

RESPONSE FROM THE BOARD OF OPTOMETRY
Economic Affairs Committee review per HB 525

The Economic Affairs Committee asks that Board Representatives Answer the Following Questions during the Board Review under House Bill No. 525:

- **What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?**

The Board protects the public from incompetent, unprofessional and unethical health providers. The Board accomplishes this mission through the performance of three key functions: licensure, regulation, and discipline. In addition, optometrists hold DEA (Drug Enforcement Administration) licenses to use controlled substance drugs in their treatments.

- **If your profession/occupation were not licensed, what public protection would be lost?**

The patient would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the Board ensures the public's protection through minimum qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the patient.

- **If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.**

Yes. The Board of Optometry was established in 1974. The Board protects the public from incompetent, unprofessional, and unethical providers of optometric services through the licensure and regulation of qualified optometrists.

- **Does your board deal with unlicensed practice issues? If yes, what types of issues?**

Yes. Practicing as an optometrist without a license or with an expired license are the most common unlicensed practice issues to come before the Board.

- **People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living – what is your response?**

The Legislature finds and declares that the practice of optometry in the state affects the public health, safety, and welfare. Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession.

- **How does your board monitor bias among board members toward a particular licensee, applicant, or respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?**

The Business Standards Division provides board member training for all members to attend, which includes information and instruction on how and when to recuse oneself when there is actual or the appearance of a conflict of interest or bias.

Additionally, the Board's composition serves to monitor bias. The Board consists of four members appointed by the Governor. Three of the members must be registered optometrists in Montana and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

- **Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?**

No. The mission of associations is to promote the profession and advocate for the industry. The Board's mission is to protect the public through the licensure and regulation of optometrists. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals.

- **Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?**

Yes, for Medicaid and Medicare and health insurance, licensure is required for billing. In addition, optometrists hold DEA (Drug Enforcement Administration) licenses to order and use controlled substance drugs in their treatments. There is no alternative.

- **What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?**

Three Board members are peers of the licensees they oversee and have knowledge of and expertise in the regulated profession. In addition, the Board includes public representation of at least one individual. This broad representation ensures an unbiased and fair approach to discipline and other issues.

- **Is there an optimum ratio between licensees, board size, or public representation?**

Yes, the Board regulates 276 active licensees. The Board's current composition balances the number of licenses and public members while remaining small enough to function efficiently.

- **If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?)**

No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting optometrists in various areas of the profession to address practice and conduct issues.

- **Who should be responsible for monitoring fraud within the profession or occupation?**

The Board, through the complaint process, monitors fraud on a licensee level. The Board has the ability to respond to fraud issues or to forward them to the Attorney General's Office if necessary. Medicaid, Medicare, and health insurance fraud has to be monitored by Medicaid or through public insurance.

- **If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?**

The Board licenses a single profession and has no overlapping scope of practice.

- **Should any board have the ability to limit use of certain terminology to only a licensee? (see for example under the Board of Psychologists, the exemption from definitions:**

37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic"....

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

Yes. Use of the title, Doctor of Optometry, OD, implies that the person has the training, education and qualifications to be licensed in the profession.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.