

KANSAS BOARD OF EXAMINERS IN OPTOMETRY

TELEOPTOMETRY GUIDANCE

This guidance document is intended for both Kansas optometrists and patients with regard to teleoptometry and the practice of optometry. Telehealth, which includes teleoptometry, is a rapidly developing area of health care which offers opportunities for enhancing the patient-doctor relationship. As the patient-doctor relationship is the foundation to good health care, the Kansas Board of Examiners in Optometry (“Board”) advises both the public and optometrists to be mindful of statutory requirements and challenges inherent when utilizing this new technology. Teleoptometry is a tool and does not alter the scope of practice, nor standard of care, of licensed optometrists who practice optometry via teleoptometry within the state nor to those optometrists located outside of the state who diagnose and treat via teleoptometry patients located within this state. Failure to conform to the scope of practice and standard of care, whether rendered in person or via teleoptometry, may subject the licensee to investigation and discipline by the Board.

TELEMEDICINE DEFINITIONS

The establishment of the optometrist and patient relationship is the same whether face-to-face or in a teleoptometry environment. Teleoptometry is a tool to be improved upon while assuring existing standards of care are met. The Optometry law and rules and regulations promulgated by the Board applies in the teleoptometry context. In addition and while not applicable to optometrists in Kansas, K.S.A. 40-2,211 et seq. provides Kansas legislative policy relating to the practice of telemedicine and defines the establishment of a provider-patient relationship through an examination.(K.S.A. 40-2,211 is produced in full below). Reference is made to some of the definitional terms along with the policy expressed by the Kansas legislature through K.S.A. 40-2,211 et seq.

BEST PRACTICES FOR TELEOPTOMETRY

The practice of optometry is defined in Article 15 of Chapter 65 of K.S.A. (“Optometry Law”). The mission of the Board is to protect the public through effective licensure and enforcement of the Optometry Law and the Board’s rules and regulations governing the practice of optometry so as to reasonably ensure a standard of competent and ethical practice. In order to provide guidance for both the public and the optometrist, the following topics in teleoptometry, should be considered. The following information is presented to reflect the Optometry Law and to enhance the patient-doctor teleoptometry experience, and shall not be interpreted as a ruling, opinion or finding of the Board.

1. Patient – Optometrist Relationship: An optometrist who provides comprehensive eyecare via teleoptometry to a patient who is not physically present at the same location as the optometrist must ensure that an appropriate optometrist-patient relationship is established prior to diagnosing or treating the patient.
 - a. Establishing an appropriate optometrist-patient relationship is best accomplished through the optometrist having at least one in-person encounter with the patient at the optometrist’s

established office location before engaging in the practice of teleoptometry. If this in-person initial encounter is not possible, the optometrist must take the time and effort, and use means and methods appropriate under the circumstances, to verify the identity of the patient, gain the necessary understanding of the patient and the patient's history, condition, and needs in order to render a diagnosis and treatment plan that is consistent with the standard of care.

b. The optometrist must provide comprehensive care to the patient, not just screen the patient for presence or absence of abnormal conditions or pathology of the eye. As such, the optometrist becomes the patient's primary eyecare provider and manages the patient consistent with the optometrist's training and licensure. Before entering into or continuing a teleoptometry relationship, the optometrist must assess whether he or she will be able to provide comprehensive eyecare and maintain the same standard of care utilizing teleoptometry as would be provided if the optometrist's services were to be provided in-person.

c. The optometrist must have means to accurately verify the patient's identity to avoid HIPAA and related patient confidentiality issues. In addition, the optometrist must ensure the data telecommunications network has the appropriate level of security so that the patient's confidential information is protected.

d. The optometrist must obtain or review all aspects of the patient's medical history and any available medical records.

e. The optometrist must:

- i. disclose his/her identity and credentials, including informing the patient that the optometrist is licensed to practice in the jurisdiction in which the patient is located.
- ii. provide the patient the optometrist's direct contact information consistent with in-person care.
- iii. maintain in the optometrist's patient records an acknowledgment signed and dated by the patient, indicating that the optometrist has provided to the patient, in written form, an appropriate summary of the risks and benefits of being treated by teleoptometry.

f. Place the welfare of the patient first; protect patient confidentiality; maintain acceptable standards of practice; and properly supervise and oversee any technicians participating in the teleoptometry process, thus maintaining appropriate control over the practice.

2. Examination, evaluation, and diagnosis: the optometrist must conduct an appropriate evaluation prior to diagnosing or treating the patient, including prior to rendering a prescription for pharmaceuticals, glasses, or contact lenses. Physical remoteness of the patient does not change the need for proper patient identification, appropriate intake procedures, adequate patient history, examination, and, where indicated, testing. An optometrist is not excused from performing an appropriate examination, evaluation, and assessment of the patient's condition by virtue of the patient's physical remoteness from the optometrist, including adhering to the minimum standards required by K.A.R. 65-8-1.

3. Assistants and Delegation: any assistant / technician involved in the teleoptometry patient encounter must be trained in the use of all equipment utilized in the teleoptometry encounter and competent in the operation of such equipment; provided, however, that teleoptometry encounters remain subject to the delegation rules contained within the Optometry law. K.S.A. 65-1508(b) allows certain examination procedures not requiring professional interpretation or judgment to be

delegated to an assistant; however, such examinations procedures must be performed under the immediate and personal supervision of the optometrist. Immediate and personal supervision is not possible via remote means.

4. Patient records: the optometrist treating via teleoptometry must create and maintain a complete record of the patient's intake, diagnosis, and treatment, no different than for an in-person patient encounter. The optometrist must have access to those records at all times so that the optometrist can address and communicate with the patient any issue the patient brings to the optometrist's attention. Maintaining these records electronically so they can be accessed from any of the optometrist's practice locations and after normal business hours meets the standard of care.

5. Prescribing: Prior to prescribing any medication or ophthalmic device (such as glasses or contact lenses), the optometrist should conduct an appropriate assessment of the ocular health and visual status of the patient. The standard of care as currently recognized by the Board, does not permit an examination consisting solely of objective refractive data or information generated by an automated testing device such as an autorefractor in order to establish a medical diagnosis or to establish refractive error. Likewise, issuing a prescription based solely on a patient's responses to a written or online questionnaire does not meet the standard of care. Optometrists prescribing controlled substances via teleoptometry also should obey all other relevant state and federal laws and regulations. (Reference should also be made to K.S.A. 40-2,214. Prescribing of drugs via telemedicine).

6. Where the practice of teleoptometry occurs: K.S.A. 40-2,211 reflects a state policy which considers that the practice of optometry occurs both where the patient is located (originating site) and where the optometrist providing professional services is located (distance site). In order for an optometrist to provide professional optometric services to a patient located in Kansas that optometrist must be licensed by the Board to engage in the practice of optometry in Kansas.

7. Laws and regulations governing the practice of optometry: As indicated previously, there is not a separate standard of care for teleoptometry under the Optometry Law. Accordingly, the optometrist who seeks to use teleoptometry in their practice should be familiar with the requirements of Kansas statutes and all other applicable laws and regulations, whether state or federal. The Board can only provide direction to current statutes, rules and regulations, but does not provide legal advice.

8. Corporate Practice prohibited: K.S.A. 65-1522 and K.S.A. 65-1524 prohibit the corporate practice of optometry, except for professional corporations authorized by K.S.A. 17-2706, professional limited liability companies authorized by K.S.A. 17-7668, medical facilities, medical care facilities and governmental institutions and agencies. This restriction applies to the practice of teleoptometry, regardless of whether the distant site of the optometrist is located in a different state.

9. Other licensing bodies may also have oversight: Kansas licensees who wish to treat patients located outside Kansas by utilizing teleoptometry should know both that the Board has oversight of such practice and that the "Originating site" state's board of optometry may take the position that such constitutes the practice of optometry in their respective states, and accordingly such boards also may require licensure in their state as a prerequisite. Optometrists intending to practice in such manner should therefore seek guidance from the optometry boards in all states in which they intend to treat patients for those states' licensure requirements to determine whether or not such practice is permitted in those jurisdictions.

10. Displaying license and current certificate of renewal; branch office licenses: The licensee must display their license and current certificate of renewal in a conspicuous place in the optometrist's office. A licensee who practices in more than one office location must obtain a duplicate license for each such branch office, with such branch office licenses to be displayed in like manner. For teleoptometry encounters, providers should display their license at the "originating site" or include licensing information along with patient onboarding materials. Providers may also consider displaying other materials commonly found in a traditional office setting such as an image of the provider (head shot), biographical information, and other certificates at an "originating site". Consumers should be aware that all current Kansas Licensed Optometrists can be validated through the "Verify a License" feature on the Kansas State Board of Examiners in Optometry website.

REFERENCE: KANSAS TELEMEDICINE ACT

K.S.A. 40-2,211. Same; definitions. (a) For purposes of Kansas telemedicine act:

(1) "Distant site" means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

(2) "Healthcare provider" means a physician, licensed physician assistant, licensed advanced practice registered nurse or person licensed, registered, certified or otherwise authorized to practice by the behavioral sciences regulatory board.

(3) "Originating site" means a site at which a patient is located at the time healthcare services are provided by means of telemedicine.

(4) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.

(5) "Telemedicine," including "telehealth," means the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine shall be provided by means of real-time two-way interactive audio, visual, or audio-visual communications, including the application of secure video conferencing or store-and-forward technology to provide or support healthcare delivery, that facilitate the assessment, diagnosis, consultation, treatment, education and care management of a patient's healthcare. "Telemedicine" does not include communication between:

(A) Healthcare providers that consist solely of a telephone voice-only conversation, email or facsimile transmission; or

(B) a physician and a patient that consists solely of an email or facsimile transmission.

(b) This section shall take effect on and after January 1, 2019.

History: L. 2018, ch. 98, § 2; July 1.

Other relevant Kansas statutes:

40-2,212. Same; confidentiality

40-2,213. Same; application of; coverage parity established

40-2,214. Prescribing of drugs via telemedicine

40-2,215. Abortions delivered via telemedicine not authorized

40-2,216. Same; nonseverability clause