all applicants for optometric licensure in Kentucky are again required to pass Part III.” However, the Board’s website states that “[g]raduates . . . in the graduating classes of 2020 through 2023 are not required to have passed” Part III. Kentucky Board of Optometric Examiners, *Licensure*, <https://optometry.ky.gov/applicants/Pages/default.aspx> [<https://perma.cc/CS67-EEED>] (last visited Sept. 5, 2025). According to NBOE’s website, “[a]ny graduate of a professional optometric degree program . . . is eligible to take NBEO examinations.” National Board of Examiners in Optometry, *Exam Eligibility Policy*, [https://www.optometry.org/policies/Exam\\_Eligibility\\_Policy](https://www.optometry.org/policies/Exam_Eligibility_Policy) [<https://perma.cc/435V-7KPZ>] (last visited Sept. 5, 2025). Taking the Board’s website as accurate, applicants who graduated in the classes of 2020–2023 may still take the exam and be waived from providing Part III scores, even as of the drafting of this Opinion.