



**VIRTUAL/TELECONFERENCE
OPTOMETRY EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Valerie Payne (608) 266-2112
March 25, 2021**

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-3)**
- B. Approval of Minutes of January 21, 2021 (4-9)**
- C. Reminders: Conflicts of Interest, Scheduling Concerns
- D. 9:00 A.M. PUBLIC HEARING: Clearinghouse Rule 21-004 for Opt 3, Relating to Reciprocal Credentials for Service Members, Former Service Members, and Their Spouses (10-21)**
- E. 9:00 A.M. PUBLIC HEARING: Clearinghouse Rule 21-005 for Opt 5, Relating to Unprofessional Conduct (22-33)**
- F. Administrative Matters – Discussion and Consideration**
 - 1) Department, Staff and Board Updates
 - 2) Board Members – Term Expiration Dates
- G. Legislative and Policy Matters – Discussion and Consideration
- H. Administrative Rule Matters – Discussion and Consideration**
 - 1) Update on Administrative Rules Reporting Requirements Under s. 227.29, Stats. **(34-36)**
 - 2) Review Pending and Possible Rulemaking Projects
- I. Best Practices for Prescribing Controlled Substances Guideline – Discussion and Consideration (37-38)**
- J. COVID-19 – Discussion and Consideration**
- K. Discussion and Consideration of Items Added After Preparation of Agenda
 - 1) Introductions, Announcements and Recognition

- 2) Nominations, Elections, and Appointments
- 3) Administrative Matters
- 4) Election of Officers
- 5) Appointment of Liaisons and Alternates
- 6) Delegation of Authorities
- 7) Education and Examination Matters
- 8) Credentialing Matters
- 9) Practice Matters
- 10) Legislative and Policy Matters
- 11) Administrative Rule Matters
- 12) Liaison Reports
- 13) Board Liaison Training and Appointment of Mentors
- 14) Informational Items
- 15) Division of Legal Services and Compliance (DLSC) Matters
- 16) Presentations of Petitions for Summary Suspension
- 17) Petitions for Designation of Hearing Examiner
- 18) Presentation of Stipulations, Final Decisions and Orders
- 19) Presentation of Proposed Final Decisions and Orders
- 20) Presentation of Interim Orders
- 21) Petitions for Re-Hearing
- 22) Petitions for Assessments
- 23) Petitions to Vacate Orders
- 24) Requests for Disciplinary Proceeding Presentations
- 25) Motions
- 26) Petitions
- 27) Appearances from Requests Received or Renewed
- 28) Speaking Engagements, Travel, or Public Relation Requests, and Reports

L. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85(1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

M. Deliberation on Department of Legal Services and Compliance Matters

- 1) **Case Closings**
 - a. 19 OPT 010 – C.E.M. **(39-42)**

N. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) DLSC Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Orders
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings

- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

O. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

P. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

Q. Open Session Items Noticed Above Not Completed in the Initial Open Session

R. Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

NEXT MEETING: MAY 25, 2021

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the deaf or hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, 608-266-2112, or the Meeting Staff at 608-266-5439.

**VIRTUAL/TELECONFERENCE
OPTOMETRY EXAMINING BOARD
MEETING MINUTES
JANUARY 21, 2021**

PRESENT: Jeffery Clark, Mark Jinkins, Robert Schulz, Lisa Slaby, Peter Sorce, John Sterling, Emmylou Wilson

STAFF: Valerie Payne, Executive Director; Jon Derenne, Legal Counsel; Dale Kleven, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor-Advanced; and other DSPS Staff

CALL TO ORDER

Robert Schulz, Chairperson, called the meeting to order at 9:08 a.m. A quorum was confirmed with seven (7) members present.

ADOPTION OF AGENDA

MOTION: Mark Jinkins moved, seconded by Lisa Slaby, to adopt the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Peter Sorce moved, seconded by John Sterling, to adopt the Minutes of September 24, 2020 as published. Motion carried unanimously.

ADMINISTRATIVE MATTERS

Election of Officers

Chairperson

NOMINATION: Peter Sorce nominated Robert Schulz for the Office of Chairperson.

Valerie Payne, Executive Director, called for nominations three (3) times.

Robert Schulz was elected as Chairperson by unanimous voice vote.

Vice Chairperson

NOMINATION: Mark Jinkins nominated John Sterling for the Office of Vice Chairperson.

Valerie Payne, Executive Director, called for nominations three (3) times.

John Sterling was elected as Vice Chairperson by unanimous voice vote.

Secretary

NOMINATION: John Sterling nominated Jeffrey Clark for the Office of Secretary.

Valerie Payne, Executive Director, called for nominations three (3) times.

Jeffrey Clark was elected as Secretary by unanimous voice vote.

| ELECTION RESULTS | |
|-------------------------|---------------|
| Chairperson | Robert Schulz |
| Vice Chairperson | John Sterling |
| Secretary | Jeffrey Clark |

Appointments of Liaisons and Alternates

| LIAISON APPOINTMENTS | |
|---|---|
| Credentialing Liaison(s) | John Sterling <i>Alternate: Lisa Slaby</i> |
| Education and Exams Liaison(s) | John Sterling |
| Monitoring Liaison(s) | Jeffrey Clark <i>Alternate: Mark Jinkins</i> |
| Professional Assistance Procedure (PAP) Liaison(s) | Jeffrey Clark <i>Alternate: Peter Sorce</i> |
| Legislative Liaison(s) | Peter Sorce <i>Alternate: Robert Schulz</i> |
| Travel Liaison(s) | Robert Schulz <i>Alternate: Lisa Slaby</i> |
| Prescription Drug Monitoring Program Liaison(s) (PDMP) | Robert Schulz <i>Alternate: Emmylou Wilson</i> |
| SCREENING PANEL APPOINTMENTS | |
| January-December 2021 | Emmylou Wilson, Mark Jinkins, Jeffrey Clark |

Delegation Motions

Document Signature Delegations

MOTION: Peter Sorce moved, seconded by John Sterling, to delegate authority to the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to sign documents on behalf of the Board in order to carry out its duties. Motion carried unanimously.

MOTION: Mark Jenkins moved, seconded by John Sterling, in order to carry out duties of the Board, the Chairperson (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) has the ability to delegate signature authority for purposes of facilitating the completion of assignments during or between meetings. The members of the Board hereby delegate to the Executive Director or DPD Division Administrator, the authority to sign on behalf of a board member as necessary. Motion carried unanimously.

Delegated Authority for Urgent Matters

MOTION: John Sterling moved, seconded by Lisa Slaby, that in order to facilitate the completion of urgent matters between meetings, the Board delegates its authority to the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession), to appoint liaisons to the Department to act in urgent matters. Motion carried unanimously.

Delegation to Chief Legal Counsel Due to Loss of Quorum

MOTION: Jeffrey Clark moved, seconded by Peter Sorce, to delegate the review of disciplinary cases to the Department's Chief Legal Counsel due to lack of/loss of quorum after two consecutive meetings. Motion carried unanimously.

Monitoring Delegations

Delegation of Authorities for Monitoring

MOTION: Peter Sorce moved, seconded by Emmylou Wilson, to adopt the "Roles and Authorities Delegated for Monitoring" document as presented in the January 21, 2021 agenda materials on pages 13-14. Motion carried unanimously.

Delegation of Authorities for Legal Counsel to Sign Monitoring Orders

MOTION: Mark Jenkins moved, seconded by Robert Schulz, to delegate to Board Legal Counsel the authority to sign Monitoring orders that result from Board meetings on behalf of the Board Chairperson. Motion carried unanimously.

Credentialing Authority Delegations

Delegation of Authority to Credentialing Liaison (Denial Decisions)

MOTION: Lisa Slaby moved, seconded by Peter Sorce, to delegate authority to the Credentialing Liaison(s) to serve as a liaison between DSPS and the Board and to act on behalf of the Board in regard to credentialing applications or questions presented to them, including the signing of documents related to applications, except that potential denial decisions shall be referred to the full Board for final determination. Motion carried unanimously.

Delegation of Authority to DSPS When Credentialing Criteria is Met

MOTION: John Sterling moved, seconded by Emmylou Wilson, to delegate credentialing authority to the Department to act upon applications that meet all credentialing statutory and regulatory requirements without Board or Board liaison review. Motion carried unanimously.

Delegation of Authority for Predetermination Reviews

MOTION: Mark Jenkins moved, seconded by Robert Schulz, to delegate authority to the Department Attorneys to make decisions regarding predetermination applications pursuant to Wis. Stat. § 111.335(4)(f). Motion carried unanimously.

Delegation of Authority for Conviction Reviews

MOTION: Mark Jenkins moved, seconded by Lisa Slaby, to delegate authority to the Department Attorneys to review and approve applications with convictions which are not substantially related to the practice of optometry. Motion carried unanimously.

Delegation of Authority for Endorsement Reviews

MOTION: John Sterling moved, seconded by Peter Sorce, to delegate authority to the Department Attorneys to review and approve endorsement applications in which the out of state license requirements are substantially similar to the Board's requirements for licensure. Motion carried unanimously.

Delegated Authority for Application Denial Reviews

MOTION: Lisa Slaby moved, seconded by John Sterling, to delegate authority to the Department's Attorney Supervisors to serve as the Board's designee for purposes of reviewing and acting on requests for hearing as a result of a denial of a credential. Motion carried unanimously.

Voluntary Surrenders

MOTION: Peter Sorce moved, seconded by Jeffrey Clark, to delegate authority to the assigned case advisor to accept or refuse a request for voluntary surrender pursuant to Wis. Stat. § 440.19 for a credential holder who has a pending complaint or disciplinary matter. Motion carried unanimously.

Education and Examination Liaison(s) Delegation

MOTION: Mark Jenkins moved, seconded by Peter Sorce, to delegate authority to the Education and Examination Liaison(s) to address all issues related to education, continuing education, and examinations. Motion carried unanimously.

Authorization for DSPS to Provide Board Member Contact Information to National Regulatory Related Bodies

MOTION: Mark Jenkins moved, seconded by Peter Sorce, to authorize DSPS staff to provide national regulatory related bodies with all board member contact information that DSPS retains on file. Motion carried unanimously.

Optional Renewal Notice Insert Delegation

MOTION: Robert Schulz moved, seconded by Jeffrey Clark to designate the Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to provide a brief statement or link relating to board-related business within the license renewal notice at the Board's or Board designee's request. Motion carried unanimously.

Legislative Liaison(s) Delegation

MOTION: John Sterling moved, seconded by Peter Sorce, to delegate authority to the Legislative Liaison(s) to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

Travel Liaison(s) Delegation

MOTION: Emmylou Wilson moved, seconded by Robert Schulz, to delegate authority to the Travel Liaison(s) to approve any board member travel. Motion carried unanimously.

Prescription Drug Monitoring Program (PDMP) Liaison(s) Delegation

MOTION: John Sterling moved, seconded by Jeffrey Clark, to delegate authority to the PDMP Liaison(s) for all matters relating to PDMP. Motion carried unanimously.

ADJOURNMENT

MOTION: Peter Sorce moved, seconded by Robert Schulz, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:42 a.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

| | | | | | | | | | | | | | |
|--|--|--|---|--------------------------|--|------------------------|----------------|---|------|--------------------------|------|--|--|
| 1) Name and title of person submitting the request: Kevyn Radcliffe, Administrative Rules Coordinator | | 2) Date when request submitted: March 10, 2021 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small> | | | | | | | | | | | |
| 3) Name of Board, Committee, Council, Sections: Optometry Examining Board | | | | | | | | | | | | | |
| 4) Meeting Date: March 25, 2021 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? 1. Public Hearing on Clearinghouse Rule 21-004 for Opt 3 relating to reciprocal credentials for service members, former service members, and their spouses. 2. Public Hearing on Clearinghouse Rule 21-005 for Opt 5 relating to unprofessional conduct. | | | | | | | | | | | |
| 7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session | | 8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No | 9) Name of Case Advisor(s), if required: | | | | | | | | | | |
| 10) Describe the issue and action that should be addressed: Both public hearings are noticed for 9:00 am. | | | | | | | | | | | | | |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">11) Authorization</td> <td style="width: 40%;"></td> </tr> <tr> <td style="border-top: 1px solid black;"><i>Kevyn Radcliffe</i></td> <td style="border-top: 1px solid black; text-align: right;">March 10, 2021</td> </tr> <tr> <td style="border-top: 1px solid black;">Signature of person making this request</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-top: 1px solid black;">Supervisor (if required)</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date</td> </tr> </table> | | | | 11) Authorization | | <i>Kevyn Radcliffe</i> | March 10, 2021 | Signature of person making this request | Date | Supervisor (if required) | Date | Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date | |
| 11) Authorization | | | | | | | | | | | | | |
| <i>Kevyn Radcliffe</i> | March 10, 2021 | | | | | | | | | | | | |
| Signature of person making this request | Date | | | | | | | | | | | | |
| Supervisor (if required) | Date | | | | | | | | | | | | |
| Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date | | | | | | | | | | | | | |
| Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. | | | | | | | | | | | | | |

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 21-004)

PROPOSED ORDER

An order of the Optometry Examining Board to amend Opt 3.02 (intro.) and to create Opt 3.025, relating to reciprocal credentials for service members, former service members, and their spouses.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 440.09(5), Stats.

Statutory authority: Sections 15.08(5)(b) and 440.09(5), Stats.

Explanation of agency authority:

Section 15.08(5)(b), Stats., states that the examining board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 440.09(5), Stats., provides “[t]he department or credentialing board, as appropriate, may promulgate rules necessary to implement this section.”

Related statute or rule:

Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

Plain language analysis:

The proposed rule creates a provision to implement s. 440.09, Stats., as amended by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

The Illinois Statutes provide for the expedited licensure of service members and their spouses (20 ILCS 5/5-715). “Service member” includes a person whose active duty service concluded within the 2 years preceding application for licensure. A license issued to a service member or the spouse of a service member may be renewed.

Iowa:

Rules of the Professional Licensure Division of the Iowa Department of Public Health provide for the expedited reciprocal licensure of a veteran or a spouse of an active duty service member (645 IAC 645.20.3). A reciprocal license issued to a veteran or a spouse of an active duty service member may be renewed.

Michigan:

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

Minnesota:

The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

Summary of factual data and analytical methodologies:

The proposed rule was developed by reviewing the provisions of s. 440.09, Stats., as created by 2019 Wisconsin Act 143, and obtaining input and feedback from the Optometry Examining Board.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before March 25, 2021 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 3.02 (intro.) is amended to read:

Opt 3.02 (intro.) Application. Except as provided in s. Opt 3.025, A an applicant for licensure as an optometrist shall submit all of the following:

SECTION 2. Opt 3.025 is created to read:

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses.

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses. A reciprocal license to practice optometry shall be granted to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (2), Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Optometry Examining Board is approved for submission to the Governor and Legislature.

Dated _____ Agency _____

Chair
Optometry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

| | |
|--|--|
| <p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p> | <p>2. Date October 15, 2020</p> |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Opt 3</p> | |
| <p>4. Subject Reciprocal credentials for service members, former service members, and their spouses.</p> | |
| <p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p> | <p>6. Chapter 20, Stats. Appropriations Affected</p> |
| <p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p> | |
| <p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p> | |
| <p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p> | |
| <p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>11. Policy Problem Addressed by the Rule This proposed rule will update ch.Opt 3 to implement 2019 Wisconsin Act 143 entitling service members, former service members who were discharged within the prior four years under conditions other than dishonorable, and spouses of service members or former service members to obtain a credential if the person resides in Wisconsin and is in good standing with the governmental authorities in every jurisdiction outside Wisconsin that have granted the individual a credential that qualifies the individual to perform acts authorized under the appropriate credential granted by the department or credentialing board.</p> | |
| <p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.</p> | |
| <p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.</p> | |
| <p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p> | |
| <p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is to update ch. Opt 3 to implement 2019 Wisconsin Act 143.</p> | |
| <p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is to update ch. Opt 3 to implement 2019 Wisconsin Act 143.</p> | |

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

17. Compare With Approaches Being Used by Federal Government
None.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

The Illinois Statutes provide for the expedited licensure of service members and their spouses (20 ILCS 5/5-715). “Service member” includes a person whose active duty service concluded within the 2 years preceding application for licensure. A license issued to a service member or the spouse of a service member may be renewed.

Iowa:

Rules of the Professional Licensure Division of the Iowa Department of Public Health provide for the expedited reciprocal licensure of a veteran or a spouse of an active duty service member (645 IAC 645.20.3). A reciprocal license issued to a veteran or a spouse of an active duty service member may be renewed.

Michigan:

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

Minnesota:

The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

19. Contact Name

Kevyn Radcliffe

20. Contact Phone Number

(608) 266-0797

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-004

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

3. Conflict With or Duplication of Existing Rules

The current administrative rules, in s. Opt 3.02, specify the materials that an applicant must submit to apply for licensure. As these materials are different from the information that must be submitted under the provision created in the proposed rule, in s. Opt 3.025, the current text of s. Opt 3.02 should be amended to add the phrase, “Except as provided in s. Opt 3.025”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The agency should consider revising s. Opt 3.025 (2) to first identify the materials that an applicant must submit to apply for the reciprocal licensure and whether those materials are in addition to or notwithstanding the materials that an applicant must submit under s. Opt 3.02. The agency should also use the active voice in the sentence structure, to clearly identify who must do what at what time. For example, “the board shall grant a license to an applicant who meets...”.

b. In s. Opt 3.025 (5), the agency should consider explaining what the agency intends to do for an “expedited” issuance. Does this mean that an application under s. Opt 3.025 will be reviewed before any pending applications submitted under s. Opt 3.02? Or does it mean that the agency intends to review the application and issue a determination within a certain number of days of receiving a complete application?

DSPS Clearinghouse Report Recommendations
CR 21 – 004 Opt 3 - relating to reciprocal credentials

3. Conflict With or Duplicative of Existing Rules

The current administrative rules, in Opt 3.02, specify the materials that an applicant must submit to apply for licensure. As these materials are different from the information that must be submitted under the provision created in the proposed rule, in s. Opt 3.025, the current text of s. 3.02 should be amended to add the phrase, “Except as provided in s. Opt 3.025”.

Recommendation: Accept

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The agency should consider revising s. Opt 3.025 (2) to first identify the materials that an applicant must submit to apply for the reciprocal licensure and whether those materials are in addition to or notwithstanding the materials that an applicant must submit under s. Opt 3.02. The agency should also use the active voice in the sentence structure, to clearly identify who must do what at what time. For example, “the board shall grant a license to an applicant who meets...”.

Recommendation: Accept

b. In s. Opt 3.025 (5), the agency should consider explaining what the agency intends to do for an “expedited” issuance. Does this mean that an application under 3.025 will be reviewed before any pending applications submitted under s. Opt 3.02? Or does it mean that the agency intends to review the application and issue a determination within a certain number of days of receiving a complete application?

Recommendation: Accept

Preliminary Rule draft:

SECTION 2. Opt 3.025 is created to read:

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses.

(1) DEFINITIONS. In this section:

(a) “Former service member” has the meaning given in s. 440.09(1)(a), Stats.

(b) “Service member” has the meaning given in s. 440.09(1)(b), Stats.

(c) “Spouse” has the meaning given in s. 440.09(1)(c), Stats.

(2) Requirements. The board shall grant a license to practice optometry to an applicant who holds an active license in another state, territory, foreign country or province upon the board’s determination that the applicant meets the requirements set forth in s. 440.09(2), Stats.

(3) AFFIDAVIT. If an applicant is unable to provide documentation that the applicant is a service member, former service member, or the spouse of a service member or former service member, the individual may submit an affidavit under s. 440.09(2m), Stats.

(4) RENEWAL. (a) A license granted under this section expires on the applicable renewal date specified in s. 440.08 (2) (a), Stats., except that if the first renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted is within 180 days of the date on which the license is granted, the license expires on the 2nd renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted.

(b) The department or board shall grant a renewed reciprocal credential to an applicant who satisfies the requirements under ch. Opt 7.

(5) EXPEDITED ISSUANCE. The department or board shall expedite the issuance of a reciprocal credential granted under this section.

New draft for Final Rule:

TEXT OF RULE

SECTION 1. Opt 3.02 (intro.) is amended to read:

Opt 3.02 (intro.) Application. Except as provided in s. Opt 3.025, A an applicant for licensure as an optometrist shall submit all of the following:

SECTION 2. Opt 3.025 is created to read:

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses.

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses. A reciprocal license to practice optometry shall be granted to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (2), Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

| | | | | | | | | | | | | | |
|--|--|--|---|--------------------------|--|------------------------|----------------|---|------|--------------------------|------|--|------|
| 1) Name and title of person submitting the request: Kevyn Radcliffe, Administrative Rules Coordinator | | 2) Date when request submitted: March 10, 2021 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small> | | | | | | | | | | | |
| 3) Name of Board, Committee, Council, Sections: Optometry Examining Board | | | | | | | | | | | | | |
| 4) Meeting Date: March 25, 2021 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? 1. Public Hearing on Clearinghouse Rule 21-004 for Opt 3 relating to reciprocal credentials for service members, former service members, and their spouses. 2. Public Hearing on Clearinghouse Rule 21-005 for Opt 5 relating to unprofessional conduct. | | | | | | | | | | | |
| 7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session | | 8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No | 9) Name of Case Advisor(s), if required: | | | | | | | | | | |
| 10) Describe the issue and action that should be addressed: Both public hearings are noticed for 9:00 am. | | | | | | | | | | | | | |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">11) Authorization</td> <td style="width: 40%;"></td> </tr> <tr> <td><i>Kevyn Radcliffe</i></td> <td style="text-align: right;">March 10, 2021</td> </tr> <tr> <td style="border-top: 1px solid black;">Signature of person making this request</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-top: 1px solid black;">Supervisor (if required)</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td style="border-top: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> </table> | | | | 11) Authorization | | <i>Kevyn Radcliffe</i> | March 10, 2021 | Signature of person making this request | Date | Supervisor (if required) | Date | Executive Director signature (indicates approval to add post agenda deadline item to agenda) | Date |
| 11) Authorization | | | | | | | | | | | | | |
| <i>Kevyn Radcliffe</i> | March 10, 2021 | | | | | | | | | | | | |
| Signature of person making this request | Date | | | | | | | | | | | | |
| Supervisor (if required) | Date | | | | | | | | | | | | |
| Executive Director signature (indicates approval to add post agenda deadline item to agenda) | Date | | | | | | | | | | | | |
| Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. | | | | | | | | | | | | | |

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 21-005)

PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 1.02 (2), (4), and (5), 5.03 (23), 5.10 (1) (d), 5.11 and 5.14; to amend Opt 5.03 (16), 5.03 (17) (a) 3., 5.03 (17) (b) 3. and 5.10 (1) (f); and to create Opt 5.02 (5m), 5.03 (17) (c) and (17m), and 5.045 (3), relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 449.03, 449.08 and 449.25, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a) and 449.25, Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., states that the examining board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 449.25, Stats., provides that the examining board shall promulgate rules relating to informed consent, stating that, “[a]ny optometrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments....”

Related statute or rule:

Sections 449.01 (2), 449.03 (1), and 990.01 (20), Stats.

Plain language analysis:

Section 1 removes the definitions of “fitting contact lenses”, “minimum examination for the fitting of contact lenses”, and “minimum eye examination” because each contain a substantive procedure more appropriately placed under s. Opt 5.03 relating to unprofessional conduct. The terms are not used elsewhere in the chapter.

Section 2 adds the definition of a “minor” as provided in s. 990.01 (20), Stats.

Section 3 updates cite references to amended and added provisions.

Section 4 creates provisions setting out the procedures for a minimum eye examination and a minimum contact lenses examination. The proposed rule clarifies that it is unprofessional conduct for an optometrist to fail to conduct certain procedures during a minimum eye examination and a minimum contact lenses examination.

Section 5 removes the provision that it is unprofessional conduct for an optometrist to fail to give a written disclosure to any patient receiving extended wear contact lenses under s. Opt 5.14.

Section 6 adds the provision that if a patient is a minor or is incompetent, treatment disclosures must be made to the patient’s parent or legal guardian.

Section 7 removes the requirement that optometrists make a notation in the patient file that ophthalmic lenses have been verified prior to dispensing under s. Opt 5.11.

Section 8 requires optometrists to document in the file of a minor or an incompetent person, that informed consent was received from the patient’s parent or legal guardian prior to treatment.

Section 9 removes the requirement that optometrists verify that ophthalmic lenses meet an outdated American National Institute Standards, Inc. (ANSI) standard prior to dispensing.

Section 10 removes the requirement that optometrists provide a written disclosure to extended wear contact lens patients describing the risks associated with extended wear contact lenses. The language in the rule is outdated and rewriting the disclosure statement would place unnecessary administrative requirements on optometrists. The public is protected by s. 449.25 (1), Stats., designating a “reasonable optometrist” standard requiring “...disclosure only of information that a reasonable optometrist would know and disclose under the circumstances.”

Summary of, and comparison with, existing or proposed federal regulation:

No existing or proposed federal regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

Comparison with rules in adjacent states:

Illinois:

No existing or proposed Illinois regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Iowa:

No existing or proposed Iowa regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Michigan:

No existing or proposed Michigan regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Minnesota:

No existing or proposed Minnesota regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Summary of factual data and analytical methodologies:

The Optometry Examining Board performed a comprehensive review of chapter Opt 5. This rule project reflects the Board's efforts to revise the chapter for clarity, remove obsolete provisions, and ensure the chapter is current with professional standards and practices.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before March 25, 2021 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1: Opt 1.02 (2), (4), and (5) are repealed.

SECTION 2: Opt 5.02 (5m) is created to read:

Opt 5.02 (5m) “Minor” has the meaning given in s. 990.01 (20), Stats.

SECTION 3: Opt 5.03 (16), 5.03 (17) (a) 3., and 5.03 (17) (b) 3. are amended to read:

Opt 5.03 (16) Failing to have in good working order adequate equipment and instruments as are necessary to perform the minimum eye examination procedures specified in s. ~~Opt 1.02 (5)~~; Opt 5.03 (17) (c).

Opt 5.03 (17) (a) 3. An examination for the fitting of contact lenses ~~as defined in s. Opt 1.02 (4)~~; under s. Opt 5.03 (17) (c).

Opt 5.03 (17) (b) 3. Where written verification of all examination findings has been received from a licensed optometrist or an ophthalmologist, stating that a minimum eye

examination, as defined in s. ~~Opt 1.02 (5)~~ under par. (c), has been performed for the patient within the 6 month period immediately preceding the date of the patient's visit.

SECTION 4: Opt 5.03 (17) (c) and (17m) are created to read:

Opt 5.03 (17) (c): When performing the minimum eye examination under sub. (a), failure to perform any of the following:

1. Recording a complete case history of the patient.
2. Measuring far and near visual acuity.
3. Conducting an internal and external examination of the eye and adnexa.
4. Measuring corneal curvature.
5. Obtaining objective measurement of refractive error.
6. Evaluating convergence and accommodation.
7. Obtaining far and near refraction.
8. Evaluating muscle balance.
9. Measuring intraocular pressure.
10. Recording spectacle prescription including far and near visual acuity.

Opt 5.03 (17m) When fitting contact lenses, failure to perform the minimum contact lenses examination. A minimum contact lenses examination shall include the performance of all the following:

- (a) Performing the minimum eye examination procedures under sub. (17) (c).
- (b) Determining whether a patient may safely and comfortably wear contact lenses.
- (c) Using a spectacle prescription as a basis for selecting, designing, manufacturing, or duplicating a contact lens.
- (d) Placing a trial contact lens upon the eye of a patient for diagnostic purposes.
- (e) Evaluating the physical fit of the trial contact lens.
- (f) Using a phoropter, hand-held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens.
- (g) Determining contact lens specifications.
- (h) Counseling the patient on all the following:
 1. The proper care and use of the prescribed contact lenses.
 2. The appropriate contact lens wearing schedule.
 3. Contact lens replacement schedule.
- (i) When contact lenses are prescribed for extended wear, informing the patient of the potential risks or complications.
- (j) Performing progress evaluations and recording in the patient record the recommended date of the patient's next visit.

SECTION 5: Opt 5.03 (23) is repealed.

SECTION 6: Opt 5.045 (3) is created to read:

Opt 5.045 (3) If the patient is a minor or incompetent, the patient's parent or legal guardian shall be informed of all disclosures required under sub. (1).

SECTION 7: Opt 5.10 (1) (d) is repealed.

SECTION 8: Opt 5.10 (1) (f) is amended to read:

Opt 5.10 (1) (f) Documentation that alternate modes of treatment have been communicated to the patient and prior informed consent has been obtained from the patient. If the patient is a minor or incompetent, documentation that prior consent for treatment was received from the patient's parent or legal guardian.

SECTION 9: Opt 5.11 is repealed.

SECTION 10: Opt 5.14 is repealed.

SECTION 11: EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

This Proposed Order of the Optometry Examining Board is approved for submission to the Governor and Legislature.

Dated _____ Agency _____
Chair
Optometry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

| | |
|---|--|
| <p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p> | <p>2. Date October 15, 2020</p> |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Opt 5</p> | |
| <p>4. Subject Unprofessional Conduct</p> | |
| <p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p> | <p>6. Chapter 20, Stats. Appropriations Affected</p> |
| <p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p> | |
| <p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p> | |
| <p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p> | |
| <p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>11. Policy Problem Addressed by the Rule The Optometry Examining Board has determined that provisions of Opt 5 do not reflect current standards of practice. The rule will update standards of practice and ensure clarity for licensees.</p> | |
| <p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.</p> | |
| <p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.</p> | |
| <p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p> | |
| <p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is providing clarity and consistency with current professional practices and applicable Wisconsin statutes. If the rule is not implemented, the rule will continue to refer to an outdated and unavailable ANSI standard for ophthalmic lenses and require optometrists to provide an outdated disclosure to patients receiving contact lenses.</p> | |
| <p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is clarity, updated references, and conformity with the Wisconsin Statutes.</p> | |
| <p>17. Compare With Approaches Being Used by Federal Government None.</p> | |

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: No existing or proposed Illinois regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Iowa: No existing or proposed Iowa regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Michigan: No existing or proposed Michigan regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Minnesota: No existing or proposed Minnesota regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

19. Contact Name

Kevyn Radcliffe

20. Contact Phone Number

(608)266-0797

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-005

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

The material for “Opt 5.03(17(b)3” should include a parenthesis to read “Opt 5.03 (17) (b) 3.”. Revise the entire rule so that proper spacing and punctuation is included when describing the administrative code.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. Opt 5.03 (16), the word “procedures” should be added between the word “examination” and “specified” in order to more clearly connect that provision to the reference in s. Opt 5.03 (17) (c).

b. Should the material that creates s. Opt 5.03 (17) (c) be included as a definition rather than material that is grounds for unprofessional conduct or made to appear more similar to how s. Opt 5.03 (17m) is constructed? That material is referenced in s. Opt 5.03 (16), but not referenced in s. Opt 5.03 (17) (a) and appears more consistent with being placed as a definition. Section Opt 5.03 (17) (c), as currently proposed, does not describe an independent ground for unprofessional conduct when compared to s. Opt 5.03 (17) (a) and (b).

c. In s. Opt 5.03 (17m) (a), the reference to “s. 5.03 (17) (c)” should be revised to refer to “sub. (17) (c)”.

DSPS Clearinghouse Report Recommendations for CR 21-005 relating to Opt 5 – unprofessional conduct

2. Form, Style and Placement in Administrative Code

The material for “Opt 5.03(17(b)3” should include a parenthesis to read “Opt 5.03 (17) (b) 3.”. Revise the entire rule so that proper spacing and punctuation is included when describing the administrative code.

Recommendation: Accept.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. Opt 5.03 (16), the word “procedures” should be added between the word “examination” and “specified” in order to more clearly connect that provision to the reference in s. Opt 5.03 (17) (c).

Recommendation: Accept

b. Should the material that creates s. Opt 5.03 (17) (c) be included as a definition rather than material that is grounds for unprofessional conduct or made to appear more similar to how s. Opt 5.03 (17m) is constructed? That material is referenced in s. Opt 5.03 (16), but not referenced in s. Opt 5.03 (17) (a) and appears more consistent with being placed as a definition. Section Opt 5.03 (17) (c), as currently proposed, does not describe an independent ground for unprofessional conduct when compared to s. Opt 5.03 (17) (a) and (b).

Recommendation: Accepted

Explanation-conformed Opt 5.03 (17) (c) to match (17m).

c. In s. Opt 5.03 (17m) (a), the reference to “s. 5.03 (17) (c)” should be revised to refer to “sub. (17) (c)”.

Recommendation: Accept

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

| | | | |
|---|--|--|--|
| 1) Name and title of person submitting the request: Kevyn Radcliffe Administrative Rules Coordinator | | 2) Date when request submitted: March 15, 2021 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small> | |
| 3) Name of Board, Committee, Council, Sections: Optometry Examining Board | | | |
| 4) Meeting Date: March 25, 2021 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Administrative Rule Matters – Discussion and Consideration 1. Update on Administrative Rules Reporting Requirements under s. 227.29, Stats. 2. Pending and Possible Rulemaking Projects a. Opt 8 | |
| 7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session | 8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No | 9) Name of Case Advisor(s), if required: | |
| 10) Describe the issue and action that should be addressed: | | | |
| 11) Authorization | | | |
| <i>Kevyn Radcliffe</i> | | March 15, 2021 | |
| Signature of person making this request | | Date | |
| Supervisor (if required) | | Date | |
| Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date | | | |
| Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. | | | |

Robert C. Schulz
Chairperson

John L. Sterling
Vice Chairperson

Jeffrey J. Clark
Secretary

**WISCONSIN OPTOMETRY EXAMINING
BOARD**



4822 Madison Yards Way
PO Box 8366
Madison WI 53708-8366

Email: dsps@wisconsin.gov
Voice: 608-266-2112
FAX: 608-251-3032

March 1, 2021

Senator Stephen Nass, Senate Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 10 South, State Capitol
Madison, WI 53702

Representative Adam Neylon, Assembly Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 240 North, State Capitol
Madison, WI 53702

RE: Report Submitted in Compliance with s. 227.29 (1), Stats.

Dear Senator Nass and Representative Neylon:

This report has been prepared and submitted in compliance with s. 227.29 (1), Stats.

I. Unauthorized rules, as defined in s. 227.26 (4) (a), Stats.:

After careful review of the agency's administrative rules, the agency has determined that no promulgated rules are unauthorized rules, as defined in s. 227.26 (4) (a), Stats.

II. Rules for which the authority to promulgate has been restricted:

After careful review of the agency's administrative rules, the agency has determined that no promulgated rules are rules for which the authority to promulgate has been restricted.

III. Rules that are obsolete or that have been rendered unnecessary:

| Rule | Citation or the text of the statute, regulation, or ruling. | Action taken to address or reason for not taking an action |
|--------------------------------|--|---|
| Opt 5 – Unprofessional conduct | Comprehensive review including the quality standards for ophthalmic lenses referenced in Opt 5.11 and the disclosure requirements in Opt 5.14 to ensure the rules reflect the current practice of optometry and adequately protect patients. | A permanent rule, CR 21-005, is currently scheduled for a public hearing on March 25, 2021. |

IV. Rules that are duplicative or, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction:

After careful review of the Board's administrative rules, the Board has determined that no promulgated rules are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction.

V. Rules that are economically burdensome:

After careful review of the agency's administrative rules, the agency has determined that no promulgated rules are economically burdensome.

VI. Status of rules identified in the Board's previous report:

| Rule | Citation or the text of the statute, regulation, or ruling. | Action taken to address or reason for not taking an action |
|---|---|--|
| ss. Opt 3.02 (3), Opt 4.03 (2) (b), Opt 7.05(2) (b) 2. a. | The rules for licensure need to be clarified to ensure applicants pass the embedded questions on the treatment and management of ocular disease, in accordance with the statutory requirements in s. 449.04 (2), Stats. | Rule effective February 1, 2020. |

Thank you.

Sincerely,



Robert C. Schulz
Chairperson
Optometry Examining Board

Ann Meier Carli
Chairperson

Robert Schulz
Vice Chairperson

Mark Jinkins
Secretary

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Optometry Examining Board Best Practices for Prescribing Controlled Substances Guidelines (approved March 16, 2017)

2015 Wisconsin Act 269 granted authority to the Optometry Examining Board to issue guidelines regarding best practices in prescribing controlled substances, as defined in s. 961.01 (4), Stats., for persons credentialed by the Optometry Examining Board who are authorized to prescribe controlled substances.

The purpose of these guidelines are to provide guidance to optometrists prescribing controlled substances, but not replace the optometrist's clinical judgment.

Optometrists provide care treating acute pain issues on a short term, non-chronic basis. Optometrists who have a valid DEA registration number may only prescribe when treating pain based on the patient's presenting symptoms, overall condition, clinical examination and risk for addiction. While standards of care permit the prescription of narcotic medications in the legitimate treatment of severe pain, optometrists are not obligated to use opioids or other controlled substances when a favorable risk to benefit balance cannot be documented.

Optometrists may prescribe the following controlled substances:

1. Schedule III, IV and V controlled substances.
2. Only the following schedule II controlled substances:
 1. Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
 2. Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Optometrists should utilize the prescription drug monitoring program (PDMP) prior to prescribing or dispensing controlled substances to determine whether the patient is receiving opioid dosages or dangerous combinations that put the patient at high risk, minimize the potential for prescription drug abuse and misuse, and reduce the number of unintentional complications associated with controlled substances. As of April 2017, Wisconsin state law requires prescribers to review the PDMP before prescribing any controlled substance for greater than a three day supply.

Optometrists must have a valid provider-patient relationship prior to prescribing controlled substances.

1. Assessment – Complete medical history and physical examination, including pregnancy status. Determine the location, intensity, severity and associated symptoms with the pain.

Consider psychological factors, including personal/family history of addiction. Risk assessment includes patient medication history, and health conditions that could aggravate adverse reactions (including COPD, CHF, sleep apnea). Observe the patient for any aberrant drug-related behaviors.

2. Develop a plan – Educate the patient and family about the goals of treatment. Discuss the risks and benefits of non-pharmacologic and pharmacologic therapies. Set patient expectations for the degree and the duration of the pain. The goal should be improvement of function to baseline as opposed to complete resolution of pain.
3. Non-pharmacological and/or non-opioid therapy should be strongly considered prior to prescribing opioids. Non-steroidal anti-inflammatory drugs (NSAIDs) should be the first-line analgesic therapy. NSAIDs have demonstrated to be very effective for the treatment of pain, if not more effective than opioids. Opioids should be used only if the expected benefits for pain and function outweigh risk to the patients. If opioids are prescribed, non-pharmacologic and/or non-opioid therapy should also be utilized as part of a multimodal approach.
4. The decision to prescribe controlled substances may be made only after a proper diagnosis and complete evaluation which should include a risk assessment, pain assessment and review of the relevant PDMP data.
5. If prescribing opioids, provide the patient with the least potent opioid to effectively manage pain and prescribe the minimum quantity needed with no refills. Avoid prescribing long-acting opioids for acute pain. If pain continues beyond the expected duration, the patient should be reevaluated and/or consider referring the patient.
6. A patient should not be prescribed opioid and benzodiazepines concurrently, whether the prescribing is done by one practitioner or multiple practitioners. Benzodiazepines triple the already high increases in respiratory depression and annual mortality rates from opioids. If a patient is taking opioids and benzodiazepines concurrently, clear clinical rationale must exist.
7. Educate the patient on the proper storage and disposal of controlled substances. Remind patients it is unsafe and unlawful to give away or sell their medications.
8. It is important to discuss with patients the effect the prescribed medication may have on their ability to safely operate machinery or a vehicle in any mode of transportation.
9. Coordinate care and communication of patients with other health care providers.