

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
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530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Debbie Morgan
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: November 8, 2019

RE: Filed Permanent Regulations: Board of Examiners in Optometry

Board of Examiners in Optometry Regulation re: Therapeutic Procedures (12 AAC 48.035)

Attorney General File:	2018200947
Regulation Filed:	11/8/2019
Effective Date:	12/8/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE BOARD OF EXAMINERS IN OPTOMETRY

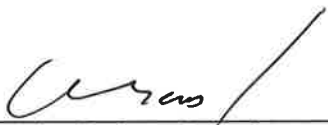
The attached five pages of regulations, dealing with therapeutic procedures, are hereby certified to be a correct copy of the regulation changes the Board of Examiners in Optometry adopted at its August 5, 2019 teleconference meeting, under the authority of AS 08.72.050, AS 08.72.278, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Board of Examiners in Optometry paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: 8/5/2019
Anchorage, Alaska




Damien Delzer, Board Chair
Board of Examiners in Optometry

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on November
8th, 2019 at 8:53 a.m., I filed the attached regulations according to the
provisions of AS 44.62.040 – 44.62.120.

for 

Kevin Meyer, Lieutenant Governor

Effective: December 8, 2019.

Register: 232, January 2020.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



A handwritten signature in blue ink, appearing to read "K. Meyer", is written over a horizontal dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

Chapter 48. Board of Examiners in Optometry.

12 AAC 48 is amended by adding a new section to Article 1 to read:

12 AAC 48.040. Expanded therapeutic procedures. (a) A licensee may not perform ophthalmic surgery as defined in AS 08.72.278(c), unless the procedure is an expanded therapeutic procedure as defined under this section and the licensee is authorized by the board to perform ^{the procedure} it.

(b) The board may authorize ^{a qualified} licensees ~~qualified by education and training~~ to perform an expanded therapeutic procedure or procedures in the practice of optometry. A licensee requesting ^{authorization} to perform an expanded therapeutic procedure ~~in the practice of optometry~~ shall have satisfactorily completed a course in the expanded therapeutic procedure provided by an institution accredited by the Council for Higher Education Accreditation and approved by the board, and shall further satisfy the requirements of this section.

(c) The board may authorize a licensee to perform an expanded therapeutic procedure if the ^{licensee} ~~applicant~~ provides:

(1) proof of a current license in good standing to practice optometry in this state;
and

(2) evidence satisfactory to the board ^{that the licensee successfully completed} of ~~successful completion~~ of a course of instruction in an expanded therapeutic procedure approved by the board.

(d) To be approved by the board, a course in an expanded therapeutic procedure shall include:

- (1) didactic classroom instruction in
 - (A) laser physics, hazards, and safety;
 - (B) biophysics of lasers;

- (C) laser application on clinical optometry;
- (D) laser tissue interactions;
- (E) laser indications, contraindication, and potential complications;
- (F) gonioscopy;
- (G) laser therapy for open angle glaucoma;
- (H) laser therapy for angle closure glaucoma;
- (I) laser posterior capsulotomy;
- (J) common complications ^{of the} lids, lashes, ^{and the} lacrimal system;
- (K) local complications;
- (L) medicolegal aspects of anterior segment procedures;
- (M) peripheral iridotomy;
- (N) laser trabeculoplasty;
- (O) minor surgical procedures;
- (P) ⁱⁿ overview of surgical instruments, asepsis, and Occupational Safety and

Health Administration regulations;

- (Q) surgical anatomy of the eyelids;
 - (R) emergency surgical procedures;
 - (S) chalazion management;
 - (T) epiluminescence microscopy;
 - (U) local anesthesia techniques and complications;
 - (V) anaphylaxis and other office emergencies;
 - (W) radiofrequency surgery; and
 - (X) post-operative wound care;
- (2) clinical or laboratory experience ^{incorporating} in:

(A) video demonstration;

(B) in vitro observation or participation; and

(C) in vivo observation;

(3) passage of a formal clinical or laboratory practical examination; and

(4) passage of a written test administered by the educational institution providing the course, that ~~utilizes~~ ^{uses} the National Board of Examiners in Optometry format.

(e) A course of instruction may be considered for approval by the board if the course;

- (1) meets the requirements of (d) of this section;
- (2) is provided by an accredited optometry school under (b) of this section;
- (3) is at least 32 clock hours in length;
- (4) is completed after graduation from optometry school; and

(5) is completed after January 1, 2016.

The board may consider a course of instruction for approval if the course satisfies

(f) ~~Courses satisfying~~ the requirements of (e)(1) through (e)(4) of this section, but ~~was~~ completed before January 1, 2016, ~~may be approved by the board~~ if the licensee

(1) has been practicing in a state that allows expanded therapeutic procedures immediately preceding the date of request for authorization of expanded therapeutic procedures;

(2) has continuously practiced in that state from the time of completion of the approved course; and

(3) provides an affidavit verifying a minimum of 1,040 hours of active clinical practice in optometry for each year since the date of completion of the approved course.

(g) An optometrist licensed and authorized by the board to perform an expanded therapeutic procedure in the practice of optometry shall be limited within the scope of the ^{board's authorization} licensee's education, training and experience as found acceptable by the board under (b) of this

section. Any license issued to the licensee ^{must} ~~shall~~ ^{each} expressly identify the approved expanded therapeutic procedure ^{is authorized to} or procedures the licensee may perform.

(b) ^{For the purpose of this section,} "Expanded therapeutic procedure" means an ophthalmic surgery approved by the board in compliance with AS 08.72.278, and may include anterior segment laser procedures, anterior segment surgical procedures, YAG laser capsulotomy, laser peripheral iridotomy, and laser trabeculoplasty.

(h) ^(b) Notwithstanding any other provision of this section, a licensee may not perform ophthalmic surgery for the following procedures, but may provide preoperative and postoperative care ^{for}

- (1) retina laser procedures;
- (2) laser-assisted in situ keratomileusis (LASIK) and photorefractive keratectomy (PRK);
- (3) surgery related to removal of the eye from a living human being;
- (4) surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the intraocular pressure;
- (5) penetrating keratoplasty ^{or} lamellar keratoplasty;
- (6) non-laser surgery requiring incision of the iris and ciliary body, including iris diathermy or cryotherapy;
- (7) non-laser surgery requiring incision of the vitreous;
- (8) surgery requiring incision of the retina;
- (9) surgical extraction of the crystalline lens;
- (10) surgical implantation of intraocular lens implants;
- (11) incisional or excisional surgery of the extraocular muscles;

- (12) non-laser surgery of the eyelid for eyelid malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis, and tarsorrhaphy;
- (13) surgery of the bony orbit, including orbital implants;
- (14) incisional or excisional non-laser surgery of the lacrimal system other than lacrimal probing or related procedures;
- (15) surgery requiring full thickness conjunctivoplasty with graft or flap;
- (16) any non-laser surgical procedure that does not provide for the correction and relief of ocular or ocular adnexa abnormalities; and
- (17) injection into the posterior chamber of the eye to treat any macular or retinal disease.

- (i) A licensee treating a
(j) ~~a~~ patient with an eyelid or adnexal lesion found to be malignant shall be referred by the treating licensee to a practitioner trained and qualified to treat those lesions.
- (j) A licensee may not perform an
(k) ~~An~~ injection into the posterior segment or chamber, or retinal tissue to treat any macular or retinal disease is prohibited under this chapter.
- (k) A licensee who performs
(l) ~~Performing~~ an expanded therapeutic procedure without board authorization may be subject to grounds for imposition of disciplinary sanctions under AS 08.72.240. (Eff. 12 / 8 / 2019,

Register 232)

AS 08.72.273

Authority: AS 08.72.050 ^ AS 08.72.278

→ (((Publisher: move (h) from page 4 to (L).)))

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: October 31, 2019

File No.: 2018200947

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Board of Examiners in Optometry
Regulation re: 12 AAC 48.035:
Therapeutic Procedures

The Department of Law has reviewed the attached regulations of the Board of Examiners in Optometry against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Board of Examiners in Optometry after the close of the public comment period. The regulations concern implementation of statutory changes allowing optometrists with certain education and training to perform ophthalmic surgery as allowed under regulations by the board. The board has adopted 12 AAC 48.040 that sets out how a licensee under AS 08.72 (practice of optometry) may be authorized by the board to perform an identified "expanded therapeutic procedure;" requirements include the requirement that the licensee be in good standing and present evidence satisfactory to the board of successful completion of training in an expanded therapeutic procedure.

The June 13, 2019, public notice and the August 5, 2019, certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:sjw

cc: Sara Chambers, Division Director
Division of Corporations, Business & Professional Licensing
Department of Commerce, Community, and Economic Development
Debbie Morgan, Executive Secretary
Department of Commerce, Community, and Economic Development
Amy Demboski, Assistant Commissioner
Department of Commerce, Community, and Economic Development
Glenn Hoskinson, Special Assistant to Commissioner
Department of Commerce, Community, and Economic Development
Sher Zinn, Regulations Specialist
Department of Commerce, Community, and Economic Development
Damien Delzer, Chair
Board of Examiners in Optometry
(via email through Sher Zinn)
Joan Wilson, Assistant Attorney General
Department of Law

NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF EXAMINERS IN OPTOMETRY

BRIEF DESCRIPTION: The Board of Examiners in Optometry proposes to adopt changes to the regulations regarding establishment of requirements for the use of therapeutic procedures, to implement the statutory amendments made in AS 08.72.278 by Chapter 17 SLA 2017 (HB 103).

The Board of Examiners in Optometry (Board) proposes to adopt regulation changes in Title 12, Chapter 48 of the Alaska Administrative Code including the following:

12 AAC 48.040. Expanded therapeutic procedures, is a proposed new section establishing requirements for the use of therapeutic procedures.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Sher Zinn, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806. Additionally, the Board will accept comments by facsimile at (907) 465-2974 and by electronic mail at RegulationsAndPublicComment@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system at <http://notice.alaska.gov/194456>, and using the comment link. **The comments must be received not later than 4:30 p.m. on July 16, 2019.** Comments received after this deadline will not be considered by the Board.

You may submit written questions relevant to the proposed action to Sher Zinn, Regulations Specialist, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, AK 99811-0806 or by e-mail at RegulationsAndPublicComment@alaska.gov. **The questions must be received at least 10 days before the end of the public comment period.** The Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and on the Board's website at <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofOptometry.aspx>. The Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Sher Zinn at (907) 465-1049 or RegulationsAndPublicComment@alaska.gov, no later than July 9, 2019, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Sher Zinn at (907) 465-1049 or RegulationsAndPublicComment@alaska.gov, or go to <https://www.commerce.alaska.gov/web/portals/5/pub/OPT-0619.pdf>.


After the public comment period ends, the Board will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.** Written comments and questions received are public records and are subject to public inspection.

Statutory Authority: AS 08.72.050; AS 08.72.278

Statutes Being Implemented, Interpreted, or Made Specific: AS 08.72.050; AS 08.72.278

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 6/13/19



Sher Zinn, Regulations Specialist
Division of Corporations, Business and

Professional Licensing

For each occupation regulated under the Division of Corporations, Business and Professional Licensing, the Division keeps a list of individuals or organizations who are interested in the regulations of that occupation. The Division automatically sends a Notice of Proposed Regulations to the parties on the appropriate list each time there is a proposed change in an occupation's regulations in Title 12 of the Alaska Administrative Code. If you would like your address added to or removed from such a list, send your request to the Division at the address above, giving your name, either your e-mail address or mailing address (as you prefer for receiving notices), and the occupational area in which you are interested.

ADDITIONAL REGULATION NOTICE INFORMATION (AS 44.62.190(d))

1. **Adopting agency:** Board of Examiners in Optometry – Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing.
2. **General subject of regulation:** Establishment of requirements for use of therapeutic procedures.
3. **Citation of regulation:** 12 AAC 48.040
4. **Department of Law file number:** #2018200947
5. **Reason for the proposed action:** Compliance with new statutes – Chapter 17 SLA 2017 (HB 103).
6. **Appropriation/Allocation:** Corporations, Business and Professional Licensing – #2360
7. **Estimated annual cost to comply with the proposed action to:**
A private person: None known.
Another state agency: None known.
A municipality: None known.
8. **Cost of implementation to the state agency and available funding (in thousands of dollars):**
No costs are expected in FY 2020 or in subsequent years.
9. **The name of the contact person for the regulation:**
Emily Mesch, Licensing Examiner
Board of Examiners in Optometry
Division of Corporations, Business and Professional Licensing
Telephone: (907) 465-2541
E-mail: emily.mesch@alaska.gov
10. **The origin of the proposed action:** Board of Examiners in Optometry.
11. **Date:** 6/13/19 **Prepared by:** Sher Zinn
Sher Zinn
Regulations Specialist

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF PROPOSED ADOPTION OF REGULATIONS
AND FURNISHING OF ADDITIONAL INFORMATION

I, Sher Zinn, Regulations Specialist, of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 12 AAC 48, dealing with therapeutic procedures, has been given by being:

1. published in a newspaper or trade publication;
2. furnished to every person who has filed a request for notice of proposed action with the state agency;
3. furnished to appropriate state officials;
4. furnished to interested persons;
5. furnished to the Department of Law, along with a copy of the proposed regulation;
6. furnished electronically to incumbent State of Alaska legislators;
7. posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 8/13/19

Sher Zinn
Sher Zinn, Regulations Specialist

Subscribed and sworn to before me at Juneau Alaska on
August 13 2019.

(date)



Jolene Siirila
Notary Public in and for the State of Alaska
My commission expires w/office

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Sher Zinn, Regulations Specialist, of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, being sworn, state the following:

In compliance with AS 44.62.215, the Department of Commerce, Community, and Economic Development has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Board of Examiners in Optometry regulations on dealing with therapeutic procedures.

Date: 8/13/19

Sher Zinn
Sher Zinn, Regulations Specialist

Subscribed and sworn to before me at Juneau Alaska on
August 13 2019
(date)



Jolene Siirila
Notary Public in and for the State of Alaska
My commission expires: w/office

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 268972
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PO BOX 110806
JUNEAU, AK 998110806

Order# 0001439334
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Product ADN-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin
being first duly sworn on oath deposes and says
that he/she is a representative of the Anchorage
Daily News, a daily newspaper. That said
newspaper has been approved by the Third
Judicial Court, Anchorage, Alaska, and it now
and has been published in the English language
continually as a daily newspaper in Anchorage,
Alaska, and it is now and during all said time
was printed in an office maintained at the
aforesaid place of publication of said newspaper.
That the annexed is a copy of an advertisement
as it was published in regular issues (and not in
supplemental form) of said newspaper on

June 13, 2019

and that such newspaper was regularly
distributed to its subscribers during all of said
period. That the full amount of the fee charged
for the foregoing publication is not in excess of
the rate charged private individuals.

Signed Joleesa Stepetin
Joleesa Stepetin

Subscribed and sworn to before me
this 13th day of June, 2019

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

7/14/2020

STATE OF ALASKA
NOTARY
PUBLIC
Jada L. Nowling

**NOTICE OF PROPOSED CHANGES RELATING TO
REGULATIONS
OF THE BOARD OF EXAMINERS IN OPTOMETRY**

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<https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BoardofOptometry.aspx>

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STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF BOARD ACTION

I, Emily Mesch, Occupational Licensing Examiner for the Board of Examiners in Optometry, being duly sworn, state the following:

The attached motion dealing with therapeutic procedures was passed by the Board of Examiners in Optometry during its August 5, 2019 meeting.

Date: 08-12-2019
Juneau, Alaska


Emily Mesch, Occupational Licensing Examiner

Subscribed and sworn to before me at JORDAN, AK

on 08.12.2019

[illegible]

Notary Public in and for the State of Alaska
My commission expires: 10/11/2025

Zinn, Sher K (CED)

From: Mesch, Emily (CED)
Sent: Tuesday, August 13, 2019 10:41 AM
To: Zinn, Sher K (CED)
Subject: Optometry Regulations Approval

Hi Sher,

Please see the below minutes from the August 5th Optometry board meeting, relating to the regulations project:

Agenda Item 3 – Regulations Project

Dr. Delzer confirms that everyone has reviewed the public comments, and opens floor for discussion.

Dr. Delzer cites input given by Dr. Karpik that suggested adding the word “known” to regulations, asks if that change would require a separate review. Renee says that only substantial changes require further review, leaves at 12:12pm to determine if the cited addition is considered substantial.

Dr. Cross supports keeping the current wording.

Dr. Steffes supports keeping the current wording.

Dr. Christianson agrees. It is determined not to adopt Dr. Karpik’s suggestions.

Mr. Lingle cites several comments from non-optometry medical professionals who oppose the new regulations, asks that those concerns be addressed.

Dr. Delzer cites examples of concerns that are already addressed

Renee returns at 12:17

Dr. Cross states that this regulation follows precedent for all expansion of scope laws.

Renee reports that addition of the word “known” would be considered clarifying what is already there, and not a change in the regulation.

Dr. Steffes re-emphasizes places where the commentary appears to criticize issues addressed elsewhere.

Dr. Steffes makes a motion to move the proposed regulation 12 AAC 48.040 forward after consideration of public comment and expense to the private individual and resident of Alaska. Dr. Christianson seconds.

Board Member	Approve	Deny	Recuse
Dr. Pam Steffes	X		
Dr. Bradley Cross	X		
Mr. Eric Lingle	X		
Dr. Damien Delzer	X		
Dr. Erik Christianson	X		

The board adopts the regulations with no changes. Dr. Delzer signs certification order.

Kind regards,

Emily Mesch

Occupational Licensing Examiner

Division of Corporations, Business and Professional Licensing

Ph: (907)465-2541 Fax: (907)465-2974
