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Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary
Kevin A. Rushing, Director

February 22, 2024

To: Hon. Michael McCarthy, Chair
House Committee on Government Operations and Military Affairs

From: Lauren Layman, General Counsel, Office of Professional Regulation

Re: Proposed OPR Bill 2024

Dear Committee,

Thank you for the opportunity to testify about the 2023 Vermont Optometric Scope of Practice Legislative Report that the Office of Professional Regulation (OPR) submitted to the Legislature this past fall.

Background

In May 2022, the Senate Government Operations Committee sent OPR a letter asking the agency to review a proposed expansion of optometrists' scope of practice to include certain laser, surgical, and injection procedures. (That letter is attached.) Prior to receiving that letter, OPR had conducted a review in 2019 of whether an expansion of the optometric scope of practice should be adopted. In January 2020 OPR submitted the report which concluded that OPR could not find that optometrists received adequate training and education in these expanded procedures. The report further concluded that there was little need for and minimal cost savings from expanding the scope of practice.

The Senate Government Operations Committee revisited this topic and took extensive testimony on scope expansion during the 2022 session. At the end of that session, the Committee concluded that "some, if not all, of the requested expansion should be pursued." The letter asked OPR to

1. Review and evaluate additional materials and to reconsider other materials; and
2. To recommend what, if any, legislative language OPR would be willing to support based on our findings.

The underlying policy and purpose of OPR regulation, articulated in 26 V.S.A. Ch. 57, are to only impose regulation if there's a public harm from the unregulated practice of a profession, and to narrowly tailor any regulations to prevent that harm. Based on the policy and purpose of OPR,

OPR understood the Senate Government Operations Committee's request to be seeking proposed legislative language that would allow for the expansion of the optometrist scope of practice in a manner that protected the public. The report submitted by OPR this past fall contains recommendations for achieving this goal.

Process

Beginning in May 2023, OPR met with stakeholders and members of the public interested in the potential optometrist scope expansion. Over the course of five months, OPR met with the Vermont Optometric Association and the Vermont Ophthalmological Society a combined six times. We met with the Board of Optometrists four times and held two public hearings. Thirty-eight people attended the first public hearing and thirty-four people attended the second public hearing. OPR also received forty-eight written comments from the public, professionals, professional associations, and other state boards. Thirty-nine comments supported scope expansion and nine opposed scope expansion. Those comments are included in appendices to the report. Meetings occurred and public comments were received before OPR developed recommendations, during the recommendation development process, and after the recommendations were released, providing an opportunity to offer input on the recommendations throughout the process.

The Senate Government Operations Committee also asked OPR to review specific materials.

1. Testimony provided to the Senate Government Operations Committee during the 2022 session
2. Reports on optometrist scope expansion from Washington and Colorado and any other reports released during the study period
3. States across the country allowing for a higher level of scope than Vermont, specifically looking at how those states' statutes work for patient safety and what procedures/scope is allowed
4. Historical and current Veterans' Administration scopes of practice for optometrists
5. Information that the VOA and the American Optometric Association committed to providing and that is laid out as required in 26 V.S.A. § 3108.

OPR reviewed each of these materials. The report includes summaries of these sources and our findings.

Findings and Recommendation

Based on its review, OPR recommendations are as follows:

- The optometric scope of practice should be expanded to allow optometrists with a special endorsement license to perform specific injection procedures and laser and non-laser surgeries.
- To provide clarity regarding what procedures are within the optometric scope of practice, the statutes should specify which advanced procedures optometrists are permitted to perform and which procedures are prohibited.

- Only optometrists with a specialty endorsement license should be permitted to perform these advanced procedures.
- To be eligible for the specialty endorsement license, optometrists should be required to complete a post-graduate residency or coursework and a preceptorship including experience performing the procedures on live, human patients.

Several issues arose during OPR's review of the proposed scope expansion, specifically

1. If optometrists were educated and trained in the advanced procedures;
2. Whether expanding the optometric scope of practice posed a risk to patient safety;
3. Whether expanding the optometric scope of practice would improve patient access to services; and
4. Whether expanding the optometric scope of practice would reduce costs for services.

After reviewing multiple conflicting sources and examining data from other states, OPR was unable to determine whether access would be improved or costs reduced through the expansion of the optometric scope of practice.

OPR was able to conclude that optometrists receive extensive didactic training and simulated education in advanced procedures during their optometry degrees. However, OPR also found that most optometry students had no experience performing the procedures on live, human beings. Given the anatomical complexity of the eye and adnexa, OPR feels strongly that public safety is best protected if, before optometrists are granted a license to perform these procedures on live, human patients, optometrists have experience performing these procedures on live, human patients. To this end, OPR recommends that optometrists seeking a license to perform these advanced procedures complete one of the following sets of qualifications:

1. If they graduated *after* 2019
 - a. Hold an optometry license in Vermont;
 - b. Complete a post-graduate residency with at least simulated experience in the authorized procedures;
 - c. Complete a supervised post-graduate preceptorship of a certain length and with experience performing the procedures on live, human patients; and
 - d. Pass the national exams in the use of lasers, surgery, and injections in optometry.
2. If they graduated *before* 2019
 - a. Hold an optometrist license in Vermont;
 - b. Complete a post-graduate course of at least 32 hours in length, with content approved by the Board of Optometry;
 - c. Complete a supervised post-graduate preceptorship of a certain length and with experience performing the procedures on live, human patients; and

- d. Pass the national exams in the use of lasers, surgery, and injections in optometry.

In its report, OPR recommended that optometrists perform a certain number of each of the advanced procedures in the post-graduate preceptorship. The numbers proposed were based on the ACGME standards for ophthalmology residencies. Both optometrists and ophthalmologists expressed dissatisfaction with this approach. In S. 233, the preceptorship is thus changed to require 100 hours of supervised practice containing at least two of each of the advanced procedures therein. OPR supports these revised requirements.

Finally, OPR recommends that optometrists holding the advanced practice endorsement complete two hours of continuing education every two years. We believe that with this additional hands-on training and practice on live, human patients, optometrists will have sufficient education and training to perform the enumerated advanced procedures in a manner that will protect patient safety.

Thank you, again, for the opportunity to review this report with the Committee. We are happy to provide any more information that the Committee thinks will be helpful as it considers this issue.



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MAY 20 2022

Secretary of State
Professional Regulation

4/21/2022

Dear Director Hibbert,

As you are aware, the Senate Government Operations committee has taken extensive testimony during the 2022 legislative session regarding scope expansion for the profession of Optometry. It seems clear that some, if not all, of the requested expansion should be pursued.

The mission of the Office of Professional regulation is to ensure the safety of the public, and within the aforementioned safety, to seek to allow its licensed professions to practice at its highest level of training.

As we discussed in committee, we would ask OPR to prepare a revision to its 2019 report. In this revision we would specifically ask for the following criterion to be evaluated.

Review:

1. testimony provided to our committee, including any required follow up or clarification OPR may need.
2. Colorado and Washington State reports as well as any others that may be released during the study period.
3. states across the country that allow a higher level of scope than Vermont. Specifically, how their statute works for patient safety, and what procedures/scope is allowed.
4. both historical VA scope as well as current VA scope.
5. information that the Vermont Optometric Association and the American Optometric Association have committed to providing as laid out in 26 V.S.A § 3108.

Within the requested revision and using the information laid out above, and any other data that you feel you may need, please bring back to our committee what legislative language, if any, whether OPR would be willing to support moving forward based on your findings. We request that this report be completed by Monday October 16th, 2023 (~18 months), but would welcome it sooner if your staffing, research, and time allows.

Regards,

Jeanette White for Senate Government Operations

CC: Dr. Dean Barcelow; VT Optometric Association
Stephanie Winter; VT Ophthalmological Society
Heather Shouldice; William Shouldice & Associates LLC