



## March 2022 Newsletter

### Current Pandemic Guidance for Kansas Optometry Licensees

The Kansas State Board of Examiners in Optometry met on March 2, 2022 and March 7, 2022, in part to discuss guidance to licensees regarding the requirements for mask wearing in healthcare settings. With this notification, all licensees are considered advised of the position of the Board regarding optometric practice in Kansas and the pandemic.

The KSSBEO hereby reminds all licensees, regardless of practice modality, that they are considered healthcare providers, and work within a healthcare setting as defined by the Centers for Disease Control and the Occupational Safety and Health Administration (OSHA). As such, all optometrists, their staff, their patients, and any other guests of the practice should follow CDC guidelines for the requirements for source control in a healthcare setting.

The KSSBEO has received and anticipates receiving future complaints regarding failure to wear a mask and/or follow CDC guidelines. The KSSBEO considers and investigates all complaints. Depending on all of the attendant circumstances, failure to follow CDC guidelines affecting optometric practices in Kansas may constitute a violation of the Kansas Optometry Law relating to standards of care and professional conduct, including without limitation K.S.A. 65-1516 (a)(1)(2)(3) and (b)(14):

Professional incompetence; unprofessional conduct; defined. As used in this act:

(a) "Professional incompetence" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence as determined by the board.

(2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.

(3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice optometry.

(b) "Unprofessional conduct" means:

....

(14) Repeated failure to practice optometry with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

The KSSBEO recognizes the implementation of these guidelines represents an inconvenience for both the patients and healthcare providers in an optometric practice. However, source control measures decrease the risk of transmission of disease between parties, in particular between HCP and patient in an examination room. One goal of the KSSBEO is to educate Kansas licensees regarding the guidance provided by CDC and OSHA to reduce this type of infection transmission.

As the COVID-19 pandemic is a continually evolving healthcare crisis, the KSSBEO encourages all licensees to continue to monitor local, state, and federal healthcare agencies to obtain the most current information to protect themselves, their staff and patients.

The KSSBEO will continue to issue updates to all licensees as the pandemic healthcare crisis evolves.

#### *History*

In March 2020, in response to the novel coronavirus and associated COVID-19 respiratory disease, the Centers for Disease Control (CDC) issued their strongest recommendation for all persons to wear facial masks to reduce the risk of transmission of disease. The Kansas State Board of Examiners in Optometry (“KSSBEO”) followed suit in April 2020, advocating all licensees continue to monitor the information provided by the CDC, state, and local health agencies to best protect themselves, their staff and patients during the pandemic.

In April 2021 the CDC issued a change in their masking recommendation to allow for fully vaccinated individuals to go about most of their normal daily activities without a facial mask. The CDC specifically exempted healthcare settings from this amended guidance.

In September 2021, the KSSBEO updated the Pandemic-Related Mask Guidance based on new information provided by the CDC and OSHA. The Board strongly encouraged all licensees to abide by the guidelines set forth by both these entities regarding optometric practice and safety of healthcare workers and patients.

On February 25, 2022, the CDC issued updated guidance regarding the wearing of facial masks in public *for non-healthcare settings*. The CDC’s most recent guidance *for non-healthcare settings* is based on local infection and hospitalization rates, determined on a community basis. The KSSBEO continues to encourage all licensees to monitor and follow the CDC’s guidance for healthcare settings.

The COVID-19 Community Level is available on the CDC website, [www.cdc.gov](http://www.cdc.gov). In the “Low” and “Medium” Community Levels, it is deemed an acceptable risk for healthy, vaccinated members of the public to be indoors without facemasks. At the “High” Community Level, members of the public are encouraged to use facemasks, regardless of their individual health status. A person whose health is compromised is encouraged to continue to use a facemask, regardless of community level status.

***A summary of information relevant to optometric practices follows, however all licensees should read and understand the material provided on the CDC website.***

#### *Current CDC guidance for Healthcare Settings*

CDC guidance for healthcare settings and healthcare personnel (HCP) was released February 2, 2022:

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>

The information presented applies to all US settings where healthcare is provided.

Recommended routine infection prevention and control (IPC) practices during the COVID-19 pandemic

- Everyone – HCP, staff persons, and patients – are encouraged to remain up to date with all recommended COVID-19 vaccine doses.
- Establish a process to identify and manage individuals with suspected or confirmed COVID-19 infection
  - Post a visual alert at the entrance and other strategic locations with instructions about recommendations to reduce transmission of illness
  - Establish a process to identify anyone entering the facility, regardless of vaccination status, who has any of the three following criteria
    - A positive viral test for SARS-CoV-2
    - Symptoms of COVID-19, or
    - Close contact with someone with SARS-CoV-2 infection or a higher-risk exposure

Implement Source Control measures

- “Source control refers to the use of respirators or well-fitting facemasks or cloth masks to cover a person’s mouth and nose to prevent spread of respiratory secretions when they are breathing, talking, sneezing, or coughing.”
- “Source control and physical distancing (when physical distancing is feasible and will not interfere with provision of care) are recommended for **everyone in a healthcare setting.**”
- “While it is generally safest to implement universal use of source control for everyone in a healthcare setting, the following allowances could be considered **for individuals who are up to date with all recommended COVID-19 vaccine doses** in healthcare facilities **located in counties with low to moderate transmission.**”
  - HCP who are up to date with all recommended COVID-19 vaccines doses could choose not to wear source control or physically distance when they are in well-defined areas that are restricted from patient access
  - HCP **should wear source control** when they are in areas of the facility where they could encounter patients
- Patients and their visitors should wear source control and physically distance with indoor visitation.

Physical Distancing

In situations when patients are not all up to date with recommended COVID-19 vaccinations are occupying the same office space, seating should be arranged to maintain a six foot separation between individuals.

Engineering Controls and Indoor Air Quality

- Optimize the use of engineering controls to reduce or eliminate exposures by shielding HCP and other patients from infected individuals

## **Message from the President:**

As we begin 2022, the COVID-19 pandemic continues to dominate all aspects of healthcare. In response to the ongoing crisis, the Centers for Disease Control (CDC) and the Occupational Safety and Health Administration (OSHA) have issued masking recommendations for fully vaccinated individuals as to how to go about their daily activities and minimize risk of infection. While these recommendations have been modified since the pandemic began, ***the CDC has specifically exempted healthcare settings.*** Since all Kansas licensees, regardless of practice modality, are healthcare providers who work in healthcare settings as defined by the CDC and OSHA, ***KSSBEO endorses following the guidelines.*** Despite COVID-19 dominating the regulatory atmosphere, KSSBEO has other duties and the Board's members are moving forward.

Rules and Regulations, which apply to all Kansas licensees, are currently being updated. This project will likely take a few years since various other branches of state government must review the changes being suggested prior to approval. As optometry changes, so do the rules and regulations.

To improve transparency, previous Board Final Orders, court decisions, and complaints from KSSBEO to other agencies are in the process of being made available on the Board's website. There is much activity on the oversight side of the Board and the public needs access to be aware of that activity.

Different databases that the Board maintains are being audited and multiple information gaps have been discovered. A core issue for the Board is the lack of current contact information for licensees which results in the inability to contact them. This is particularly important with something time sensitive, such as license renewal, since not responding to a Board inquiry may result in a license expiring. K.S.A. 65-1509(a) requires that licensees keep their practice location and contact information current; please review your information on the Board's website and update accordingly on an annual basis.

In an attempt to reach more licensees with Newsletters and announcements, the Board is reviewing the use of text messages as a notification method. Email notification does not have sufficient readership resulting in licensees being unaware of information from KSSBEO. Please email your cell phone number to [kssbeo@ks.gov](mailto:kssbeo@ks.gov) to receive text messages from the Board. The text will come from **468311**; be sure to add that number to your contacts.

A page has been added to the Board's website called "Forms". All Board related forms may be found on this page to simplify website navigation. To view the new page, and the changes discussed in the Newsletter, go to [www.kssbeo.ks.gov](http://www.kssbeo.ks.gov).

Gerard Lozada, O.D.  
KSSBEO President

## **Meet the New Board Member:**

In 2021, the Board said farewell to board member Craig Newland, OD and welcomed Lora Durst, OD.

Lora Durst received her undergraduate degree from the University of California at Davis and her Doctor of Optometry from the University of California, Berkeley, School of Optometry in 1992. After practicing for several years in the Chicago suburbs, Lora relocated to Kansas to be closer to family. She's enjoyed practicing in a variety of settings, most recently solo practice in Topeka. In her spare time, Lora enjoys quilting and bicycling.

## **Trade Names:**

The Board conducted a trade name audit in 2021 which uncovered several issues with trade names and licensees.

Per K.A.R. 65-9-1, no licensee, including any licensee who practices in a partnership, association, professional corporation, limited liability company or other group practice, may practice under a trade name unless approved by the Board. Note that this means if a licensee is an employee of a practice and will engage in the practice of optometry under the trade name, the licensee is responsible for ensuring that the trade name has been approved.

There is a Trade Name Application on the Board's [website](#). Trade Names are discussed and approved or denied at quarterly Board meetings. You may not begin using your desired trade name until and unless you have received Board approval.

Another item noticed during the audit was that some corporations and limited liability companies have not been organized correctly with the Kansas Secretary of State.

Per K.S.A. 65-1522: *Professional corporations, limited liability company, associations, sole practitioners; practice locations, franchise agreements. (a) A licensee may practice optometry under the name of a professional corporation, authorized by K.S.A. 17-2706 and amendments thereto or a limited liability company authorized by K.S.A. 2002 Supp. 17-7668 and amendments thereto. Such professional corporate name or limited liability company name may contain a trade name or assumed name approved by the board.*

One of the requirements is to obtain a [\*Certificate of Good Standing\*](#) from the Board that also states that the name of the entity has been approved. If you did not request a certificate of good standing from the Board and file the certificate of good standing with the Secretary of State along with your articles of incorporation or articles of organization, then your corporation or LLC was not established properly. Please take a moment to check with the Secretary of State to determine if your corporation was correctly set up: <https://www.kansas.gov/businesscenter/> If your corporation is not set up correctly, you will need to file an amendment with the [\*Secretary of State\*](#).

During its January 2022 meeting the Board determined to grant amnesty to any licensees practicing through improperly organized entities until June 30, 2022 to allow time to make certain your corporation or LLC is set up correctly or to file the appropriate amendment with the Secretary of State's

office. After June 30, 2022, the Board will take corrective action against non-compliant licensees including the assessment of fines to anyone that still has not set up their corporation or LLC correctly. However, please note that if other issues which violate the Optometry Law are found in conjunction with the improper organization, then such licensees will not be entitled to the aforementioned amnesty.

Please remember that trade Names are also ***location specific***. If you have ***moved or added additional locations***, you will need Board approval ***prior*** practicing at those locations. You will need to practice under your own name until the Board has approved the changes. Fines will be accessed for failure to obtain Board approval.

In addition, per K.A.R. 65-9-5(f), if a practitioner is deceased or retired, the trade name may only be used by a new practitioner for up to one year from the date of succession, provided that the new optometrist uses the term “succeeded by,” “succeeding” or “successor to”.

And finally, per K.A.R. 65-9-5(g), ultimately, the optometrist who obtained trade name approval is responsible for compliance with all provisions of the law. The holder of the trade name is likewise responsible for notifying the Board in writing of all licensees practicing under the trade name and within 30 days if there is a change in the licensees practicing under the name. See K.A.R. 65-9-5(a).

## **Keep the Board Updated:**

Another item that was noticed during the trade name audit is that Board had not been notified of changes in practice locations. Any change to your record and this includes practice locations, home addresses, or insurance, needs to be updated. It should be done ***at the time of the change*** and not just during renewals. During renewals, you should double check that the information is still correct. During the audit it was discovered that practice locations had changed years ago but it had never been updated in the Board’s database.

*K.S.A. 65-1509. Notification of location of practice; biennial license renewal, fee; inactive status license; expiration of license, notice; cancellation of license; reinstatement, fee. (a) Before engaging in the practice of optometry in this state, it shall be the duty of each licensed optometrist to notify the board in writing of the address of the office or offices where such licensee is to engage or intends to engage in the practice of optometry and of any changes in the licensee's location of practice. Any notice required to be given by the board to any licensed optometrist may be given by mailing to such address through the United States mail, postpaid, or by electronic means to such electronic mail or facsimile address provided by the licensed optometrist to the board for such purpose.*

## **New Login Process for the Licensing Database:**

In December 2021, the Board improved the login process to the licensing database. You will need to link your licensing account with KanAccess. If you do not have a KanAccess account, you will need to create one by following these steps:

1. Click the "Start" or "Begin" button on the front page. Once you've selected to "Start" or "Begin" the application, you will be directed to KanAccess.
2. Click on the "Sign Up" button to continue.
3. An email confirmation will be sent to the email provided.
4. Complete the Sign-Up process by selecting the link in the email sent to the supplied email address.

**Every licensee must have their own individual KanAccess Account.**

### **Electronic Prescribing:**

During the 2019 session, the Kansas legislature passed a bill that has been codified as KSA 65-16,128 mandating electronic prescribing of controlled substance opioids beginning July 1, 2021.

The Kansas Board of Pharmacy will be issuing waivers for prescribers that meet certain criteria and providing a verification method for pharmacists. Waivers will not take effect until July 1, 2021 and all will expire December 31, 2021. Prescribers can apply at any time and can then later apply for six-month extensions. To keep it simple, waivers will always expire June 30 and December 31 each year (no more than 6 months). Also, notable that these are waivers of state requirements, NOT federal requirements (see CMS rules on controlled substance prescribing). For additional information or to apply for a waiver or renewal: [Electronic Prescribing Waiver \(ks.gov\)](http://Electronic+Prescribing+Waiver+(ks.gov))

### **Intense Pulsed Light:**

During the May 19, 2021 Board meeting, the Board discussed Intense Pulsed Light. The Board decided in its current form, it can be used at therapy for treating certain conditions of the eye. If the procedure for using Intense Pulsed Light should change, the Board would address it at that time.

### **Medicated Contact Lenses:**

Per the Kansas Board of Pharmacy: Dispensing medicated contact lenses is acceptable for optometrists. The medication dispensing allowance coupled with the contact lens dispensing authorization is within the law.

### **Maintaining an Office:**

The Board office receives many questions regarding the relationship of the O.D. to large non-professional corporations. Some of these non-professional corporations offer space for rent for optometrists to practice near their dispensaries. Kansas rules and regulations are specific about these relationships. Following are some of these rules.

**K.A.R. 65-11-3; Advertising**—“...all signs, advertising, and displays of any licensee shall be separate and distinct from those of any other person, firm, or corporation and shall not in any way suggest that the licensee is associated with any other person, firm, or corporation with which the licensee is not associated...”

**K.A.R. 65-10-3; Physical Space**—“...If a licensee obtains any beneficial interest in a franchise or equivalent relationship to engage in the business of marketing ophthalmic goods or contact lenses, all operations of that franchise or equivalent relationship shall be separate and apart from any and all offices or locations at which the licensee, or any entity in which the licensee has a beneficial interest, provides optometric services.

... “separate and apart” shall include: (1) being physically separated; and (2) the totally independent functioning of the franchise business of optical dispensing and any optometric office or practice location.”

**K.A.R. 65-10-2; Maintaining an Office**—“...an unlicensed person shall be deemed to be maintaining an office for the practice of optometry if either of the following conditions is met:

- (a) That person bears any expense for this office by having entered into any rental arrangement, lease arrangement, or debt arrangement with a licensee regarding the licensee's practice whereby the cost or terms allow the unlicensed person to exert influence on the professional judgment or practice of the licensee.
- (b) The licensee's office, location, or place of practice indicates or implies, by location, advertising, or otherwise, that the licensee is practicing as a part of or in association with the business of an unlicensed person.”

To reference the complete Rules and Regulations, please go to the Board [website](#).

## **Hubble Contacts Fined \$3.5 Million**

Filing complaints with the FTC does work. The FTC fined Hubble Contacts \$3.5 million for violating the Contact Lens Rule. More details can be found here: <https://www.ftc.gov/news-events/press-releases/2022/01/vision-path-inc-online-seller-hubble-lenses-settles-charges-it>

## **Impaired Provider Committee Update**

The Risk Management Law for Kansas, K.S.A. 65-4921 through 65-4930, requires all professional groups to have a mechanism in place to help their providers deal with conditions that would diminish their ability to work at their highest level. Examples of impairment might include senility, untreated mental illness, sexual harassment or other abusive sexual behavior, abuse of or dependency on alcohol or drugs, and other addictions such as gambling

Referrals into the program may come from another provider, a spouse or other family members, a patient, a staff member, or a friend. Alternatively, the provider can self refer and enter the program voluntarily. Once a referral occurs, an evaluation takes place to determine its justification. In the case of a self-referral, the evaluation is limited to an interview with the provider. If indicated, a treatment program is recommended and a means of monitoring progress is put in place. Providers who cooperate with treatment and monitoring recommendations are not identified by name to the State Board of Examiners in Optometry. Those who fail to cooperate are reported to the State Board for potential disciplinary action, including the possibility of license suspension or revocation.

The Kansas Optometric Association contracts with the Heart of America Professional Network to provide the evaluation and monitoring services. All optometrists in Kansas are subject to the Risk Management law, regardless of KOA membership. HAPN provides the same service for the state's chiropractors, dentists, nurses, pharmacists, physical therapists, and veterinarians.

To make a referral to the Impaired Provider Committee, contact chairman Dr. Sharon Green, 3111 West 6th, Lawrence, KS 66049, 785-841-5288, or any other member. Current members include: Drs. Doug Ayre, Andrew Piester, Melissa Hahn Price, Hector Rios and Brandon Smith. All referrals are treated confidentially.

This is an issue where it really pays to be pro-active. We want to avoid situations where a patient or other individual is harmed by an impaired provider who should have been referred for help. This is especially so when someone knew an impairment existed and failed to act. Remember that a referral of a colleague is not necessarily a negative event in their life if it results in successful rehabilitation. The benefit of all our patients and the condition of our profession is at stake. It should also be understood that the Kansas Risk Management Law stipulates that providers who know of an impairment in a peer and fail to make the appropriate referral can be subject to disciplinary action themselves (#65-4927), as can providers who knowingly make false referrals (#65-4926). Staff members are protected from retribution by their employer if they make a referral (#65-4928).

## **Disciplinary Actions:**

*In the Matter of the Application of Aaron Lee Van Hooser, O.D., KSSBEO Case No. 2020-01*

*In the Matter of Wade Abbey, O.D., KSSBEO Case No. 2020-02*

## **Retired Licenses:**

Douglas Blackman  
G Derrill Gwinner  
Lewis LaPierre

Kenneth Bono  
Randall Holloway  
David Miller

Wade Dulin  
Dennis Hoss  
Duane Muck

Kristine Fletcher  
Carrie Kramer  
Richard Reeves