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## TITLE 852 INDIANA OPTOMETRY BOARD

### **Proposed Rule** LSA Document #05-184

#### DIGEST

Amends 852 IAC 1-12-1 concerning duties of optometrists to designate the manner and circumstances of use of the title "optometrist" and its abbreviation in conjunction with their name. Effective 30 days after filing with the Secretary of State.

#### **IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**

##### **Estimated Number of Small Businesses Subject to This Rule:**

Industry Sector 621320 Offices of Optometrists

The Indiana Optometry Board (Board) estimates that no small businesses will be directly affected by this rule. The Board has the authority to promulgate rules establishing the standards for the competent practice of optometry, which includes the standards of professional conduct. This proposed rule will have no cost on small businesses.

##### **Estimated Average Annual Administrative Costs That Small Businesses Will Incur:**

The Board estimates that there will be no annual reporting, record keeping, or administrative costs incurred by small businesses to comply with this rule.

##### **Estimated Total Annual Economic Impact on Small Businesses:**

The Board estimates that there will be no impact on small businesses as a result of compliance with this rule.

- Justification of Requirements or Costs on Small Businesses Where Rule Is Not Expressly Required by Law: There are no compliance costs on small businesses that need to be justified for this proposed rule.
- Supporting Data, Studies, or Analyses: The Board has relied on no supporting data, studies, or analyses in reaching these estimates.

##### **Regulatory Flexibility Analysis of Alternative Methods:**

The Board has not analyzed alternatives to this proposed rule.

- Explanation of Preliminary Determination: The General Assembly gave the Board the authority to enact and establish these rules, and thus the Board did not explore alternative measures.
- Supporting Data, Studies, or Analyses: The Board did not rely on any studies in its decision not to employ alternatives to rulemaking.

### **852 IAC 1-12-1**

SECTION 1. 852 IAC 1-12-1 IS AMENDED TO READ AS FOLLOWS:

#### **852 IAC 1-12-1 Duties of optometrist**

**Authority:** IC 25-24-1-1

**Affected:** IC 25-24-1-3

Sec. 1. **(a)** An optometrist in the conduct of his **or her** practice of optometry shall abide by, and comply with, the ~~following~~ standards of professional conduct **in this section.**

~~(a)~~ **(b)** An optometrist shall **do the following:**

**(1)** Maintain the confidentiality of all knowledge and information regarding a patient, including, but not limited to:

**(A)** the patient's diagnosis, treatment, and prognosis; and ~~of~~

**(B)** all records relating thereto;

about which the optometrist may learn or otherwise be informed during the course of, or as a result of, the patient-optometrist relationship. Information about a patient shall be disclosed by an optometrist when required by law or when authorized by the patient or those responsible for the patient's care.

~~(b) An optometrist shall~~ **(2)** Give a truthful, candid, and reasonably complete account of the patient's condition to the patient or

to those responsible for the patient's care, except where an optometrist reasonably determines that the information is or would be detrimental to the physical or mental health of:

(A) the patient; or

(B) in the case of a minor or incompetent person, ~~except where an optometrist reasonably determines that the information would be detrimental to the physical or mental health of~~ those responsible for the patient's care.

~~(c)(1) The optometrist shall~~ (3) Give reasonable written notice to an active patient or those responsible for the patient's care when the optometrist withdraws from a case so that another optometrist may be employed by the patient or by those responsible for the patient's care. An optometrist shall not abandon a patient. As used in this section, "active patient" means a person whom the optometrist has examined, cared for, or otherwise consulted with, during the two-year period ~~prior to~~ **before any of the following:**

(A) Retirement.

(B) Discontinuation of ~~the~~ practice of optometry. ~~or~~

(C) Leaving or moving from the community.

~~(2)~~ An optometrist who withdraws from a case, except in emergency circumstances, shall, upon written request, make available to his ~~or her~~ patient all records, test results, histories, diagnoses, files, and information relating to ~~said the patient which that~~ are in the optometrist's custody, possession, or control, or copies of ~~such the~~ documents ~~hereinbefore~~ described **in this subdivision.**

~~(d) An optometrist shall~~ (4) Exercise reasonable care and diligence in the diagnosis and treatment of patients based upon approved:

(A) scientific principles;

(B) methods;

(C) treatments;

(D) professional theory; and

(E) practice.

~~(e)~~ (c) An optometrist shall not:

(1) represent;

(2) advertise;

(3) state; or

(4) indicate;

the possession of any degree recognized as the basis for licensure to practice optometry unless the optometrist is actually licensed on the basis of ~~such the~~ degree in the **state or** states in which he ~~or she~~ practices.

**(d) To designate that an optometrist is licensed to practice optometry in Indiana, the optometrist shall use, in conjunction with his or her name, the words "optometrist" or "doctor of optometry" or the abbreviation "O.D." on all of the following:**

(1) Signs.

(2) Letterhead.

(3) Business cards.

(4) Similar items of identification.

(5) Advertising.

(6) Solicitation of any kind.

**However, an optometrist shall not use any words that would mislead the public into believing the optometrist is licensed in Indiana to practice any other licensed occupation or profession for which the optometrist does not hold an Indiana license.**

~~(f)~~ (e) An optometrist shall obtain consultation whenever requested to do so by:

(1) a patient; or ~~by~~

(2) those responsible for a patient's care.

~~(g)~~ (f) An optometrist who has personal knowledge:

(1) based upon a reasonable belief that another optometrist has engaged in:

(A) illegal;

(B) unlawful;

(C) incompetent; or

(D) fraudulent;

conduct in the practice of optometry; ~~shall promptly report such conduct to the board. Further, an optometrist who has personal knowledge or~~

(2) of any person:

(A) engaged in; or

(B) attempting to engage in;  
the unauthorized practice of optometry;  
shall promptly report such the conduct to the board. (*Indiana Optometry Board; 852 IAC 1-12-1; filed May 11, 1987, 9:00 a.m.: 10 IR 1876; readopted filed Jul 10, 2001, 3:00 p.m.: 24 IR 4238*)

**Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on February 15, 2006 at 9:15 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W064, Indianapolis, Indiana the Indiana Optometry Board will hold a public hearing on proposed amendments concerning duties of optometrists to designate the manner and circumstances of use of the title "optometrist" and its abbreviation in conjunction with their name.*

*The Indiana Optometry Board has the authority to promulgate rules establishing the standards for the competent practice of optometry, which includes the standards of professional conduct. The Board presided over a disciplinary case wherein the practitioner referred to himself as an "optometric physician". The Board determined that the use of that title was beyond the scope of the practice and could mislead the public. Currently, the Board does not have any rules that specifies and/or limits the use of titles and/or abbreviations when referring to an optometrist. This proposed rule will clarify and limit the title and/or abbreviation that an optometrist may use in conjunction with their name, which will protect the public. This proposed rule will have no cost on the regulated entities.*

*Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W072 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Frances L. Kelly  
Executive Director  
Indiana Professional Licensing Agency