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November 21, 2023

Kevin A Rushing, Director
Lauren Layman, General Counsel
Vermont Secretary of State
Office of Professional Regulation
89 Main Street
Montpelier, VT 05633

Re: Optometry Scope of Practice – 2023 Revision to the 2019 Optometry Report

Dear Mr. Rushing and Ms. Layman:

The Ophthalmic Mutual Insurance Company (a Risk Retention Group) (“OMIC”) became aware earlier this week that a statement written by its President & CEO, Timothy J. Padovese, was among the Senate Government Operations Committee (“SGO”) sources cited in the 2019 OPR Optometry Report (“2019 Report”) and that OMIC was characterized as a witness in the Revision to the Report published October 31, 2023 (“2023 Revision”). The table appearing on page 4 of the 2023 Revision summarizes OMIC’s position on expanded optometric scope of practice as “Neutral.” This is not the case. OMIC is **OPPOSED** to the proposed expansion of optometric scope of practice as further described below. We ask that, to the extent OPR edits the 2023 Revision or to the extent OMIC’s position on scope expansion becomes a topic of testimony in the upcoming legislative session, OMIC’s opposition is noted.

Domiciled in Vermont, OMIC offers medical professional liability insurance to members of the American Academy of Ophthalmology, their medical entities, and their employees, including optometrists. OMIC currently insures more than 6,000 ophthalmologists and 1,400 optometrists nationwide.

Over the years, as states have considered legislation to expand the optometric scope of practice, OMIC has been asked to provide data to inform these deliberations. In response OMIC has written statements or letters, such as the “Statement on Optometric Malpractice Rates” by Timothy J. Padovese dated January 30, 2019 (“OMIC Statement”) (*see attached*). It appears that this letter was provided to the OPR in 2019 by ophthalmologists opposing S.158 (the bill to expand optometric scope of practice). We believe the 2019 Report fairly summarizes OMIC’s

provided data on optometric insurance rates¹ and properly references the source of the information.²

This is not the case for the 2023 Revision. OMIC's leadership was dismayed to find OMIC's name and position improperly characterized in the 2023 Revision and lacking reference to the source of the data. The 2023 Revision³ states "OPR reviewed the testimony provided to the SGO in 2022 regarding S. 158, an act relating to optometrists' scope of practice. Testimony and supporting documents are summarized in the following table." In the table, OMIC is listed as a "Witness," however, no OMIC representatives provided oral or written testimony to the SGO in 2022 or otherwise. Since no reference is made to the source of the testimony, we assume it refers back to the OMIC Statement submitted by others in 2019. Listing OMIC as a "Witness" improperly characterizes OMIC as having directly presented data to the SGO.

Under "Testimony Summary," portions of the OMIC Statement are summarized. These excerpts adequately reflect OMIC's statement in regards to (1) the reasons malpractice rates for optometrists are low; (2) the likelihood that surgical complications can be decreased by having a trained and skilled surgeon provide the procedure; and (3) OMIC not offering coverage to optometrists to perform surgical procedures. Omitted from the summary, however, are the reasons OMIC does not offer this coverage: (1) OMIC does not have the experience to properly underwrite, rate, and administer claims arising from surgical procedures performed by optometrists; (2) there is a lack of data available on this liability risk; and (3) OMIC covers health care providers *only for those procedures for which they have the necessary education, training, and expertise* [emphasis added]. OMIC does not believe optometrists have the education, training, and expertise necessary to safely administer injections or perform procedures using scalpels or lasers (other than diagnostic lasers, such as OCT).

As a result, OMIC is not "Neutral" with regard to scope expansion, as stated in the table under "Support/Oppose Scope Expansion." OMIC is an insurance carrier, committed to risk management, loss prevention, and patient safety. The information in the OMIC Statement entering the record here, when taken as a whole, reflects this. In furtherance of this purpose, OMIC is opposed to an expansion of the scope of optometric practice because optometrists lack the education, training, and expertise to safely perform the procedures within OPR's recommended expansion of the optometric scope of practice.

¹ 2019 OPR Optometry Report, Summary of Arguments For and Against Optometric Scope Expansion and Analysis of Findings, Patient Safety, II. Arguments that Expanded Scope will Harm Patient Safety, Vermont Ophthalmological Society and Vermont Medical Society, C. Malpractice Insurance Rates. See page 18 of the 2019 Report.

² Id. See footnotes 39, 40, and 41 on page 18 of the 2019 Report.

³ Revision to the OPR Optometry Report, published October 31, 2023, Section IV. Legislature's Request and Comments, A. Senate Government Operations Sources, 1) Testimony Provided to SGO during the 2022 Session, page 4.

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Therefore, we ask that, to the extent OPR edits the 2023 Revision or to the extent OMIC's position on scope expansion becomes a topic of testimony in the upcoming legislative session or other forums, OMIC's opposition is noted.

Sincerely,

The Ophthalmic Mutual Insurance Company (a Risk Retention Group)

A handwritten signature in cursive script, appearing to read "Robert S. Gold, MD".

Robert S. Gold, MD
Chair of the Board

Attachment: "Statement on Optometric Malpractice Rates," Timothy J. Padovese, OMIC President & CEO, January 30, 2019.

Statement on Optometric Malpractice Rates January 30, 2019

OMIC currently insures more than 5,250 ophthalmologists and more than 800 optometrists nationwide. During our 30+ years in operation, we have handled over 10,000 medical professional liability incidents and claims arising from the actions of the entire eye care team, from ophthalmologists to optometrists to technicians.

I will address the two issues that are frequently inquired about:

1. The stability of malpractice rates for optometrists; and
2. The complications that can arise from the performance of certain surgical procedures.

Insurance Premiums

Regarding the stability of optometric malpractice rates, the answer is very straightforward and is actuarial in nature.

- Most optometrists in the United States do not manage patients with complex ophthalmic conditions or perform laser and incisional surgery.
- Therefore, the number of “opportunities” for potential malpractice is relatively small, and such cases typically take three to four years to come to final adjudication.
- Without large numbers of cases having yet moved through the courts, there is little statistical information on which to base rate increases.
- This is particularly true compared to ophthalmologists who spend much of their time managing (including surgically) complex and sight-threatening cases and therefore have significantly more “opportunities” to incur malpractice allegations.

Surgical Complications

Regarding outcomes, every surgical procedure has associated potential complications. OMIC has drafted consent forms for most ophthalmic surgical procedures that explain the risks – or potential complications – for those procedures.

- For example, the consent form for laser iridotomy, which involves making a hole in the iris with the laser to treat narrow angle glaucoma, lists risks for this procedure that include:
 - Inflammation or bleeding in the eye,
 - Cataract formation, and
 - Damage to the cornea or retina from the laser light.
- All ocular surgical procedures have their own associated risks, including permanent loss of vision, even for surgeries seemingly as safe as draining a chalazion (an inflamed oil gland) of the eyelid.
- These complications cannot always be prevented, but the likelihood can be decreased by having a trained and skilled surgeon perform the procedure.



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OMIC is committed to risk management, loss prevention, and patient safety. To this end, we have implemented underwriting guidelines to ensure that coverage is extended to health care providers only for those procedures for which they have the necessary education, training, and expertise. For this reason, as well as the company's assessment that it does not have the experience to properly underwrite, rate, and administer claims arising from surgical procedures performed by optometrists, and the lack of data available on this liability risk, OMIC does not offer coverage to optometrists for most surgical procedures (exceptions being, e.g., limited forms of epilation, insertion of punctal plugs, and use of diagnostic lasers).

Timothy J. Padovese
President & CEO
Ophthalmic Mutual Insurance Company