

1 PHYSICIAN OR AN OPTOMETRIST TO PROVIDE SUCH POSTOPERATIVE CARE UNDER THE
2 PROVISIONS OF THIS ARTICLE. SUCH DELEGATION SHALL ONLY BE MADE THROUGH A
3 CO-MANAGEMENT AGREEMENT THAT MEETS THE REQUIREMENTS OF THIS SECTION AND
4 IF THE PERSON TO WHOM THE RESPONSIBILITY IS DELEGATED IS:

5 (A) AN OPTOMETRIST; OR

6 (B) A PHYSICIAN.

7 2. A CO-MANAGEMENT AGREEMENT FOR POSTOPERATIVE EYE CARE OF A PATIENT
8 SHALL MEET THE FOLLOWING REQUIREMENTS:

9 (A) THE AGREEMENT MAY BE ENTERED INTO ONLY WHEN:

10 (I) THE DISTANCE THE PATIENT WOULD HAVE TO TRAVEL TO THE REGULAR
11 OFFICE OF THE OPERATING PHYSICIAN WOULD RESULT IN AN UNREASONABLE HARD-
12 SHIP FOR THE PATIENT, AS DETERMINED BY THE PATIENT, OR THE PATIENT HAS
13 OR DEVELOPS AN ILLNESS WHICH PRECLUDES TRAVEL, OR

14 (II) THE OPERATING PHYSICIAN WILL NOT BE AVAILABLE FOR POSTOPERATIVE
15 EYE CARE OF THE PATIENT AS A RESULT OF THE OPERATING PHYSICIAN'S
16 PERSONAL TRAVEL, ILLNESS, PHYSICIAN'S LEAVE OF ABSENCE, TRAVEL TO A
17 RURAL AREA OF THE STATE FOR THE OCCASIONAL PRACTICE OF MEDICINE, OR
18 SURGERY PERFORMED IN A DESIGNATED PHYSICIAN SHORTAGE AREA;

19 (B) THE AGREEMENT SHALL PROVIDE A FEE TO THE PERSON TO WHOM THE CARE
20 IS DELEGATED THAT REFLECTS THE FAIR MARKET VALUE OF THE SERVICES
21 PROVIDED BY SUCH PERSON;

22 (C) THE AGREEMENT SHALL BE ENTERED INTO ONLY IF THE OPERATING PHYSI-
23 CIAN CONFIRMS THAT THE PERSON TO WHOM THE CARE IS DELEGATED IS QUALIFIED
24 TO TREAT THE PATIENT DURING THE POSTOPERATIVE PERIOD;

25 (D) THE AGREEMENT SHALL NOT TAKE EFFECT UNLESS THERE IS A WRITTEN
26 STATEMENT IN THE OPERATING PHYSICIAN'S FILE AND IN THE FILES OF THE
27 PERSON TO WHOM POSTOPERATIVE EYE CARE IS BEING DELEGATED THAT IS SIGNED
28 BY THE PATIENT IN WHICH THE PATIENT STATES HIS OR HER CONSENT TO THE
29 CO-MANAGEMENT AGREEMENT AND IN WHICH THE PATIENT ACKNOWLEDGES THAT THE
30 DETAILS OF THE CO-MANAGEMENT AGREEMENT HAVE BEEN EXPLAINED TO THE EXTENT
31 REQUIRED PURSUANT TO PARAGRAPH (E) OF THIS SUBDIVISION; AND

32 (E) THE SPECIFIC TERMS OF THE AGREEMENT SHALL BE DISCLOSED TO THE
33 PATIENT IN WRITING BEFORE SURGERY IS PERFORMED, AND SHALL INCLUDE:

34 (I) THE REASON FOR THE DELEGATION,

35 (II) THE QUALIFICATIONS, INCLUDING LICENSURE OR CERTIFICATION, OF THE
36 PERSON TO WHOM THE CARE IS DELEGATED,

37 (III) THE FINANCIAL DETAILS ABOUT HOW THE SURGICAL FEE WILL BE DIVIDED
38 BETWEEN THE OPERATING PHYSICIAN AND THE PERSON WHO PROVIDES THE POSTOP-
39 ERATIVE EYE CARE,

40 (IV) A NOTICE THAT, NOTWITHSTANDING THE DELEGATION OF CARE, THE
41 PATIENT MAY RECEIVE POSTOPERATIVE EYE CARE FROM THE OPERATING PHYSICIAN
42 AT THE PATIENT'S REQUEST WITHOUT THE PAYMENT OF ADDITIONAL FEES AND THAT
43 THE PATIENT ALWAYS HAS ACCESS TO THE OPERATING SURGEON DURING THE POST-
44 OPERATIVE PERIOD,

45 (V) A STATEMENT THAT THE OPERATING PHYSICIAN WILL BE ULTIMATELY
46 RESPONSIBLE FOR THE PATIENT'S CARE UNTIL THE PATIENT IS POSTOPERATIVELY
47 STABLE,

48 (VI) A STATEMENT THAT THERE IS NO FIXED DATE ON WHICH THE PATIENT WILL
49 BE REQUIRED TO RETURN TO THE REFERRING PHYSICIAN OR OPTOMETRIST, AND

50 (VII) A DESCRIPTION OF SPECIAL RISKS TO THE PATIENT THAT MAY RESULT
51 FROM THE CO-MANAGEMENT AGREEMENT.

52 3. NO OPERATING PHYSICIAN SHALL ENTER INTO A CO-MANAGEMENT AGREEMENT
53 GOVERNED BY THIS SECTION:

54 (A) UNDER WHICH TWO OR MORE PHYSICIANS OR OPTOMETRISTS AGREE TO
55 CO-MANAGE PATIENTS OF THE OPERATING PHYSICIAN AS A MATTER OF ROUTINE
56 POLICY RATHER THAN ON A CASE-BY-CASE BASIS;

1 (B) THAT IS NOT CLINICALLY APPROPRIATE FOR THE PATIENT;
2 (C) THAT IS MADE WITH THE INTENT TO INDUCE SURGICAL REFERRALS; OR
3 (D) THAT IS BASED ON ECONOMIC CONSIDERATIONS AFFECTING THE OPERATING
4 PHYSICIAN.

5 4. NO PHYSICIAN OR OPTOMETRIST SHALL REQUIRE AS A CONDITION OF MAKING
6 REFERRALS TO AN OPERATING PHYSICIAN THAT THE OPERATING PHYSICIAN ENTER
7 INTO A CO-MANAGEMENT AGREEMENT WITH THE PHYSICIAN OR OPTOMETRIST FOR THE
8 POSTOPERATIVE EYE CARE OF THE PATIENT WHO IS REFERRED.

9 5. NO PHYSICIAN OR OPTOMETRIST TO WHOM POSTOPERATIVE EYE CARE IS
10 DELEGATED UNDER A CO-MANAGEMENT AGREEMENT GOVERNED BY THIS SECTION SHALL
11 DELEGATE THE CARE TO ANOTHER PERSON, REGARDLESS OF WHETHER SUCH PERSON
12 IS UNDER THE SUPERVISION OF THE PHYSICIAN OR OPTOMETRIST.

13 6. NOTHING IN THIS SECTION SHALL PROHIBIT THE PROVISION OF POSTOPERA-
14 TIVE EYE CARE BY A PHYSICIAN WHO IS A MEMBER OF THE SAME GROUP PRACTICE
15 AS THE OPERATING PHYSICIAN.

16 7. IT SHALL BE AN AFFIRMATIVE DEFENSE IN A DISCIPLINARY PROCEEDING FOR
17 VIOLATION OF THIS SECTION THAT THE OPERATING PHYSICIAN DELEGATED POSTOP-
18 ERATIVE EYE CARE OF A PATIENT BECAUSE OF UNANTICIPATED CIRCUMSTANCES
19 THAT WERE NOT REASONABLY FORESEEABLE BY SUCH PHYSICIAN BEFORE THE
20 SURGERY WAS PERFORMED.

21 S 3. Subdivisions 44, 45, 46, 47, 48 and 49 of section 6530 of the
22 education law, subdivisions 44 and 45 as added by chapter 606 of the
23 laws of 1991, subdivision 46 as amended and subdivision 49 as added by
24 chapter 477 of the laws of 2008, subdivision 47 as added by chapter 786
25 of the laws of 1992, and subdivision 48 as added by chapter 365 of the
26 laws of 2007, are amended and a new subdivision 50 is added to read as
27 follows:

28 44. In the practice of psychiatry, (a) any physical contact of a sexu-
29 al nature between licensee and patient except the use of films and/or
30 other audiovisual aids with individuals or groups in the development of
31 appropriate responses to overcome sexual dysfunction and (b) in therapy
32 groups, activities which promote explicit physical sexual contact
33 between group members during sessions; [and]

34 45. In the practice of ophthalmology, failing to provide a patient,
35 upon request, with the patient's prescription including the name,
36 address, and signature of the prescriber and the date of the
37 prescription[.];

38 46. A violation of section two hundred thirty-nine of the public
39 health law by a professional[.];

40 47. Failure to use scientifically accepted barrier precautions and
41 infection control practices as established by the department of health
42 pursuant to section two hundred thirty-a of the public health law[.];

43 48. A violation of section two hundred thirty-d of the public health
44 law or the regulations of the commissioner of health enacted there-
45 under[.];

46 49. Except for good cause shown, failing to provide within one day any
47 relevant records or other information requested by the state or local
48 department of health with respect to an inquiry into a report of a
49 communicable disease as defined in the state sanitary code, or
50 HIV/AIDS[.]; AND

51 50. FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION TWO HUNDRED NINE-
52 TY-ONE OF THE PUBLIC HEALTH LAW, RELATING TO LIMITATIONS ON CO-MANAGE-
53 MENT AGREEMENTS FOR POSTOPERATIVE CARE.

54 S 4. This act shall take effect on the ninetieth day after it shall
55 have become a law.