

MINNESOTA BOARD OF OPTOMETRY

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Source: Board Minutes July 9, 2014

Subject: **Fee Splitting and Social Media**

Significant discussion took place on the board's current role in defining fee splitting or Minnesota Rule 6500.0400 and Minnesota Statute 148.57 (Subd 3).

Current Minnesota Statute 148.57 (Subd 3).

The board may revoke the license or suspend or restrict the right to practice of any person who has been convicted of any violation of sections 148.52 to 148.62 or of any other criminal offense, or who violates any provision of sections 148.571 to 148.576 or who is found by the board to be incompetent or guilty of unprofessional conduct. "Unprofessional conduct" means any conduct of a character likely to deceive or defraud the public, including, among other things, free examination advertising, the loaning of a license by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business; **splitting or dividing a fee with any person**; the obtaining of any fee or compensation by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by sections 148.52 to 148.62; the advertising by any means of optometric practice or treatment or advice in which untruthful, improbable, misleading, or impossible statements are made. After one year, upon application and proof that the disqualification has ceased, the board may reinstate such person.

Current Minnesota Board of Optometry Minn. Rule 6500.0400 Subp. 3 Employment of cappers or steerers. Any optometrist employing or engaging for a salary, fee, or commission any person, firm, or corporation to steer, solicit, lure, or entice any person to come to the optometrist's office or branch office for optometric service is considered as employing "cappers" or "steerers" to obtain business and this constitutes unprofessional conduct.

The Minnesota Board of Optometry adopts the following guidance:

Current Minnesota laws for nearly all professional licenses (similar to Optometrist office settings) direct that 'fee splitting constitutes unprofessional conduct'. Fee Splitting includes, but is not limited to, soliciting patients or potential patients through internet based marketing systems which utilize vouchers or coupons to secure medical services, or any other paid referral system for the same, where the Optometrist and a third party each keep or receive part of the fee paid by the patient or potential patient for each voucher or coupon.

Current Minnesota Statute 148.57 and Minnesota Rule 6500.0400 prohibit fee splitting; therefore models such as Groupon and Living Social with shared discount offers may be problematic for the Optometrist. Licensed Optometrists can use discount offers such as Groupon appropriately only when the licensee pays a flat fee for advertising and not a fee that is conditional on volume purchases.