STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

Continuing Education Course Approval Checklist

Title: Optometry Law Lecture

Provider Name: Eap Optometry c/o Dr. Stephen Eap, O.D.

☑Completed Application
Open to all Optometrists? ☑Yes ☐No
Maintain Record Agreement? ☑Yes ☐No

☑Correct Application Fee

☑Detailed Course Summary

☑Detailed Course Outline

☑PowerPoint and/or other Presentation Materials

☐Advertising (optional)

☑CV for EACH Course Instructor

☑License Verification for Each Course Instructor
Disciplinary History? ☐Yes ☑No

CALIFORNIA STATE BOARD OF OPTOMETRY

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CONTINUING EDUCATION COURSE APPROVAL APPLICATION

$50 Mandatory Fee

Pursuant to California Code of Regulations (CCR) § 1536, the Board will approve continuing education (CE) courses after receiving the applicable fee, the requested information below and it has been determined that the course meets criteria specified in CCR § 1536(g).

In addition to the information requested below, please attach a copy of the course schedule, a detailed course outline and presentation materials (e.g., PowerPoint presentation). Applications must be submitted 45 days prior to the course presentation date.

Please type or print clearly.

Course Title	**Course Presentation Date**
OPTOMETRY LAW LECTURE	02/12/2017

Course Provider Contact Information

Provider Name

STEPHEN (First) EAP (Last) HOR-BENG (Middle)

Provider Mailing Address

Street 6541 E SPRING ST **City** LONG BEACH **State** CA **Zip** 90808

Provider Email Address DREAP@EAPOPTOMETRY.COM

Will the proposed course be open to all California licensed optometrists?	☑ YES ☐ NO
Do you agree to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation?	☑ YES ☐ NO

Course Instructor Information

Please provide the information below and attach the curriculum vitae for each instructor or lecturer involved in the course. If there are more instructors in the course, please provide the requested information on a separate sheet of paper.

Instructor Name

STEPHEN (First) EAP (Last) HOR-BENG (Middle)

License Number 1017T	**License Type** OPTOMETRY
Phone Number (562) 496.3365	**Email Address** dreap@eapoptometry.com

I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and on any accompanying attachments submitted is true and correct.

Stephen H. Eap, O.D. — ***Signature of Course Provider***

02/03/17 — ***Date***

OPTOMETRY LAW LECTURE

Stephen H. Eap, O.D., J.D.

Sunday, February 12, 2017

Summary of Course Topics

I. Preventive Law for Optometrists

A detailed look at each legal issue pertaining to the practice of clinical optometry will be presented with a basic knowledge of the laws. Each area of clinical optometry as related to the laws will be covered to provide the optometrists insights and techniques of how to protect themselves from a malpractice lawsuit. By doing so, the optometrists can better serve their patients. Furthermore, with this preventive knowledge of the laws, the optometrists can preserve their personal and professional assets.

II. How to Deal With Uncooperative Patients

By knowing how to deal with uncooperative in a professional, ethical and legal way, the optometrists can preserve and extend the doctor-patient relationship. A happy patient leads to a lesser chance that the patient would seek a legal action against the optometrist.

III. Proper Documentation of Patient Record

With a clear, accurate and contemporaneous patient record, an optometrist is protecting himself/herself from any potential liability due to inaccurate diagnosis (or misdiagnosis), treatment and management of a patient. In addition, by doing som the optometrist is abiding to the rules and regulations set forth in the CA Optometry Laws and Regulations.

IV. Employer-Employee Relationship

As there many tasks that an employee of an optometrist can perform daily in a clinical setting, an employer-optometrist needs to know what the employee can and cannot legally perform during his/her scope of employment. With the knowledge of this law, the employer-optometrist can better supervise the employee and thus protect himself/herself from any potential liability due to an employer-employee relationship. More importantly, patients are protected from any harms inflicted by the employee's illegal and unsupervised conducts.

V. California Optometry Laws and Regulations Overview

An overview of the CA Optometry Laws and Regulations will provide optometrists in attendance the insight of what the optometrists practicing in CA can and cannot legally perform in a clinic. Also, it will provide the optometrists information as to the standards of

professional conduct outside the clinical setting as not to injure himself/herself, patients, and/or the public. This overview will simplify and clarify any legal issues the optometrists may have. By fully understanding the laws and regulations, the optometrists will have the ability to practice optometry to the fullest level and highest confidence. With this highest confidence, the optometrists will provide their patients the highest quality of eye care possible under the law.

OPTOMETRY LAW LECTURE
Stephen H. Eap, O.D., J.D.
Long Beach Marriott
4700 Airport Plaza Drive
Long Beach, California 90815
Sunday, February 12, 2017
1:00 PM-6:00 PM
5 Hours of Continuing Education Credit

Topics:

I. **Preventive Law for Optometrists**
II. **How to Deal With Uncooperative Patients**
III. **Proper Documentation of Patient Record**
IV. **Employer-Employee Relationship**
V. **California Optometry Laws and Regulations Overview**

****

I. Preventive Law for Optometrists

Summary:
A detailed look at each legal issue pertaining to the practice of clinical optometry will be presented with a basic knowledge of the laws. Each area of clinical optometry as related to the laws will be covered to provide the optometrists insights and techniques of how to protect themselves from a malpractice lawsuit. By doing so, the optometrists can better serve their patients. Furthermore, with this preventive knowledge of the laws, the optometrists can preserve their personal and professional assets.

A. Negligence

A circumstance in which an OD fails to exercise the standard of care that a reasonable OD would have exercised in the same or similar situation.

1. Elements

a. Duty
b. Breach
c. Causation
d. Damage

2. Defenses

a. Contributory/Comparative negligence
b. Assumption of risk
c. Statute of limitation

d. Res judicata

B. How to Prevent Malpractice Lawsuits

1. Binocular vision

a. Due to a long-term basis for binocular vision problems, always perform a thorough eye exam periodically in order to avoid misdiagnosing a co-existing eye disease or condition
b. Refer patient to a binocular vision specialist timely and appropriately if OD does not wish to treat patients with binocular vision problems
c. Sample case

2. Contact lenses

a. Document in the patient's chart any non-compliance with contact lenses' warnings and instructions
b. Inspect and make sure that all contact lenses' parameters are correct as specified before fitting
c. Review office procedures with employees to ensure that misadventures and mistakes do not occur
d. Supervise employees who clean, dispense, or handle contact lenses
e. Always check for ocular health prior to contact lens fitting
f. Schedule follow-up visits at regular intervals
g. Document any missed follow-up appointments
h. Keep a copy of the signed Contact Lens Service, Care, and Handling Agreement in the patient's file
i. Sample case

3. Diabetic retinopathy

a. Have patients who refuse dilation sign an informed refusal dilation form before the patents leave the office
b. Document in the patient's chart the recommendation of dilation
c. Refer a diabetic patient to an ophthalmologist if the patient has vision problems not caused by refractive errors or binocular vision conditions and the patient refuses dilation
d. Make the ophthalmological referral appointment for the patient by phone before the patient leaves the office. For HMO patients, refer the patient to an ophthalmologist through their PCP by transmitting via facsimile a medical/surgical referral form after the patient signs and receives a copy of the referral form
e. Document in the patient's chart the referral doctor's name, the date and time of the appointment
f. Sample case

4. Glaucoma

a. Do not omit an ocular health examination because a patient seeks only contact lenses, binocular vision therapy, or other services
b. Document reading of intraocular pressures of both eyes at each visit
c. Document patient failure to comply with scheduled recall or referral appointments
d. Make the referral appointment for the patient by phone or fax the referral to PCP for HMO patients

e. Do not delay examining a patient who may be suffering from angle-closure glaucoma
f. Sample case

5. Low vision

a. Document in the patient's chart if the patient is no longer legally qualified to operate a motor vehicle, and provide a notice to the Department of Motor Vehicles of the warning given to the patient
b. Document in the patient's chart any warning given to the patient
c. Counsel patients who have the following genetic ocular disorders"
   i. Albinism
   ii. Cataracts
   Iii. Color vision deficiencies
   iv. Corneal dystrophies
   v. Dyslexia
   vi. Glaucoma
   vii. Hypertensive retinopathy
   viii. Macular dystrophies
   ix. Nystagmus
   x. Optic atrophy
   xi. Refractive errors
   xii. Retinitis pigmentosa
d. Sample case

6. Ocular foreign bodies

a. Even of the appearance of the eye is normal, a penetrating foreign body may be present. So look for the following signs of global penetration by a foreign bodies:
   i. Decreased VA
   ii. Hypotony
   iii. Shallowing or flattening of the anterior chamber
   iv. Alteration in pupil size, shape or location
   v. Marked conjunctival chemosis
   vi. Corneal or scleral laceration
b. It is highly recommended that optometrists obtain informed consent from a patient prior to removing a foreign body located in the visual axis
c. Sample case

7. Ocular tumors

a. As a choroidal nevus may develop into a malignant melanoma, the following general clinical guidelines should be followed:
   i. Nevi < 2 disc diameters: Perform a periodic exam including a fundus photo or a drawing specifying size, shape, color, raised or flat in the patient's chart
   ii. Nevi 2-5 disc diameters: Specialized tests such as ultrasonography and fluorescein angiography should be performed in addition to a regular eye exam, or refer the patient to a retinal specialist

iii. Nevi > 5 disc diameters: Specialized tests are mandatory and periodic follow-up exams must be performed at regular intervals, or refer the patient to a retinal specialist if specialized tests are not done

b. For suspicious or resolved findings such as decreased VA, headaches, and diplopia, perform a thorough eye exam, including a threshold VF test and a periodic recall to rule out the presence of an underlying tumor

c. Document the patient's failure to comply with scheduled recall or referral appointments

d. Refer the patient to a retinal specialist if the optometrist is not sure whether the lesion is benign or malignant

e. Sample case

8. Ophthalmic infections

a. Take a thorough case history when a patient comes in for an eye exam with an ophthalmic infection in order to accurately diagnose, treat and manage the patient

b. Appropriately select an ophthalmic pharmaceutical agent to treat the ophthalmic infection

c. Perform all necessary follow-up exams on the patient until the infection is completely resolved

d. If in doubt, refer the patient to an ophthalmologist

e. Document the ophthalmological appointment in the patient's chart

f. Sample case

9. Ophthalmic pharmaceutical agents

a. Instruct office personnel in the proper procedure for prescription refills

b. Make a follow-up appointment if a drug might produce complications (e.g. steroids)

c. Contact the patient if a follow-up appointment is missed

d. Use mydriatic drops to perform DFE on all open-angle patients during an annual eye exam, on patients who have symptoms of a retinal detachment, and on glaucoma patients prior to treatment

e. Use a topical drug over a systemic drug if the topical drug will suffice

f. Discuss the benefits, risks, and possible side effects of a drug with the patient

g. Document in the patient's history of drug use (past and present) and previous adverse reactions to a drug

h. Instruct the patient on how to take action in the event of adverse reactions to a prescribed drug

i. Manage the patient who adversely reacts to a prescribed drug

j. Sample case

10. Ophthalmic surgery co-management

a. Do not skip any preoperative evaluation or postoperative follow-up visits

b. Refer the patient back to the surgeon immediately for any complications that are not part of the side effects that normally occur during or after the surgery (true complications)

c. Document in the patient's chart any misses or deviations from the recommended dosages of eye drops following surgery or any missed follow-up appointments
d. Sample case

11. Retinal detachment

a. Patients who have posterior vitreous detachment symptoms of photopsia, floaters, and/or curtain, and those who have predisposing conditions to retinal detachment such as high myopia, lattice degeneration, aphakia, glaucoma, blunt trauma, proliferative DM retinopathy, branch retinal vein occlusion, and sickle-cell retinopathy should have their eyes dilated during routine eye examination
b. Provide the patient a "home" Amsler grid with printed instructions to serve as a sensitive measure of any macular changes affecting the patient's vision
c. Document all findings, instructions, and recall
d. If the patient is referred to a retinal specialist, make the appointment for the patent or fax a referral form to the patient's PCP if the patient has an HMO insurance
e. Sample case

II. How to Deal With Uncooperative Patients

Summary:
By knowing how to deal with uncooperative patients in a professional, ethical and legal way, the optometrists can preserve and extend the doctor-patient relationship. A happy patient leads to a lesser chance that the patient would seek a legal action against the optometrist.

1. Discuss the findings and all treatment options with patients
2. Discuss the importance of following any instructions given and any follow-up visits necessary
3. Listen attentively to the patient's complaints
4. If it is a prescription issue, recheck the prescription---redo glasses or refit contact lenses as necessary

a. If all redos do not resolve the issue(s), ask the patient the following question: What would you want me to do to make you happy? Then do what the patient wishes, including refund the patient on ophthalmic products. The main reason for a majority of malpractice lawsuits is because of a patient's anger toward an optometrist and not because of a patient's greed.

5. If the optometrist does not wish to continue to care for the patient, then the doctor has to send a certified mail to the patient by explaining the nature of the termination of the doctor-patient relationship and the need for continued care with another doctor in the letter. Make sure to provide the new doctor sufficient information about the patient avoid undue delay of continuation of care. By doing this, the doctor avoids liability for abandonment.

III. Proper Documentation of Patient Record

Summary:
With a clear, accurate and contemporaneous patient record, an optometrist is protecting himself/herself from any potential liability due to inaccurate diagnosis (or misdiagnosis), treatment and management of a patient. In addition, by doing so, the optometrist is abiding to the rules and regulations set forth in the CA Optometry Laws and Regulations.

1. Maintain clear, accurate and contemporaneous patient records at all times
2. Always document the following in the patient's record:

a. Any procedure performed
b. Any test result obtained
c. Any diagnosis made
d. Any treatment plan recommended
e. Any discuss occurred
f. Any warning given

In the eyes of the court, if the doctor did not document "it" in the patient's record, "it" never happened.

IV. Employer-Employee Relationship

Summary:
As there are many tasks that an employee of an optometrist can perform daily in a clinical setting, an employer-optometrist needs to know what the employee can and cannot legally perform during his/her employment. With the knowledge of this law, the employer-optometrist can better supervise the employee and thus protect himself/herself from any potential liability due to an employer-employee relationship. More importantly, patients are protected from any harms inflicted by the employee's illegal and unsupervised conducts.

1. Supervise employees adequately and provide trainings in HIPAA compliance on a regular and ongoing basis
2. Delegate only duties that employees are qualified to perform
3. Screen and select employees diligently
4. Legal responsibility of an employer for his/her employees' wrongdoings: Vicarious Liability

a. Sample case

V. California Optometry Laws and Regulations Overview

Summary:
An overview of the CA Optometry Laws and Regulations will provide optometrists in

attendance the insight of what the optometrists practicing in CA can and cannot legally perform in clinic. Also, it will provide the optometrists information as to the standards of professional conduct outside the clinical setting as not to injure himself/herself, patients, and/or the public. This overview will simplify and clarify any legal issues the optometrists may have.

By fully understanding the laws and regulations, the optometrists will have the ability to practice optometry to the fullest level and highest confidence. With this highest confidence, the optometrists will provide their patients the highest quality of eye care possible under the law.

A. Prescription (RX) lenses

1. Spectacle lens RX requirements:

a. Diopter power

b. Expiration date

c. Name, address, phone, prescriber's license number, and signature of the prescriber

d. Patient's name

2.. Expiration date

a. Spectacle lens RX expiration date: 2-4 years from the date of issuance (RX given date) Earlier than 2 years of expiration if patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude or presence or probability of visual abnormalities related to ocular or systemic disease

b.The prescriber shall orally inform the expiration date of a spectacle lens RX at the time the RX is issued. The expiration date may be extended by the prescriber and transmitted by phone, email, or any other means of communication. An oral RX for a spectacle lens shall be reduced to writing and a copy of that writing shall be sent to prescriber prior to the delivery of the lenses to the person to whom the RX is issued.

c. A prescriber of a spectacle lens shall abide by the rules pertaining to spectacle lens RX and eye exams adopted by the Federal TRade Commission (Part 456 of Title 16 of the Code of the Federal Regulations)

d. An expired RX may be filled if all of the following conditions exist:

i. The patient's spectacles are lost, broken, or damaged to a degree that renders them unusable

ii. Upon dispensing a RX, the person dispensing shall recommend that the patient return to the doctor who issued the RX for an eye exam and provide the prescriber a written notification of the RX that was filled

2. Contact lens RX

a. Expiration date: 1-2 years from the date of issuance (the date the patient receives a copy of RX)

Earlier than 1 year if the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination of the patient earlier than 1 year, or the presence or probability of visual abnormalities related to ocular or systemic disease to warrant a reexamination of the

patient earlier than 1 year. If the expiration date is less than 1 year, the health-related reasons shall be documented in the patient's medical record.

b. Upon completion of the eye exam or, if applicable, the contact lens fitting, a doctor shall provide the patient a copy of the patient's contact lens RX.

i. Contact lens RX: Power, material or manufacturer or both, base curve or appropriate designation, diameter when appropriate and expiration date

ii. Contact lens fitting: Begins after the initial comprehensive eye exam, and includes an exam to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal RX of an established patient, and follow-up exams that are medically necessary, and ends when the doctor determines that an appropriate fit (**proper vision**, **comfortable fit**, and **freedom of injury**) has been achieved, or in the case of a RX renewal for an established patient, the doctor determines that there is no change in the RX.

c. A doctor shall retain professional discretion regarding the release of the contact lens RX for patients who wear the following types of contact lenses:

i. Rigid gas permeables

ii. Bitoric gas permeables

iii. Bifocal gas permeables

iv. Keratoconus lenses

v. Custom designed lenses that are manufactured for an individual patient and are not mass produced

d. If a patient places an order with a contact lens seller other than a doctor, the doctor or his/her authorized agent shall, upon request of the contact lens seller and in the absence of the actual RX, attempt to promptly confirm the information contained in the RX through direct communication with the seller within eight business hours of receiving the request from the seller. Records of this communication with the seller should be kept for no less than three years, and these records must be available for inspection by the Federal Trade Commission.

e. The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the RX, but only if the doctor would have required immediate payment from the patient had the exam revealed that no ophthalmic goods were required. A doctor shall not charge the patient any fee as a condition to releasing the RX to the patient. A doctor may charge an additional fee for verifying ophthalmic good dispensed by another seller if the additional fee is imposed at the time the verification is performed.

f. A doctor shall not condition the availability of an eye exam, a contact lens fitting, or the

release of a contact lens RX on a requirement that the patient agree to purchase contact lenses from that doctor.

g. A doctor shall not place on the contact lens RX, deliver to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the doctor for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a doctor for the ophthalmic goods and services dispensed by another seller pursuant to the doctor's RX.

B. Optometric Assistant Duties

1. Contact lens fitting under the direct responsibility of an optometrist
2. May perform the following:

a. Prepare patients for examination
b. Collect preliminary patient data, including taking a patient history
c. Perform simple noninvasive testing of VA, pupils, and ocular motility
d. Perform automated VF testing
e. Perform ophthalmic photography and digital imaging
f. Perform tonometry
g. Perform lensometry
h. Perform non-subjective autorefraction in connection with subjective refraction procedure performed by an optometrist
i. Administer cycloplegics, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes
j. Perform pachymetry, keratometry, A cans, B scans, and electrodiagnostic testing

C. Continuing Education Requirements

1. Non-therapeutic (Non-TPA) optometrists are required to complete 40 hours of Board approved continuing education every two-year renewal period.
2. Certified therapeutic (TPA certified) optometrists shall complete a total of 50 hours of continuing education every two years in order to renew his/her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

a. Glaucoma
b. Ocular infection
c. Ocular inflammation
d. Topical steroids
e. Systemic medication
f. Pain medication

3. Glaucoma (TPG, TLG) certified optometrists are required to follow the same continuing education as a TPA certified optometrist plus 10 hours of glaucoma specific continuing education every license renewal period. These 10 hours shall be part of the 35 hours on the diagnosis and treatment and management of ocular disease.
4. Self study/correspondence courses: 20 hours of continuing education earned through the completion of acceptable documented and accredited self-study courses (review of written,

audio, video material, or a combination) is given at the ratio of one hour of credit for one hour of self study earned.

5. Child and elder abuse detection credit: Optometrists can earn up to eight hours of continuing education in care management for courses taken in elder and/or child abuse detection.

Note: The Child Abuse and Neglect Reporting Act (CANRA) requires that any optometrist who has knowledge of or who, in his/her professional capacity or within the scope of his/her employment, knows of or observes a child whom he/she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident to a designated agency. The report must be made immediately or as soon as practically possible by telephone and followed up with a written report within 36 hours of receiving the information.

D. Retention of Records

1. Adults: Seven years from the date an optometrist completes treatment of the patient
2. Minors: A minimum of seven years from the date an optometrist completes treatment of the patient and at least until the patient reaches 19 years of age

E. Unprofessional Conduct

It includes, but is not limited to, the following:

1. Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of the rules and regulations adopted by the Board of Optometry.
2. Gross negligence (criminal negligence, culpable negligence): An action or inaction of an optometrist creating a greater risk of harm to the other party than a common civil negligence, and that the optometrist had a subjective awareness of the risk of harm, or both.
3. Repeated negligent acts.
4. Incompetence.
5. The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.
6. Any action or conduct that would have warranted the denial of a license.
7. The use of advertising that disseminates false and misleading information concerning professional services or products.
8. Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against an optometrist by another state or territory of the US, or by any other governmental agency, or by another CA health care professional licensing board.
9. Procuring his/her license by fraud, misrepresentation, or mistake.
10. Making or giving any false statement or information connection with the application for issuance of a license.
11. Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist.

12. Administering to himself/herself any controlled substance or using any of the dangerous drugs, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the optometrist, or to any other person, or to the public, or to the extent that the use impairs the ability of the optometrist to conduct with safety to the public the practice of optometry, or the conviction of a misdemeanor or felony involving in the use, consumption, or self administration of any dangerous drugs, alcohol, or any combination thereof.
13. Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist.
14. Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs.
15. Repeated acts of excessive use of diagnostic or therapeutic procedures, or repeated acts of excessive use of diagnostic or treatment facilities.
16. The prescribing, furnishing, or administering of controlled substances or drugs, or treatment without a good faith prior exam of the patient and optometric reason.
17. The failure to maintain adequate and accurate records relating to the provision of services to his/her patients.
18. Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of optometry.
19. Practicing optometry without a valid, unrevoked, unexpired license.
20. Employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required.
21. Permitting another person to use the licensee's optometry license for any purpose.
22. Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.
23. Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist.
24. Failure or refusal to comply with a request for the clinical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the doctor is unable to provide the documents within this time period for good cause.
25. Failure to refer a patient to an appropriate physician when an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

OPTOMETRY LAW LECTURE

Stephen H. Eap, O.D., J.D.

PREVENTIVE LAW FOR OPTOMETRISTS

- **Negligence**

A circumstance in which an optometrist fails to exercise the standard of care that a reasonable optometrist would have exercised in the same or similar situation

A. Elements

1. Duty
2. Breach
3. Causation
4. Damage

B. Defenses

1. Contributory/Comparative negligence
2. Assumption of risk
3. Statute of limitation
4. Res judicata

HOW TO PREVENT MALPRACTICE LAWSUITS

1. **Binocular vision**

a. A thorough eye exam

b. Refer to a BV doctor if OD does not wish to treat

SAMPLE CASE

- A patient was examined by an OD and found to have reduced VA that was believed to be due to refractive amblyopia
- Best corrected VA was 20/60 in OS
- No pathology was noted without DFE
- A home pathing therapy was recommended
- Five months later patient complained of double vision, and three months afterwards he was unable to CF at 2 ft
- With DFE, a pituitary adenoma was found compressing the ON
- Suit was instituted against the OD for failure to dx the tumor and refer to a specialist for tx

HOW TO PREVENT MALPRACTICE LAWSUITS

- **2. Contact lenses**

a. Document any non-compliance with warnings and instructions
b. Inspect and make sure all parameters are correct prior to fitting
c. Review office procedures with employees
d. Supervise employees
e. Always check for ocular health
f. Schedule follow-up visits
g. Document missed follow-up appointments
h. Keep a copy of the signed CL Agreement

SAMPLE CASE

- A young woman was fitted with extended CL's by an OD and told to return for a F/U next day
- The F/U exam revealed no problems and was rescheduled for reevaluation 3 days later
- The exam determined CL's were unclean and a small area of epithelial loss had developed in one eye
- The OD prescribed Gentamycin drops and told patient to return the next day
- The patient failed to keep the appt and instead consulted OMD about a week later
- The OMD discovered a corneal ulcer caused by Pseudomonas infection
- The patient sued the OD, alleging negligence in the management of her case

HOW TO PREVENT MALPRACTICE LAWSUITS

- **3. Diabetic retinopathy**

a. Have patients sign an informed refusal DFE form
b. Document the recommendation of DFE
c. Refer to OMD if vision problems are not caused by RX &/or binocular vision conditions and patient refuses DFE
d. Make the referral appointment for patients or fax referral form to PCP for HMO patients
e. Document the referral

SAMPLE CASE

- A diabetic patient was seen by an OD for blurry vision
- After the exam w/o DFE, the OD prescribed glasses and advised her visual difficulties would disappear in 2 wks
- Five months later, patient consulted another doctor, who found she had a RD and proliferative DM retinopathy
- Patient sued the OD alleging that the OD's failure to dx and recommend appropriate medical attention proximately resulted in the loss of vision in one eye and accelerated the deterioration of vision in the other

HOW TO PREVENT MALPRACTICE LAWSUITS

- **4. Glaucoma**

a. Do not omit an ocular health exam
b. IOP's in both eyes
c. Document failure to comply with scheduled recall or referral appointments
d. Make referral or fax referral to PCP
e. Do not delay examining angle-closure GLC patients

SAMPLE CASE

- An OD used a mydriatic during the course of an exam
- Some hours after the exam, the patient called the doctor and complained of HA and discomfort
- The OD prescribed oral analgesic and rest but did not see the patient
- The patient's condition did not improve and she saw another doctor the following day
- She was found to have an acute angle closure
- Patient sued the first OD who had failed to examine her

HOW TO PREVENT MALPRACTICE LAWSUITS

- **5. Low vision**

a. Document legally unqualified to drive and provide notice to DMV of warning given
b. Document the warning
c. Counsel patients on genetic ocular disorders

SAME CASE

- A patient was examined by an OD with dilation
- After the exam, no pathology or RX was found
- The OD did not warn the patient about the side effects of DFE
- The patient drove home right after the exam without wearing sunglasses and got into an accident with another car
- The patient and the other driver were injured
- Both the patient and the other driver sued the OD for negligence for failing to warn of DFE side effects

HOW TO PREVENT MALPRACTICE LAWSUITS

- **6. Ocular foreign bodies**

a. Look for signs of global penetration by FB
   i. Decreased VA
   ii. Hypotony
   iii. Shallowing or flattening of AC
   iv. Alteration in pupil size, shape or location
   v. Marked conjunctival chemosis
   vi. Corneal or scleral laceration
b. Obtain informed consent prior to removing FB located in visual axis

SAMPLE CASE

- A patient who had gotten several cement particles in his eye was seen by an OMD, who removed some of them
- The patient was instructed to return if difficulties were encountered
- The patient did not feel that he was treated appropriately by the doctor and thus went to see another doctor for a severe infection in the affected eye
- Even with the second doctor's treatment, the patient suffered some permanent vision loss
- The patient sued the first doctor alleging the doctor was negligent in failing to remove all of the cement particles
- The first doctor's defense was contributory negligent for patient's failing to return as recommended, and was found not liable

HOW TO PREVENT MALPRACTICE LAWSUITS

- **7. Ocular tumors**

a. Choroidal nevus:

i. <2 DD: Periodic exam + fundus photo or drawing

ii. 2-5 DD: Regular exam + specialized tests or refer to retinal specialist

iii. > 5 DD: Specialized tests + periodic FU exams or refer to retinal specialist

b. Thorough eye exam, threshold VF test and periodic recall if patients have decreased VA, HA's, diplopia

c. Document failure to comply with scheduled recall or referral appointments

d. Refer if not sure if lesion is benign or malignant

SAMPLE CASE

- An OD examined a lady in her early 60's, w/ a cc of decreased VA in one eye
- The best corrected VA was 20/40 in the affected eye and 20/25 in the other eye
- Although the OD performed ophthalmoscopy and tonometry, the doctor did not perform DFE or VF test, and attributed the decreased VA to cataracts
- Nine months later, patient saw another doctor as she continued to have difficulties with VA
- The second doctor diagnosed ocular malignant melanoma
- The affected eye was enucleated due to the size of the tumor
- The first doctor was sued for negligence in failing to diagnosis the tumor in a timely manner so the eye would have been spared and decease the risk of metastatic disease

HOW TO PREVENT MALPRACTICE LAWSUITS

- **8. Ophthalmic infections**

a. A thorough case history
b. Select an appropriate ophthalmic pharmaceutical agent to treat
c. Follow patients until the infection is completely resolved
d. If in doubt, refer to OMD
e. Document the referral

SAMPLE CASE

- A young woman was fitted with EW CL's by an OD
- On the first night she slept with CL's in, she woke @ 3 AM with pain in her OS
- Although she removed the CL, the pain persisted, and she returned to the OD later that day for exam
- The OD diagnosed corneal abrasion and told the patient to discontinue CL wear and start using Systane Balance QID or PRN
- After one week, the patient saw an OMD as she continued to experience pain
- The OMD diagnosed corneal ulcer and cultured the ulcer and found it was infected by Psudomonas aeruginosa
- The patient sued the OD for negligent in the management of her case

HOW TO PREVENT MALPRACTICE LAWSUITS

- **9. Ophthalmic pharmaceutical agents**

a. Instruct office personnel on RX refills
b. Follow –up appointment if a drug might produce complications
c. Contact patient if follow-up appointment is missed
d. Use mydriatic drops for DFE on all open-angle patients during annual exam, on patients with symptoms of RD, and on GLC patients prior to treatment
e. Use topical drugs if suffice
f. Discuss the benefits, risks and possible side effects
g. Document patients' drug use history and previous adverse reactions to a drug
h. Instruct patients how to take action in case of adverse reactions
i. Manage patients with adverse reactions to drugs

SAMPLE CASE

- An OD prescribed glasses for a young patient
- After wearing the glasses for a short period of time, patient experienced severe HA's, nausea, and a deep-seated pain
- Patient's mother brought patient back to the OD, but the doctor urged her to allow her son to wear the glasses
- When the symptoms persisted, the patient was brought to see an OMD
- The OMD performed a cycloplegic refraction and prescribed a new pair of glasses
- The OD was sued thereafter for malpractice
- During trial, the OMD testified that it was not possible to determine the correct RX without cycloplegia and that the mis-prescribed glassses might retard the proper development of the child's eyes

HOW TO PREVENT MALPRACTICE LAWSUITS

- **10. Ophthalmic surgery co-management**

a. Do not skip any preoperative evaluation or postoperative follow-up visits

b. Refer patients back to the surgeon immediately for any true complications

c. Document any misses or deviations from the recommended dosages of eye drops following surgery or any missed follow-up appointments

SAMPLE CASE

- An OD performed all necessary pre-operative measurements for her LASIK patient
- The OD sent the pre-operative findings through facsimile to the surgeon's office
- Unfortunately, the technician entered the wrong surgical treatment plan into the laser
- The surgeon did not notice the technician's mistake
- After the surgery, the patient was left with a permanent partial visual disability due to problems with his quality of vision, including blur, glare, halos, diminished night vision, and of contrast sensitivity
- The patient sued both the OD and the surgeon for negligence under vicarious liability

HOW TO PREVENT MALPRACTICE LAWSUITS

11. Retinal detachment

a. Perform DFE on patients who have PVD symptoms and those who have predisposing conditions to RD
b. Provide a “home” Amsler grid with printed instructions to monitor any macular changes
c. Document all findings, instructions, and recall
d. Make a retinal specialist referral appointment or fax a referral form to PCP for HMO patients

SAMPLE CASE

- A 47-year-old woman was struck in the eye with a fist and suffered a black eye, with a 3-mm hyphema and a depressed fracture of the orbit
- The OD treated the patient with cool compresses and oral analgesic for pain
- After two months of the trauma, the OD found the patient's muscle balance to be acceptable and that direct ophthalmoscopy and gonioscopy were normal
- The patient was released but ten months after the trauma experienced the symptoms of a RD
- Following surgery to reattach the retina the patient sued the OD for negligence, alleging that she had not been warned of the possibility of RD and of the importance of immediate exam if the symptoms of RD occurred

HOW TO DEAL WITH UNCOOPERATIVE PATIENTS

1. Discuss the findings and all treatment options with patients
2. Discuss the importance of following any instructions given and any follow-up visits necessary
3. Listen attentively to the patients' complaints
4. If it is a RX issue, recheck the RX---redo glasses or refit contact lenses as necessary

a. If all redos do not resolve the issue(s), ask the patient the following question: What would you like me to do to make you happy? Then do what the patient wishes, including refund the patient on ophthalmic products. Anger is the main reason for malpractice lawsuits.

5. Certified mail to end doctor-patient relationship to avoid abandonment.

PROPER DOCUMENTATION OF PATIENT RECORD

- 1. Maintain clear, accurate and contemporaneous patient records at all times
- 2. Always document the following in the patient's record:
- a. Any procedure performed
- b. Any test result obtained
- c. Any diagnosis made
- d. Any treatment plan recommended
- e. Any discussion occurred
- f. Any warning given
- In the eyes of the court, if the doctor did not document "it" in the patient's record, "it" never happened.

EMPLOYER-EMPLOYEE RELATIONSHIP

1. Supervise employees adequately and provide trainings in HIPAA compliance on a regular and ongoing basis
2. Delegate only duties that employees are qualified to perform
3. Screen and select employees diligently
4. Legal responsibility of an employer for his/her employees' wrongdoings: Vicarious Liability

SAMPLE CASE

- A patient, who had been fitted with soft CL's by an OD, visited the doctor's office complaining about her lenses
- The OD was out of town but one of his assistants (who worked with CL patients) cleaned and returned the lens to the patient
- Three days later the patient, complaining of reduced VA and ocular discomfort, was examined by the OD and found to have a central corneal abrasion
- Despite treatment, the patient suffered a recurrent corneal erosion and a permanent vision loss
- Patient sued the OD, alleging negligence on the part of the assistant and the OD's failure to directly supervise the assistant's duties

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- A. RX lenses
- 1. Spectacle lens RX requirements:
- a. Diopter power
- b. Expiration date
- c. Name, address, phone, prescriber's
- license # and signature
- d. Patient's name
- 2. Expiration date
- a. Spectacle lens: 2-4 years from the date
- of issuance
- b. Extended if spectacles are lost, broken, or
- damaged with the recommendation patient
- return for an eye exam

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- 2. Contact lens RX
- a. Expiration date: 1-2 years from the date
- of issuance
- b. CL RX: Power, material or manufacturer
- or both, BC or appropriate designation,
- diameter and expiration date
- c. CL fitting: Begins after initial
- comprehensive exam and ends with
- appropriate fit (proper vision,
- comfortable fit and freedom from injury)
- d. Professional discretion in releasing the
- following CL RX:
- i. RGP's, including bitoric and bifocal
- ii. Keratonus lenses
- iii. Custom designed lenses
-

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- e. Third-party CL seller
- i. Promptly confirm CL RX within 8 business hours and keep this communication for no less than 3 years for inspection by FTC
- f. Payment for exam, fitting and evaluation prior to releasing of RX only if doctor would have required immediate payment had the exam revealed no ophthalmic goods were required. Not allowed to charge a fee for releasing RX. Additional fee allowed to verify ophthalmic goods dispensed by another seller if imposed at the time of verification.

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

g. Not allowed to require patients to purchase CL's in order to get exam, CL fitting, or release of RX

h. Not allowed to place on CL RX, deliver to patient, or require patient to sign a form or notice waiving or disclaiming liability or responsibility of doctor for the accuracy of the ophthalmic goods and services dispensed by another seller. But it does not apply for the ophthalmic goods and services dispensed by another seller pursuant to the doctor's RX.

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- B. Optometric Assistant Duties
- 1. CL fitting under the direct responsibility
- of an optometrist
- 2. May perform the following:
- a. Prepare patients for exam
- b. Collect preliminary patient data,
- including taking a patient history
- c. Perform simple noninvasive testing of VA,
- pupils, and ocular motility
- d. Perform automated VF testing
- e. Perform ophthalmic photography and
- digital imaging
- f. Perform tonometry
- g. Perform lensometry
- h. Perform non-subjective autorefraction in connection
- with subjective refraction performed by an optpmetrist
- i. Administer cycloplegics, mydriatics, and topical anesthetics that are
- not controlled substances, for ophthalmic purposes
- j. Perform pachemetry, keratometry, A & B scan, and electrodiagnostic testing

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- C. CE Requirements
- 1. Non-TPA: 40 hours for every 2-year renewal
- 2. TPA: 50 hours for every 2-year renewal, with 35 hours in the following areas
  - a. GLC
  - b. Ocular infection
  - c. Ocular inflammation
  - d. Topical steroids
  - e. Systemic medication
  - f. Pain medication
- 3. TPG & TLG: Same as TPA plus 10 hours of 35 hours are GLC specific CE
- 4. Self study/correspondent courses: 20 hours for 20 hours of SS/C courses
- 5. Child and elder abuse detection credit: 8 hoiurs

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- D. Retention of Records
- 1. Adults: 7 years from the date of completion of treatment
- 2. Minors: A minimum of 7 years from the date of completion of treatment and at least until the patient reaches 19 years old

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

- E. Unprofessional Conduct
- 1. Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of the rules & regulations of the Board
- 2. Gross negligence
- 3. Repeated negligent acts
- 4. Incompetence

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

5. Fraud, misrepresentation, or any involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist
6. Any action or conduct that would have warranted the denial of a license
7. Ads that disseminate false and misleading information concerning services or products

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

8. Denial of licensure, revocation, suspension, restriction, or any other disciplinary action by another state or territory of the US, or by any other governmental agency, or anther, or by another CA health care professional licensing board
9. Procuring his/her license by fraud, misrepresentation, or mistake
10. Making or giving any false statement or information connection with the application for issuance of a license

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

11. Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of an optometrist
12. Administering to himself/herself any controlled substance or using any of the dangerous drugs, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the optometrist, or to any other person, or to the public, or to the extent that the use impairs the ability to conduct with safety to the public the practice of optometry, or the conviction of a misdemeanor or felony involving in the use, consumption, or self administering of any dangerous drugs, alcohol, or any combination thereof

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

13. Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an optometrist
14. Repeated acts of excessive prescribing, furnishing or administering of controlled substances or dangerous drugs
15. Repeated acts of excessive use of diagnostic or therapeutic procedures, or or repeated acts of excessive use of diagnostic or treatment facilities

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

16. The prescribing, furnishing, or administering of controlled substances or drugs, or treatment without a good faith prior exam of the patient and optometric reason
17. The failure to maintain adequate and accurate records relating to the provision of services to his/her patients
18. Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of optometry

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

19. Practicing optometry without a valid, unrevoked, unexpired license
20. Employing, directly or indirectly, of any suspended or unlicensed optometrist to perform any work for which an optometry license is required
21. Permitting another person to use the licensee's optometry license for any purpose

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

22. Altering with fraudulent intent a license issued by the board, or using a fraudulently altered license, permit certification or any other registration issued by the board
23. Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood borne infectious diseases from optometrist to patient, from patient to patient, or from patient to optometrist

CA OPTOMETRY LAWS & REGULATIONS OVERVIEW

24. Failure or refusal to comply with a request for the patient's clinical records, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, unless the doctor is unable to provide the documents within this time period for good cause
25. Failure to refer a patient to an appropriate physician when an exam of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician

STEPHEN H. EAP, O.D., J.D.

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Professional Summary

A UCLA graduate earned my optometry degree from the Illinois College of Optometry and my law degree from the Pacific Coast University School of Law. I am an optometrist and the owner of Eap Optometry in Long Beach, CA. I served as an adjunct assistant professor at the Marshall B. Ketchum University Southern California College of Optometry. In addition, I have served as a guest lecturer at the Illinois College of Optometry and the Midwestern University Arizona College of Optometry. Academically, I have taught the legal aspects of optometry in Professional Ethics, Clinical Seminars and the Business of Optometry courses. I am also a national speaker for an optometric continuing education, where I lecture on the fundamental laws related to the practice of Optometry. I am the author of *Optometry Law*.

Licensures

Optometrist, State of California, Active
Optometrist, State of Hawaii, Inactive
Optometrist, State of Illinois, Inactive
Optometrist, State of Pennsylvania, Inactive

Professional Experiences

Member, Peer Review and Quality Management Committee (2006-Present)
Delta Vision Insurance - Cerritos, CA

Optometrist/Owner (1994-Present)
Eap Optometry - Long Beach, CA

Optometrist (1994-1995)
Pearle Vision - Thousand Oaks, CA

Optometrist (1992-1994)
Sears Optical - Bloomington, IL

Optometric Assistant (1991-1992)
California Center for Eye Care/Eye Surgery - Torrance, CA

Optometric Assistant (1990-1991)
Curtis Kan, O.D. - Los Angeles, CA

Education and Training

Preceptorship Training (1997)
Eye Treatment Center - Long Beach, CA

Ocular Therapeutics Courses (1996)
University of California, Berkeley School of Optometry - Berkeley, CA

Clinical Rotations (1988-1990)
Illinois Eye Institute - Chicago, IL

Juris Doctor Degree (2001)
Pacific Coast University School of Law - Long Beach, CA

Doctor of Optometry Degree (1990)
Illinois College of Optometry - Chicago, IL

Bachelor of Science in Visual Science Degree (1988)
Illinois College of Optometry - Chicago, IL

Bachelor of Arts in Psychology Degree (1986)
University of California Los Angeles - Los Angeles, CA

Academic Positions

Adjunct Assistant Professor (2011-2014)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA
Teach fundamental laws in optometry to first-year students.
Teach clinical optometry and the law to fourth-year students.

Guest Lecturer (2013)
Illinois College of Optometry - Chicago, IL
Teach optometry law to third-year students.

Guest Lecturer (2013)
Midwestern University Arizona College of Optometry - Glendale, AZ
Teach optometry law to fourth-year students.

Guest Lecturer (2009-2011)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA
Teach fundamental laws in optometry to first-year students.

Lectures

Optometry Law Lecture (07/31/16)
Fremont Marriott Silicon Valley - Fremont, CA

Optometry Law Lecture (02/21/16)
Long Beach Marriott - Long Beach, CA

Protect Yourself From a Malpractice Lawsuit (09/29/13)
Illinois College of Optometry - Chicago, IL

Optometric-Legal Management of Ocular Disease Part II (07/21/13)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Optometric-Legal Management of Ocular Disease Part I (07/20/13)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Legal Issues in Diagnosis and Treatment of Ocular Disease (03/03/13)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Advanced Legal Issues in Optometry-Complex Cases (07/0812)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Ophthalmic Infections, Ocular Foreign Bodies and the Law (07/07/12)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

The Basis of Optometric Malpractice-A Case Presentation (05/15/12)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Legal Issues in Diabetic Retinopathy and Ophthalmic Pharmaceutical Agents (03/03/12)
Marshall B. Ketchum University Southern California College of Optometry-Fullerton, CA

Legal Issues in Optometry (07/10/11)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Clinical Optometry and the Law (03/13/11)
Marshall B. Ketchum University Southern California College of Optometry - Fullerton, CA

Publication

Optometry Law (2012)
Outskirts Press, Inc. - Parker, CO

Awards and Honors

Excellent Vision Care Services (2010)
Medical Eye Services, Inc. - Santa Ana, CA

Best Optometrist Nominee (2010)
Best of LA TV Show - Los Angeles, CA

Leader in the Eyecare Profession (2000)
Marchon Eyewear, Inc. - New York, NY

Memberships

Alumni Association Council Member (2012-Present)
Illinois College of Optometry - Chicago, IL

Alumni Association Treasurer (2009-2010)
Pacific Coast University School of Law - Long Beach, CA

Alumni Association Council Member (2008-2009)
Pacific Coast University School of Law - Long Beach, CA