

**TELECONFERENCE/VIRTUAL  
OPTOMETRY EXAMINING BOARD**  
**Virtual, 4822 Madison Yards Way, Madison**  
**Contact: Tom Ryan (608) 266-2112**  
**January 25, 2024**

*The following agenda describes the issues that the Council 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 record of the actions and deliberations of the Council.*

**AGENDA**

**9:00 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

- A. Adoption of Agenda (1-3)**
- B. Approval of Minutes of September 28, 2023 (4-6)**
- C. Introductions, Announcements and Recognition
- D. Reminders: Conflicts of Interest, Scheduling Concerns
- E. Administrative Matters – Discussion and Consideration (7-26)**
  - 1) Department, Staff and Board Updates
  - 2) 2024 Meeting Dates **(7)**
  - 3) Annual Policy Review **(8-10)**
  - 4) Elections of Officers, Appointment of Liaisons and Alternates, and Delegation of Authorities **(11-26)**
  - 5) Board Members – Term Expiration Dates
    - a. Jinkins, Mark A. – 7/1/2016
    - b. Kenitz, Scott F. – 7/1/2025
    - c. Schulz, Robert C. – 7/1/2020
    - d. Slaby, Lisa L. – 7/1/2027
    - e. Sorce, Peter I. – 7/1/2023
    - f. Wilson, Emmylou – 7/1/2027
    - g. Wonderling, Ann M. – 7/1/2027
- F. Legislative and Policy Matters – Discussions and Consideration
- G. Administrative Rule Matters – Discussion and Consideration (28-44)**
  - 1) Opt 8 (Continuing Education) Final Rule Draft and Report to the Legislature - motion to approve for submittal to GORC and Legislature **(29-36)**
  - 2) Opt 1, 5, 6 (Telehealth) Preliminary Rule Draft discussion **(37-44)**

- 3) Pending or Possible Rulemaking Projects

## **H. Speaking Engagements, Travel, or Public Relation Requests, and Reports**

- 1) Consideration of Attendance: Association of Regulatory Boards of Optometry (ARBO) Annual Meeting, June 16-18, 2024, in Nashville, TN

## **I. 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) Public Health Emergencies
- 16) Division of Legal Services and Compliance (DLSC) Matters
- 17) Presentations of Petitions for Summary Suspension
- 18) Petitions for Designation of Hearing Examiner
- 19) Presentation of Stipulations, Final Decisions and Orders
- 20) Presentation of Proposed Final Decisions and Orders
- 21) Presentation of Interim Orders
- 22) Petitions for Re-Hearing
- 23) Petitions for Assessments
- 24) Petitions to Vacate Orders
- 25) Requests for Disciplinary Proceeding Presentations
- 26) Motions
- 27) Petitions
- 28) Appearances from Requests Received or Renewed
- 29) Speaking Engagements, Travel, or Public Relation Requests, and Reports

## **J. 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.).**

## **K. 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

L. Consulting with Legal Counsel

**RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION**

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

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

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

**ADJOURNMENT**

**NEXT MEETING: APRIL 4, 2024**

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 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 virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way, Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the board's agenda, please visit the Department website at <https://dsps.wi.gov>. 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 hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, or the Meeting Staff at 608-267-7213.

**HYBRID (IN-PERSON/VIRTUAL)  
OPTOMETRY EXAMINING BOARD  
September 28, 2023**

**PRESENT:** Mark Jenkins, Scott Kenitz, Robert Schulz, Lisa Slaby, Emmylou Wilson, Ann Wonderling (*via Zoom*)

**EXCUSED:** Peter Sorce

**STAFF:** Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Dana Denny, Administrative Rules Coordinator; Brenda Taylor, Board Services Supervisor; and other DSPS Staff

**CALL TO ORDER**

Robert Schulz, Chairperson, called the meeting to order at 9:00 a.m. A quorum was confirmed with six (6) members present.

**ADOPTION OF AGENDA**

**Amendments to the Agenda**

- *Additional Materials provided in (H.) Administrative Rule Matters*

**MOTION:** Mark Jenkins moved, seconded by Emmylou Wilson, to adopt the Agenda as amended. Motion carried unanimously.

**APPROVAL OF MINUTES OF July 6, 2023**

**MOTION:** Emmylou Wilson moved, seconded by Lisa Slaby, to adopt the Minutes of July 6, 2023 as published. Motion carried unanimously.

**INTRODUCTIONS, ANNOUNCEMENTS AND RECOGNITION**

**MOTION:** Lisa Slaby moved, seconded by Emmylou Wilson, to recognize and thank Jeffrey J. Clark for his years of dedicated service to the Board and State of Wisconsin. Motion carried unanimously.

<b>ELECTION RESULTS</b>	
<b>Chairperson</b>	Robert Schulz
<b>Vice Chairperson</b>	Emmylou Wilson
<b>Secretary</b>	Scott Kenitz

**NOMINATION:** Mark Jenkins nominated Scott Kenitz for the Office of Secretary. Scott Kenitz accepted the nomination.

Tom Ryan, Executive Director, called for nominations three (3) times. Scott Kenitz was elected as Secretary by unanimous voice vote.

**Appointment of Liaisons and Alternates**

<b>LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaison(s)</b>	Lisa Slaby, Ann Wonderling <i>Alternate: Robert Schulz</i>
<b>Education and Exams Liaison(s)</b>	Lisa Slaby <i>Alternate Emmylou Wilson</i>
<b>Monitoring Liaison(s)</b>	Scott Kenitz <i>Alternate: Mark Jinkins</i>
<b>Professional Assistance Procedure (PAP) Liaison(s)</b>	Scott Kenitz <i>Alternate: Peter Sorce</i>
<b>Legislative Liaison(s)</b>	Peter Sorce <i>Alternate: Robert Schulz</i>
<b>Travel Authorization Liaison(s)</b>	Robert Schulz <i>Alternate: Lisa Slaby</i>
<b>Prescription Drug Monitoring Program Liaison(s) (PDMP)</b>	Robert Schulz <i>Alternate: Emmylou Wilson</i>
<b>SCREENING PANEL APPOINTMENTS</b>	
<b>January-December 2023</b>	Emmylou Wilson, Mark Jinkins, Scott Kenitz <i>Alternate: Lisa Slaby</i>

**PRELIMINARY PUBLIC HEARING ON CLEARINGHOUSE RULE 23-040 ON OPT 8,  
RELATING TO CONTINUING EDUCATION**

**MOTION:** Emmylou Wilson moved, seconded by Schulz, to accept all Clearinghouse comments for CR 23-040 relating to continuing education. Motion carried unanimously.

**ADMINISTRATIVE RULE MATTERS**

**Opt 1, 5, and 6, Relating to Telehealth**

**MOTION:** Robert Schulz moved, seconded by Lisa Slaby, to direct DSPS staff to formally withdraw scope statement 114-23. Motion carried unanimously.

**Opt 8, Relating to Continuing Education Requirements – ARBO**

**MOTION:** Mark Jenkins moved, seconded by Robert Schulz, to designate Lisa Slaby to serve as liaison to DSPS staff for drafting Opt 8, relating to continuing education requirements - ARBO. Motion carried unanimously.

#### **ADDRESSING THE ISSUE OF OPIOID ABUSE – BOARD GOAL SETTING FOR 2024**

**MOTION:** Robert Schulz moved, seconded by Emmylou Wilson, to adopt the goals for 2024 to address the issue of opioid abuse as presented at today's meeting. Motion carried unanimously.

**MOTION:** Emmylou Wilson moved, seconded by Lisa Slaby, to delegate the Chair of the Board to work with DSPS staff to develop and approve the 2023 Opioid Report to the legislature. Motion carried unanimously.

#### **OPIOID PRESCRIBING GUIDELINE**

**MOTION:** Robert Schulz moved, seconded by Lisa Slaby, to adopt the Wisconsin Optometry Examining Board Guidelines for Prescribing Controlled Substances - Amended 9/2023 as presented at today's meeting. Motion carried unanimously.

#### **CONTINUING EDUCATION REQUIREMENT CLARIFICATION**

**MOTION:** Robert Schulz moved, seconded by Emmylou Wilson, to find that, due to the constraints of the COVID pandemic, Wisconsin optometrists have experienced a hardship as defined in Wis. Admin. Code § Opt 8.01(3). The board therefore approves attendance of fewer than 20 hours of in-person continuing education for the renewal period ending in December 2023 for all Wisconsin licensed optometrists. All other Statutory and Rule requirements for continuing education, including the total number of required hours (30) and the requirements under Opt 8.02(3e) concerning courses not completed in person, remain in effect. Motion carried unanimously.

#### **DELEGATION OF RATIFICATION OF EXAMINATION RESULTS AND RATIFICATION OF LICENSES AND CERTIFICATES**

**MOTION:** Lisa Slaby moved, seconded by Robert Schulz, to delegate ratification of examination results to DSPS staff and to delegate and ratify all licenses and certificates as issued. Motion carried unanimously.

#### **ADJOURNMENT**

**MOTION:** Emmylou Wilson moved, seconded by Robert Schulz, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:16 a.m.

**OPTOMETRY EXAMINING BOARD**  
**2024 Meeting dates**

<b>Meeting Date</b>		<b><i>Start time</i></b>	<b>Agenda item deadline</b>
Thursday, January 25, 2024	Virtual	<i>9:00 AM</i>	<b>1/12/2024</b>
Thursday, April 4, 2024	Virtual	<i>9:00 AM</i>	<b>3/25/2024</b>
Thursday, July 11, 2024	Virtual	<i>9:00 AM</i>	<b>6/28/2024</b>
Thursday, September 19, 2024	In person	<i>9:00 AM</i>	<b>9/9/2024</b>

## AGENDA REQUEST FORM

1) Name and title of person submitting the request: Brenda Taylor, Board Services Supervisor		2) Date when request submitted: 12/14/2023	
3) Name of Board, Committee, Council, Sections: All Boards			
4) Meeting Date: First Meeting of 2024	5) Attachments: <input checked="" type="checkbox"/> Yes	6) How should the item be titled on the agenda page? Annual Policy Review	
7) Place Item in: <input checked="" type="checkbox"/> Open Session	8) Is an appearance before the Board being scheduled? <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if applicable: N/A	
10) Describe the issue and action that should be addressed: <a href="https://dsps.boards.wisconsin.gov/">Board SharePoint Site: https://dsps.boards.wisconsin.gov/</a>			
<p><b>Please be advised of the following Policy Items:</b></p> <ol style="list-style-type: none"> <li>1. <b>In-Person Meeting Policy:</b> Depending on the frequency of Board meetings, a Board may be allowed a certain number of in-person meetings. <ul style="list-style-type: none"> <li>• 4-5 Meetings per year = 1 in-person opportunity</li> <li>• 6-8 Meetings per year = 2 in-person opportunities</li> <li>• 12 Meetings per year = 4 in-person opportunities</li> </ul> </li> <li>2. <b>Attendance/Quorum:</b> Thank you for your service and commitment to meeting attendance. If you cannot attend a meeting or have scheduling conflicts impacting your attendance, please let us know as soon as possible. Timely notification is appreciated as a quorum is required for Boards, Sections, and Councils to meet pursuant to Open Meetings Law.</li> <li>3. <b>Walking Quorum:</b> Board/Section/Council members must not collectively discuss the body's business outside a properly noticed meeting. Should several members of a body do so, the members could be violating the open meetings law.</li> <li>4. <b>Mandatory Training:</b> All Board Members must complete Public Records and Ethics Training, annually. <a href="#">Register to set up an account</a> in the Cornerstone LearnCenter online portal or <a href="#">Log in</a> to an existing account.</li> <li>5. <b>Agenda Deadlines:</b> Please communicate agenda topics to your Executive Director before the agenda submission deadline at 12:00 pm, 8 business days prior to a meeting. (Attachment: Timeline of a Meeting)</li> <li>6. <b>Per Diem and Reimbursement Claims:</b> Please submit all Per Diem and Reimbursement claims to DSPS within 30 days of the close of each month in which expenses are incurred. (Attachment: Per Diem Example)</li> <li>7. <b>Lodging Accommodations/Hotel Cancellation Policy:</b> Lodging accommodations are available to eligible members. Standard eligibility: the member must leave home before 6:00 am to attend a meeting by the scheduled start time. <ol style="list-style-type: none"> <li>a. If a member cannot attend a meeting it is their responsibility to cancel their reservation within the applicable cancellation timeframe.</li> <li>b. If a meeting is changed to occur remotely, is canceled, or rescheduled, DSPS staff will cancel or modify reservations as appropriate.</li> </ol> </li> <li>8. <b>Inclement Weather Policy:</b> In the event of inclement weather, the DSPS may change a meeting from an in-person venue to hosted as virtual/teleconference only.</li> </ol>			
11)		<b>Authorization</b>	
<i>Brenda Taylor</i>		<i>12/14/2023</i>	
<p><b>Directions for including supporting documents:</b></p> <ol style="list-style-type: none"> <li>1. This form should be saved with any other documents submitted to the <a href="#">Agenda Items</a> folders.</li> <li>2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director</li> </ol>			



## Timeline of a Meeting

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**8 business days prior to the meeting:** All agenda materials are due to the Department by 12:00 pm, 8 business days prior to the meeting date.

**7 business days prior to the meeting:** The draft agenda page is due to the Executive Director. The Executive Director transmits to the Chair for review and approval.

**5 business days prior to the meeting:** The approved agenda is returned to the Board Administration Specialist for agenda packet production and compilation.

**4 business days prior to the meeting:** Agenda packets are posted on the DSPS Board SharePoint site and on the Department website.

### Agenda Item Examples:

- Approval of the Agenda and previous meeting Minutes
- Open Session Items
  - Public Hearings (relating to Administrative Rules)
  - Administrative Matters
  - Legislation and Policy Matters
  - Administrative Rules Matters
  - Credentialing Matters
  - Education and Exam Issues
  - Public Agenda Requests
  - Current Issues Affecting the Profession
  - Public Comments
- Closed Session items
  - Deliberations on Proposed Disciplinary Actions
    - Stipulations
    - Administrative Warnings
    - Case Closings
    - Monitoring Matters
    - Professional Assistance Procedure (PAP) Issues
  - Proposed Final Decisions and Orders
  - Orders Fixing Costs/Matters Relating to Costs
  - Credentialing Matters
  - Education and Exam Issues

**Thursday of the Week Prior to the Meeting:** Agendas are published for public notice on the Public Notices and Meeting Minutes website: [publicmeetings.wi.gov](http://publicmeetings.wi.gov).

**1 business day after the Meeting:** "Action" lists are distributed by staff detailing board actions on closed session business.

**5 business days after the Meeting:** "To Do" lists are distributed to staff to ensure that board decisions are acted on and/or implemented within the appropriate divisions in the Department. Minutes approved by the board are published on the the Public Notices and Meeting Minutes website: [publicmeetings.wi.gov](http://publicmeetings.wi.gov).

# Department of Safety and Professional Services

## PER DIEM REPORT

**INSTRUCTIONS:** Claimant records board-related activities by entering the date of an activity, the duration of time spent in that activity, the relevant purpose code (see purpose code descriptions below), where the activity is conducted, and the type of activity performed. Only one (1) \$25.00 per diem payment can be issued on any given calendar day.

**Purpose Codes:**

- A. Official meetings including video/teleconference calls** (automatic day of per diem): i.e., board, committee, board training or screening panels; **Hearings**, i.e., Senate Confirmation, legislative, disciplinary or informal settlement conferences; **Examinations and Test Development Sessions**, i.e., test administration, test review or analysis events, national testing events, tour of test facilities, etc.)
- B. Other** (One (1) per diem will be issued for every five (5) hours spent in category B, per calendar month): i.e., review of disciplinary cases, consultation on cases, review of meeting materials, board liaison work e.g., contacts regarding Monitoring, Professional Assistance Procedure, Credentialing, Education and Examinations

NAME OF EXAMINING BOARD OR COUNCIL			BOARD OR COUNCIL MEMBER'S NAME	
<b>EXAMPLE EXAMINING BOARD</b>			<b>MARY SUNSHINE</b>	
Activity Date	Duration of Activity	Purpose Code	Where Performed	Activity
MM/DD/YY	Hours/Minutes	A or B	City/Location (Home, Work, DSPS)	Describe Activity Performed (see purpose codes)
12/2/20	2 hrs	B	Pleasant Prairie/Home	Review of screening panel materials
12/3/20	2 hr / 30 mins	B	Pleasant Prairie/Home	Review of screening panel materials
12/10/20	1 hr	A	Pleasant Prairie/Home	Screening Panel Meeting - Teleconference
12/12/20	1 hr / 30 mins	B	Pleasant Prairie/Home	Case consultation
12/13/20	1 hr	B	Pleasant Prairie/Home	Liaison: Application Review
12/16/20	6 hrs	A	Madison/DSPS	Board Member Training
				<p><b>The 5-hour rule applies to "B" code activities. Add the 'B' codes within the calendar month and then divide by five (5) hours to calculate your per diem payment. In this case the total is seven (7) hours which equals one (1) day of per diem.</b></p> <p><b>Each 'A' code is an automatic day of per diem regardless of time spent in that activity. Ms. Sunshine is eligible for two (2) additional days of payment.</b></p> <p><b>Department staff completes the fields titled "Total Days Claimed".</b></p>
<b>CLAIMANT'S CERTIFICATION</b>			Comments:	
The undersigned certifies, in accordance with § 16.53, Wis. Stats., that this account for per diem, is just and correct; and that this claim is for service necessarily incurred in the performance of duties required by the State, as authorized by law.				
<i>Mary Sunshine</i>		1/4/2021		
Claimant's Signature	Date	Supervisor	Date	

EMPL ID: 100012345-0

To be completed by Department staff: **TOTAL DAYS CLAIMED: 3 @ \$25.00 = 75.00**

**2024 Elections and Liaison Appointments**

<b>ELECTION RESULTS as of 12/31/2023</b>	
<b>Chairperson</b>	Robert Schulz
<b>Vice Chairperson</b>	Emmylou Wilson
<b>Secretary</b>	Scott Kenitz

**Appointment of Liaisons and Alternates as of 12/31/2023**

<b>LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaison(s)</b>	Lisa Slaby, Ann Wonderling <i>Alternate: Robert Schulz</i>
<b>Education and Exams Liaison(s)</b>	Lisa Slaby <i>Alternate Emmylou Wilson</i>
<b>Monitoring Liaison(s)</b>	Scott Kenitz <i>Alternate: Mark Jenkins</i>
<b>Professional Assistance Procedure (PAP) Liaison(s)</b>	Scott Kenitz <i>Alternate: Peter Sorce</i>
<b>Legislative Liaison(s)</b>	Peter Sorce <i>Alternate: Robert Schulz</i>
<b>Travel Authorization Liaison(s)</b>	Robert Schulz <i>Alternate: Lisa Slaby</i>
<b>Prescription Drug Monitoring Program Liaison(s) (PDMP)</b>	Robert Schulz <i>Alternate: Emmylou Wilson</i>
<b>SCREENING PANEL APPOINTMENTS</b>	
<b>January-December 2023</b>	Emmylou Wilson, Mark Jenkins, Scott Kenitz <i>Alternate: Lisa Slaby</i>



**State of Wisconsin**  
**DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**  
**CORRESPONDENCE / MEMORANDUM**

**DATE: January 9, 2024**

**TO: Board, Council, and Committee Members**

**FROM: Legal Counsel**

**SUBJECT: Liaison Definitions and Delegations Explanations**

### **Overall Purpose of Liaison Appointments**

Each Board/Section (Board) has inherent authority that is established in our Wisconsin Statutes. This authority may change from Board to Board. For further information on your Board's authority review Wis. Stat. ch. 15. Generally, each Board has authority to grant credentials, discipline credential holders, and set standards for education and examinations. Additionally, Liaisons assist with the operations of the Boards purpose by weighing in on legislative matters, traveling to national conferences, or communicating with stakeholders.

The Department asks that each year the Boards make liaison appointments to assist the Board and Department to accomplish these tasks in an efficient manner. Your practical knowledge and experience, as an appointed member of a professional board, are essential in making determinations regularly. The Liaison positions below assist the Department to complete operations between Board meetings. In most cases, Liaisons can make decisions for the full Board in their designated area. These are determined through the delegation process. However, a Liaison may also decide to send the delegated issue to the full Board for consideration as appropriate. Delegations assist the Board in defining the roles and authorities of each Liaison.

### **Liaison Definitions**

**Credentialing Liaison:** The Credentialing Liaison is empowered by the Board to review and make determinations regarding certain applications for credentials. The Credentialing Liaison may be called on by Department staff to answer questions that pertain to qualifications for licensure, which may include whether a particular degree is suitable for the application requirements, whether an applicant's specific work experience satisfies the requirements in statute or rule for licensure, or whether an applicant's criminal or disciplinary history is substantially related to the practice of the profession in such a way that granting the applicant a credential would create a risk of harm to the public. Questions will likely be sent by Department

staff to the Credentialing Liaison via email and may include application materials. The Credentialing Liaison serves a very important role in the credentialing process.

**Monitoring Liaison:** The Monitoring Liaison is empowered by the Board to make decisions on any credential that is limited either through a disciplinary order or initial licensure. The Department Monitors will send requests from credential holders to the Monitoring Liaison. These requests vary wildly. A common request could be to remove a limitation that has been placed on a credential or to petition for full licensure. The Monitoring Liaison can review these requests and make decisions on behalf of the Board. The Board has the authority to grant decision making latitude to their liaison to any degree. The specific monitoring delegations are found in the Monitoring Document attached to the agenda. If the Monitoring Liaison has a question on a request, it is advisable for the Liaison to consult further with Department staff or bring the matter to the full Board for consideration.

**Professional Assistance Procedure (PAP) Liaison:** PAP is a voluntary program open to credential holders with substance abuse issues who wish to seek help by being held accountable through treatment and monitoring by the Department and Board. As part of PAP, the credential holder enters into an agreement with the Department to undergo testing, counseling, or other rehabilitation. The PAP Liaison's role includes responding to credential holders' requests for modifications and terminations of provisions of the agreement. Similar to the Monitoring Liaison, the Department Monitors will send requests from credential holders to the PAP Liaison for further review.

**Education and Examination Liaison:** Some Boards are required by statute or rule to approve qualifying education and examinations. The Education and Examination Liaison provides guidance to Department staff to exercise authority of the Board to approve or decline examinations and educational programs. This determination requires a level of professional expertise and should be performed by a professional member of the Board. For some Boards, the Education and Examination Liaison will also be tasked with approving continuing education programs and courses.

**Legislative Liaison:** The Legislative Liaison is permitted to act and speak on the Board's behalf regarding pending and enacted legislation or actions being considered by the legislature outside of Board meetings. The Legislative Liaison is not the Board's designated lobbyist and should exercise their delegated authority carefully.

**Travel Authorization Liaison:** The Travel Authorization Liaison is authorized to approve a Board member to travel to events and speak or act on the Board's behalf between Board meetings. The Travel Authorization Liaison is called upon to make decisions when sufficient notice was not received, and the full Board could not determine a representative to travel. The Travel Authorization Liaison is tasked with making determinations if the Board appointed representative is not able to attend or if the Board becomes authorized to send additional members. As scholarship and funding streams can be unpredictable.

**Communication Liaison:** The Communication Liaison responds on behalf of the Board when questions arise that require a response from the Board. The Communication Liaison works with

the Department to cultivate an appropriate response. The Communication Liaison can be responsible for all types of communication on behalf of the Board. However, the Board can appoint a separate **Website Liaison** to work with DSPS staff to make changes and ensure the Board webpage contains updated and accurate information. Additionally, for the Boards that are required by statute to produce a newsletter or digest. The Board can appoint a separate **Newsletter/Digest Liaison** to assemble and approve content for those communications.

**Screening Panel Members:** The duties of the Screening panel are to review incoming complaints against credential holders and determine which complaints should be opened for investigation and which complaints should be closed without further action. The complexity and amount of work in this role depends substantially on your particular Board. As a member of the Screening panel you are asked to apply your professional expertise to determine if a complaint alleges unprofessional conduct.

## **Delegations Explanations**

### **Credentialing Delegations**

*The overall purpose of credentialing delegations is to allow the credentialing process to proceed as efficiently and effectively as possible.*

#### **Delegation of Authority to Credentialing Liaison (Generic)**

MOTION EXAMPLE: to delegate authority to the Credentialing Liaison(s) to serve as a liaison between the Department 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.

PURPOSE: To permit one representative of the Board to assist Department staff with credentialing applications and eliminate the need for the entire Board to convene to consider credential application content or questions. Additionally, it is most efficient to have the designated liaison who has assisted with the credentialing process to be able to effectuate decisions which require a signature.

#### **Delegation of Authority to DSPS When Credentialing Criteria is Met**

MOTION EXAMPLE: 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.

PURPOSE: To permit Department staff to efficiently issue credentials and eliminate the need for Board/Section/Liaison review when all credentialing legal requirements are met in an application.

#### **Delegation of Authority for Predetermination Reviews**

MOTION EXAMPLE: to delegate authority to the Department Attorneys to make decisions regarding predetermination applications pursuant to Wis. Stat. § 111.335(4)(f).

PURPOSE: In general, the Wisconsin Fair Employment Act (codified in Wis. Stat. Ch. 111) prohibits licensing agencies from discriminating against applicants because of their arrest and/or conviction record. However, there are exceptions which permit denial of a license in certain circumstances. Individuals who do not possess a license have a legal right to apply for a determination of whether they are disqualified from obtaining a license due to their conviction record. This process is called “Predetermination”. Predeterminations must be completed within 30 days. This delegation allows Department Attorneys to conduct predetermination reviews and efficiently make these legal determinations without need for Board/Section/Liaison review.

### **Delegation of Authority for Conviction Reviews**

MOTION EXAMPLE: to delegate authority to the Department Attorneys to review and approve applications with convictions which are not substantially related to the practice.

PURPOSE: As used here, “substantially related” is a legal standard that is used in the Wisconsin Fair Employment Act. The concept of what is “substantially related” is informed by case law. This delegation permits Department Attorneys to independently conduct conviction reviews and efficiently approve applications if convictions are not substantially related to the practice of the profession. Applications that contain conviction records that may be substantially related to the practice of a profession will still be submitted to the Credentialing Liaison for input.

### **Delegation to DSPS When Applicant’s History Has Been Previously Reviewed**

MOTION EXAMPLE: to delegate authority to Department staff to approve applications where Applicant’s prior discipline has been approved for a previous credential and there is no new discipline.

PURPOSE: Some Boards offer progressive levels of credentials. This delegation eliminates the need for a re-review of discipline that has already been considered and approved by the Board/Section/Liaison for a lower-level credential.

### **Delegation to DSPS When Applicant’s Conviction History Has Been Previously Reviewed**

MOTION EXAMPLE: to delegate authority to Department staff to approve applications where criminal background checks have been approved for a previous credential and there is no new conviction record.

PURPOSE: Some Boards offer progressive levels of credentials. This delegation eliminates the need for a re-review of conviction history that has already been reviewed and approved for a lower-level credential.

### **Delegation of Authority for Reciprocity Reviews**

MOTION EXAMPLE: to delegate authority to the Department Attorneys to review and approve reciprocity applications in which the out of state license requirements meet Wisconsin license requirements. (specific legal standards are referenced in the motion depending on credential/profession type).

PURPOSE: Applications via reciprocity or endorsement require comparison of Wisconsin licensing requirements to the licensing requirements of another jurisdiction. These reviews consider the legal standard for reciprocity, which varies by profession, as well as the specified legal requirements to obtain licensure in the profession. This delegation permits Department Attorneys to independently conduct reciprocity reviews and efficiently approve applications if legal standards and requirements are met for licensure. Applications for which reciprocity may not be available will still be submitted to the Credentialing Liaison for input.

### **Delegation of Authority for Military Reciprocity Reviews**

MOTION EXAMPLE: to delegate authority to the Department Attorneys to review and approve military reciprocity applications in which the individual meets the requirements of Wis. Stat. § 440.09.

PURPOSE: The law permits service members, former service members, and their spouses to be licensed if they hold licensure in other jurisdictions that qualify them to perform acts authorized by the credential they are seeking in Wisconsin. This is a shortened path to licensure that does not require meeting the specific requirements/standards for licensure/reciprocity in a profession. By law, the Department/Board must expedite the issuance of a reciprocal license via military reciprocity. This delegation permits Department Attorneys to independently conduct military reciprocity reviews and efficiently approve applications if legal standards and requirements are met for licensure. Applications for which reciprocity may not be available will still be submitted to the Credentialing Liaison for input.

### **Delegation of Authority for Application Denial Reviews**

MOTION EXAMPLE: to delegate authority to the Department's Attorney Supervisors to serve as the Board designee for purposes of reviewing and acting on requests for hearing as a result of a denial of a credential.

PURPOSE: When an application is denied, the applicant has a legal right to appeal the denial determination. Applicants must meet a specified legal standard in order to have an appeal granted. Additionally, Wisconsin law sets specific time frames for appeal decisions. This delegation permits Department Attorney Supervisors to independently review and efficiently act on requests for hearing as a result of a denial of a credential.

### **Delegation to Department Attorneys to Approve Duplicate Legal Issue**

MOTION EXAMPLE: to delegate authority to Department Attorneys to approve a legal matter in connection with a renewal application when that same/similar matter was already addressed



by the Board and there are no new legal issues for that credential holder. Motion carried unanimously.

PURPOSE: The intent of this delegation is to be able to approve prior discipline by the Board for the renewal applicant. This delegation eliminates the need for a re-review of discipline that has already been considered and approved by the Board/Section/Liaison.

### **Monitoring Delegations**

*The overall purpose of monitoring delegations is to be able to enforce the Boards orders and limited licenses as efficiently and effectively as possible. Monitoring delegations have two categories: delegations to the monitoring liaison and delegations to the Department Monitor.*

### **Delegation of Authority to Department Monitor**

MOTION EXAMPLE: to delegate authority to the Department Monitor

- a. to grant full reinstatement of licensure if education is the only limitation and credential holder has submitted the required proof of course completion.
- b. to suspend the credential if the credential holder has not completed Board ordered education, paid costs, paid forfeitures, within the time specified by the Board Order.
- c. to lift a suspension when compliance with education and costs provisions have been met.

PURPOSE: These delegations allow for the Department Monitor to automatically act on requests when certain criteria are met or not met without needing to burden the Board Monitoring Liaison. The Board can set their own criteria for what actions they would like to be handled by the Department, the Monitoring Liaison and the full Board.

### **Delegation of Authority to Monitoring Liaison**

MOTION EXAMPLE: to delegate authority to the Monitoring Liaison to approve or deny all requests received by the credential holder.

PURPOSE: These delegations allow the Board to set criteria for what decisions can be made by the Board member(s) serving as the Monitoring Liaison and what matters should be decided by the full Board. The Board has the authority to set specific criteria or to permit the liaison to make all determinations at their discretion.

### ***Education and Exam Delegations***

MOTION EXAMPLE: to delegate authority to the Education and Examination Liaison(s) to address all issues related to continuing education and examinations. Motion carried unanimously. (Differs by Board)

PURPOSE: Some Boards are responsible for approving qualifying educational programs or continuing education courses. A delegation is executed in order for a Board member to make

these determinations on behalf of the Boards and with assistance of the Department. Additionally, some Boards review examinations and individual scores to qualify for a credential.

## **Miscellaneous Delegations**

### ***Document Signature***

MOTION EXAMPLE: 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 EXAMPLE: 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, Board Counsel or DPD Division Administrator, the authority to sign on behalf of a Board member as necessary. Motion carried unanimously.

PURPOSE: In order to take the action approved at Board meetings, the Department may need to draft correspondence and/or Orders after the meetings have adjourned. These actions then need to be signed by a Board Member. This interaction usually takes place over email and a Board member can authorize the use of his/her signature that is kept on file.

### ***Urgent Matters***

MOTION EXAMPLE: 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.

PURPOSE: Allows for quick responses to urgent matters that may need Board approval or for which the Department requires guidance from the Board.

### ***Delegation to Chief Legal Counsel***

#### **Due to Loss of Quorum**

MOTION EXAMPLE: to delegate the review and authority to act on disciplinary cases to the Department's Chief Legal Counsel due to lack of/loss of quorum after two consecutive meetings. Motion carried unanimously.

PURPOSE: Sometimes Boards can struggle to meet quorum necessary to conduct business. This happens for a multitude of reasons but this delegation allows for the Boards to have disciplinary cases decided by Chief Legal Counsel if the Board fails to meet quorum for two consecutive meetings.

## **Stipulated Resolutions**

MOTION EXAMPLE: to delegate to the Department's Chief Legal Counsel (CLC) the authority to act on behalf of the Board concerning stipulated resolutions providing for a surrender, suspension, or revocation of a credential, where the underlying merits involve serious and dangerous behavior, and where the signed stipulation is received between Board meetings. The Board further requests that CLC only act on such matters when the best interests of the Board, Department and the Public are best served by acting upon the stipulated resolution at the time the signed stipulation is received versus waiting for the next Board meeting. Motion carried unanimously.

PURPOSE: For matters of public safety, it may be necessary to take immediate action on a stipulated agreement rather than allowing a credential holder to continue practicing unencumbered until the next scheduled meeting. This delegation allows CLC to act on behalf of the Board when there is a stipulated agreement. A stipulated agreement is an agreement to which all relevant parties have consented to the terms.

### ***Voluntary Surrenders***

MOTION: 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: to delegate authority to the Department to accept the voluntary surrender of a credential when there is no pending complaint or disciplinary matter with the Department pursuant to Wis. Stat. § 440.19.

PURPOSE: Credential holders can ask the Boards to surrender their credentials at any time. These delegations are in place for the different situations that arise from those requests. If a credential holder is seeking to surrender their credential because they wish to leave the profession that can be processed with this delegation by the Department if they have no pending disciplinary complaints. If the credential holder wishes to surrender while they have a pending disciplinary complaint that request is reviewed by the individual Board member assigned to the case.

### ***DLSC Pre-screening***

MOTION EXAMPLE: to delegate pre-screening decision making authority to the DSPS screening attorney for opening cases where the credential holder has failed to respond to allegations contained in the complaint when requested by intake (Case will be opened on failure to respond and the merits of the complaint).

PURPOSE: Pre-Screening delegations exist so the Board can define specific parameters where the Department can review disciplinary complaints and open those cases if they meet certain criteria. Boards also have the authority to set certain criteria that would allow the Department to review and close a case if the criteria is met.

## **Roles and Authorities Delegated for Monitoring**

The Monitoring Liaison (“Liaison”) is a Board/Section designee who works with department monitors (“Monitor”) to enforce Board/Section orders as explained below.

### **Authorities Delegated to the Monitoring Liaison**

The Liaison may take the following actions on behalf of the Board/Section:

1. Grant a temporary reduction in random drug screen frequency upon Respondent’s request if he/she is unemployed and is otherwise compliant with Board/Section order. The temporary reduction will be in effect until Respondent secures employment in the profession. The Department Monitor (“Monitor”) will draft an order and sign on behalf of the Liaison.
2. Grant a stay of suspension if Respondent is eligible per the Board/Section order. The Monitor will draft an order and sign on behalf of the Liaison.
3. Remove the stay of suspension if there are repeated violations or a substantial violation of the Board/Section order. In conjunction with removal of any stay of suspension, the Liaison may prohibit Respondent from seeking reinstatement of the stay for a specified period of time. The Monitor will draft an order and sign on behalf of the Liaison.
4. Grant or deny approval when Respondent proposes continuing/disciplinary/remedial education courses, treatment providers, mentors, supervisors, change of employment, etc. unless the order specifically requires full-Board/Section approval.
5. Grant full reinstatement of licensure if Respondent has fully complied with all terms of the order without deviation. The Monitor will draft an order and obtain written authorization from the Liaison to sign on their behalf.
6. Grant or deny a request to appear before the Board/Section in closed session.
7. The Liaison may determine whether Respondent’s petition is eligible for consideration by the full Board/Section.
8. Accept Respondent’s written request to surrender credential. If accepted by the Liaison, Monitor will consult with Board Counsel to determine if a stipulation is necessary. If a stipulation is not necessary, Monitor will draft an order and sign on behalf of the Liaison. If denied by the Liaison, the request to surrender credential will go to the full Board for review. (Except PHM, MED)

9. Grant Respondent's petition for a reduction in drug screens per the standard schedule, below. If approved, Monitor will draft an order and sign on behalf of the Liaison. Orders that do not start at 49 screens will still follow the same standard schedule.
  - a. Initial: 49 screens (including 1 hair test, if required by original order)
  - b. 1st Reduction: 36 screens (plus 1 hair test, if required by original order)
  - c. 2<sup>nd</sup> Reduction: 28 screens plus 1 hair test
  - d. 3<sup>rd</sup> Reduction: 14 screens plus 1 hair test
10. (*Dentistry only*) Ability to approve or deny all requests from a respondent.
11. The Liaison may approve or deny Respondent's request to be excused from drug and alcohol testing for work, travel, etc. (Applies only to these Boards: Dietitians, Massage/Bodywork Therapy Board, DEN, PAB, CHI, MED, RAD)
12. **The Liaison may have full authority to approve or deny a request from a Respondent that otherwise would require the approval of the full Board if the request cannot be heard and voted on due to lack of/loss of quorum.**
13. **The Liaison may have full authority to terminate any treatment ONLY upon written request from Respondent and written recommendation from Respondents treater.**

**Authorities Delegated to the Department Monitor**

The Monitor may take the following actions on behalf of the Board/Section, draft an order and sign:

1. Grant full reinstatement of licensure if education is the sole condition of the limitation and Respondent has submitted the required proof of completion for approved courses.
2. Suspend the license if Respondent has not completed Board/Section-ordered education and/or paid costs and forfeitures within the time specified by the Board/Section order. The Monitor may remove the suspension and issue an order when proof of completion and/or payment have been received.
3. Suspend the license (or remove stay of suspension) if Respondent fails to enroll and participate in an Approved Program for drug and alcohol testing within 30 days of the order, or if Respondent ceases participation in the Approved Program without Board approval. This delegated authority only pertains to respondents who must comply with drug and/or alcohol testing requirements.
4. Grant or deny approval when Respondent proposes treatment providers [, mentors, supervisors, etc.] unless the Order specifically requires full-Board/Section or Board designee approval. (Except for MED)
5. Grant a maximum of one 90-day extension, if warranted and requested in writing by Respondent, to complete Board/Section-ordered continuing/disciplinary/remedial education.
6. Grant a maximum of one 90-day extension or payment plan for proceeding costs and/or forfeitures if warranted and requested in writing by Respondent.
7. Grant a maximum of one 90-day extension, if warranted and requested in writing by Respondent, to complete a Board/Section-ordered evaluation or exam.

## **Authorities Delegated to Board Legal Counsel**

Board Legal Counsel may take the following actions on behalf of the Board/Section:

1. Sign Monitoring orders that result from Board/Section meetings on behalf of the Board/Section Chair.
- 

Updated 03/13/2023

2022 Roles & Authorities

## **Delegation of Authorities**

### ***Document Signature Delegations***

**MOTION:** Mark Jenkins moved, seconded by Lisa Slaby, 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:** Peter Sorce moved, seconded by Emmylou Wilson, 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:** Mark Jenkins moved, seconded by Jeffrey Clark, 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:** Mark Jenkins moved, seconded by Lisa Slaby, to delegate the review and authority to act on disciplinary cases to the Department's Chief Legal Counsel due to lack of/loss of quorum. Motion carried unanimously.

### ***Delegation to Chief Legal Counsel for Stipulated Resolutions***

**MOTION:** Mark Jenkins moved, seconded by Robert Schulz, to delegate to DSPS Chief Legal Counsel the authority to act on behalf of the Board concerning stipulated resolutions providing for a surrender, suspension, or revocation of a credential, where the underlying merits involve serious and dangerous behavior, and where the signed stipulation is received between Board meetings. The Board further requests that CLC only act on such matters when the best interests of the Board, Department and the Public are best served by acting upon the stipulated resolution at the time the signed stipulation is received versus waiting for the next Board meeting. Motion carried unanimously.

## *Monitoring Delegations*

### **Delegation of Authorities for Monitoring**

**MOTION:** Mark Jenkins moved, seconded by Peter Sorce, to adopt the “Roles and Authorities Delegated for Monitoring” document as presented in the January 26, 2023 agenda materials on pages 17-19. Motion carried unanimously.

### **Delegation of Authorities for Legal Counsel to Sign Monitoring Orders**

**MOTION:** Lisa Slaby moved, seconded by Emmylou Wilson, to delegate to 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**

**MOTION:** Mark Jenkins moved, seconded by Emmylou Wilson, to delegate authority to the Credentialing Liaison(s) to serve as a liaison between the Department 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. Motion carried unanimously.

### **Delegation of Authority to DSPS When Credentialing Criteria is Met**

**MOTION:** Jeffrey Clark moved, seconded by Lisa Slaby, 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 Peter Sorce, 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:** Peter Sorce moved, seconded by Robert Schulz, 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 Jeffrey Clark, 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.

### **Delegation of Authority for Military Reciprocity Reviews**

**MOTION:** Lisa Slaby moved, seconded by Peter Sorce, to delegate authority to the Department Attorneys to review and approve military reciprocity applications in which the individual meets the requirements of Wis. Stat. § 440.09. Motion carried unanimously.

### ***Voluntary Surrenders***

**MOTION:** Peter Sorce moved, seconded by Robert Schulz, 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.

**MOTION:** Emmylou Wilson moved, seconded by Jeffrey Clark, to delegate authority to the Department to accept the voluntary surrender of a credential when there is no pending complaint or disciplinary matter with the Department pursuant to Wis. Stat. § 440.19. Motion carried unanimously.

### ***Education and Examination Liaison(s) Delegation***

**MOTION:** Emmylou Wilson moved, seconded by Robert Schulz, to delegate authority to the Education and Examination Liaison(s) to address all issues related to continuing education and examinations. Motion carried unanimously.

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

**MOTION:** Peter Sorce moved, seconded by Jeffrey Clark, to authorize the Department staff to provide national regulatory related bodies with all board member contact information that the Department retains on file. Motion carried unanimously.

***Optional Renewal Notice Insert Delegation***

**MOTION:** Lisa Slaby moved, seconded by Robert Schulz, 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 Delegation***

**MOTION:** Peter Sorce moved, seconded by Jeffrey Clark, to delegate authority to the Legislative Liaisons to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

***Travel Authorization Liaison Delegation***

**MOTION:** Lisa Slaby moved, seconded by Robert Schulz, to delegate authority to the Travel Authorization Liaison to approve any board member travel to and/or participation in events germane to the Board, and to designate representatives from the Board to speak and/or act on the Board's behalf at such events. Motion carried unanimously.

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

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

## AGENDA REQUEST FORM

<b>1) Name and title of person submitting the request:</b> Jake Pelegrin Administrative Rules Coordinator		<b>2) Date when request submitted:</b> 1/11/24 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
<b>3) Name of Board, Committee, Council, Sections:</b> Optometry Examining Board			
<b>4) Meeting Date:</b> 1/25/24	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Administrative Rule Matters – Discussion and Consideration 1. Opt 8 (Continuing Education) Final Rule Draft and Report to the Legislature - motion to approve for submittal to GORC and Legislature 2. Opt 1, 5, 6 (Telehealth) Preliminary Rule Draft discussion 3. Pending or Possible Rulemaking Projects	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	<b>8) Is an appearance before the Board being scheduled?</b> <i>(If yes, please complete <a href="#">Appearance Request</a> for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A	
<b>10) Describe the issue and action that should be addressed:</b>  Attachments: -Rule Projects Chart  -Final Rule Draft and Report to the Legislature for Opt 8 (Continuing Education), submitted for Board approval  -Opt 1, 5, 6 Preliminary Rule Draft  -Questions for the Board on Opt 1, 5, 6  -Motions for the Board today			
<b>11)</b> <i>Jake Pelegrin</i>		<b>Authorization</b> _____ 1/11/24	
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	
<b>Directions for including supporting documents:</b> 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.			

**Rule Projects (updated 1/9/24)**

<b>Clearinghouse Rule Number</b>	<b>Scope #</b>	<b>Scope Expiration</b>	<b>Code Chapter Affected</b>	<b>Relating clause</b>	<b>Current Stage</b>	<b>Next Step</b>
23-040	080-21	07/10/2024	OPT 8	Continuing Education	Board approval of Final Rule Draft with Report to the Legislature	Submittal of Final Rule Draft to Governor's Office, then Legislature.
Not Yet Assigned	018-23	08/20/2025	OPT 1, 5 and 6	Telehealth	Rule Drafting – Questions for Board	Board Approval of Preliminary Rule Draft, for EIA comments.
Not Yet Assigned	057-23	2/26/2026	OPT 8	Continuing Education-ARBO	Rule Drafting	Board Approval of Preliminary Rule Draft.

**STATE OF WISCONSIN  
OPTOMETRY EXAMINING BOARD**

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**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : CR 23-040  
OPTOMETRY EXAMINING BOARD :**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

N/A

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The board is updating the continuing education requirements in order to clarify the number of in person continuing education hours required to renew an optometry license. Additionally, the continuing education requirements are also being reviewed and updated to create clarity and ensure required topics reflect the current practice of optometry, which takes into consideration if the licensee holds a DEA registration and does not prescribe controlled substances.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Optometry Examining Board held a public hearing on September 28, 2023. The Board did not receive any written comments or testimony concerning the proposed rules.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All Legislative Council recommendations have been incorporated into the proposed rules.

**VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:**

N/A

<p>1. Type of Estimate and Analysis  <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date  July 19, 2023</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)  OPT 8</p>	
<p>4. Subject  Continuing Education</p>	
<p>5. Fund Sources Affected  <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected  s.20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule</p> <p> <input type="checkbox"/> No Fiscal Effect      <input type="checkbox"/> Increase Existing Revenues      <input checked="" type="checkbox"/> Increase Costs      <input type="checkbox"/> Decrease Costs  <input checked="" 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)</p> <p> <input type="checkbox"/> State's Economy      <input checked="" type="checkbox"/> Specific Businesses/Sectors  <input type="checkbox"/> Local Government Units      <input type="checkbox"/> Public Utility Rate Payers  <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b> </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)?</p> <p> <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No </p>	
<p>11. Policy Problem Addressed by the Rule  The objective of the proposed rule is to clarify the number of in-person continuing education hours required to renew an optometry license. The optometry board will also review Opt 8 in its entirety to ensure that continuing education requirements reflect current best practices in the field.</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 rule was posted for 14 days on the Department of Safety and Professional Services (DSPS) website to solicit comments on the potential economic impact. No comments were received.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA.  N/A</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)  DSPS estimates a total of \$2,000 in one-time costs for staffing and an indeterminate one-time IT impact to implement the rule. The estimated one-time cost is for staff and board training, website and forms updates, and additional workload associated with a temporary increase in inquiries. The one-time estimated costs cannot be absorbed in the currently appropriated agency budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule  The benefit of implementing the rule is to better clarify the continuing education requirements, utilize current technological delivery methods, and ensure that required topics reflect the current practice of optometry, The alternative to implementing the rule is that the Wisconsin Administrative Code Opt 8 will remain as is, without clarification on how continuing education should be implemented.</p>	
<p>16. Long Range Implications of Implementing the Rule  The long term implications are to clarify optometry continuing education implementation practices.</p>	

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

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

Illinois: Rules of the Illinois Department of Financial and Professional Regulation establish continuing requirements for optometrists licensed in Illinois. [68 Ill. Adm. Code 1320.80]. Currently, the State of Illinois does not require licensed optometrists to complete cultural competency or DEI continuing education requirements.

Iowa: Rules of the Iowa Board of Optometry establish continuing education requirements for optometrists licensed in Iowa [645 IAC 181.1 – 181.111]. Currently, the State of Iowa does not require licensed optometrists to complete cultural competency or DEI continuing education requirement.

Michigan: Rules of the Michigan Board of Optometry establish continuing medical education requirements for optometrists licensed in Michigan [Mich Admin Code, R 338.319 to R 338.323]. Currently, the State of Michigan does not currently require licensed optometrists to complete cultural competency or DEI continuing education requirements.

Minnesota: Rules of the Minnesota Board of Optometry establish continuing education requirements for optometrists licensed in Minnesota [Minnesota Rules, Chapter 6500.3000]. Currently, the State of Minnesota does not currently require licensed optometrists to complete cultural competency or DEI continuing education requirements.

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19. Contact Name

Dana Denny

20. Contact Phone Number

608-287-3748

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

## ATTACHMENT A

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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)

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

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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

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5. Describe the Rule's Enforcement Provisions

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

- Yes    No
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STATE OF WISCONSIN  
OPTOMETRY EXAMINING BOARD

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD  
OPTOMETRY EXAMINING BOARD : ADOPTING RULES  
 : (CLEARINGHOUSE RULE 23-040)

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PROPOSED ORDER

An order of the Optometry Examining Board to **amend** Opt 8.02 (1), (1m), and (3s), and to **create** Opt 8.02 (1s), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s.448.40 (1), Stats.

**Statutory authority:** ss. 15.08 (5) (b) and 449.06 (2m), Stats.

**Explanation of agency authority:**

Section 15.08 (5) (b), Stats., provides each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 449.06 (2m), Stats., provides that “the examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2–year period immediately preceding the renewal date specified in s. 440.08(2)(a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.”

**Related statute or rule:** None.

**Plain language analysis:**

The board is updating the continuing education requirements in order to clarify the number of in person continuing education hours required to renew an optometry license. Additionally, the continuing education requirements are also being reviewed and updated to create clarity and ensure required topics reflect the current practice of optometry, which takes into consideration if the licensee holds a DEA registration and does not prescribe controlled substances.

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

N/A

**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:**

N/A

**Comparison with rules in adjacent states:**

**Illinois:** Rules of the Illinois Department of Financial and Professional Regulation establish continuing requirements for optometrists licensed in Illinois. [68 Ill. Adm. Code 1320.80]. Currently, the State of Illinois does not require licensed optometrists to complete cultural competency or DEI continuing education requirements.

**Iowa:** Rules of the Iowa Board of Optometry establish continuing education requirements for optometrists licensed in Iowa [645 IAC 181.1 – 181.111]. Currently, the State of Iowa does not require licensed optometrists to complete cultural competency or DEI continuing education requirement.

**Michigan:** Rules of the Michigan Board of Optometry establish continuing medical education requirements for optometrists licensed in Michigan [Mich Admin Code, R 338.319 to R 338.323]. Currently, the State of Michigan does not currently require licensed optometrists to complete cultural competency or DEI continuing education requirements.

**Minnesota:** Rules of the Minnesota Board of Optometry establish continuing education requirements for optometrists licensed in Minnesota [Minnesota Rules, Chapter 6500.3000]. Currently, the State of Minnesota does not currently require licensed optometrists to complete cultural competency or DEI continuing education requirements.

**Summary of factual data and analytical methodologies:**

The proposed rules were developed by obtaining input and feedback from the Optometry Board with additional information from the Association of Schools and Colleges of Optometry (ASCO).

**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 will be attached upon completion.

**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 [Jennifer.Garrett@wisconsin.gov](mailto:Jennifer.Garrett@wisconsin.gov), or by calling (608) 266-6795.

**Agency contact person:**

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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TEXT OF RULE

SECTION 1. Opt 8.02 (1) and (1m) are amended to read:

**Opt. 8.02 (1)** A licensee shall complete 30 hours of approved continuing education in each biennial registration period. ~~A minimum of 20 of the 30 hours shall relate to ocular health, conditions, or disease management.~~ A licensee may elect to complete 1 of the 30 hours related to cultural competency or diversity training.

**Opt 8.02 (1m)** ~~During the biennial registration period commencing December 15, 2019 and ending December 14, 2021, unless~~ Each biennium, except as provided in sub. (1s), and unless granted a hardship waiver in accordance with sub. (3m), the 30 required hours of continuing education shall include ~~2 hours~~ 1 hour on the topic of responsible prescribing of controlled substances.

SECTION 2. Opt 8.02 (1s) is created to read:

**Opt 8.02 (1s)** The board shall provide an exemption to any licensee under sub. (1m) if the optometrist does not hold a DEA registration and does not prescribe controlled substances.

SECTION 3. Opt 8.02 (3s) is amended to read:

**Opt 8.02 (3s)** An optometrist who by the renewal date has been licensed for one year or less from the date issued shall not be required to report continuing education for the first renewal of the license. An optometrist who by the renewal date holds a license for more than one year and less than 2 years shall be required to report 15 hours of approved continuing education for the first renewal of the license. A minimum of 10 of the 15 hours shall be attended in person.

SECTION 4. 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.

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(END OF TEXT OF RULE)

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

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Optometry Examining Board

STATE OF WISCONSIN  
OPTOMETRY EXAMINING BOARD

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

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PROPOSED ORDER

An order of the Optometry Examining Board to **amend** Opt 1.03 and Opt 5.03 (8); and to **create** Opt 1.02 (7m) and Opt 5.20; relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections 440.01 (1) (hm), 449.02 (1), and 449.25 (1), Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) (a), and 449.25, Stats., and section 5 of 2021 Wisconsin Act 121.

**Explanation of agency authority:**

Section 15.08 (5) (b), Stats., provides that each 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., provides that “Each 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.”

Section 5 of 2021 Wisconsin Act 121: “If the department, an examining board, or an affiliated credentialing board promulgates rules related to telehealth, the department, the examining board, or the affiliated credentialing board shall define “telehealth” to have the meaning given in s. 440.01 (1) (hm).”

**Related statute or rule:**

None.

**Plain language analysis:**

This rule will include a uniform definition of telehealth for optometrists based on that given by 2021 Wisconsin Act 121. It will specify optometrists are to hold a Wisconsin license or apply for a temporary credential in order to diagnose and treat patients located in Wisconsin. It will specify that optometrists are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth.

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

None.

**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:**

N/A

**Comparison with rules in adjacent states:**

**Illinois:**

Illinois Statute provides that telehealth includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system. Illinois law further provides that “[a] health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.” Practice of telehealth in Illinois is limited to the extent of the practitioner’s scope of practice as established in his or her respective licensing and consistent with the standards of care for in-person services. Optometrists are included in the definition of “health care professionals.”

**Iowa:**

Iowa law defines “Telehealth” as “the delivery of health care services through the use of real-time interactive audio and video, or other real-time interactive electronic media, regardless of where the health care professional and the covered person are each located. “Telehealth” does not include the delivery of health care services delivered solely through an audio-only telephone, electronic mail message, or facsimile transmission.” Services must comply with all rules adopted by the appropriate professional licensing board that has oversight of the health care professional providing the health care services. Optometry is included in the delivery of health care services.

**Michigan:**

Michigan law defines “telemedicine” in their insurance code as "the use of an electronic media to link patients with health care professionals in different locations.” To be considered telemedicine under this section, the health care professional must be able to examine the patient via a secure interactive audio or video, or both, telecommunications system, or through the use of store and forward online messaging. Optometrists are included in the definition of “health care professionals.”

**Minnesota:**

Minnesota law defines "Telehealth" as “the delivery of health care services or consultations through the use of real time two-way interactive audio and visual communications to provide or support health care delivery and facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient's health care.” Telehealth includes the application of secure video conferencing, store-and-forward technology, and synchronous interactions between a patient located at an originating site and a health care provider located at a distant site. Until July 1, 2025, telehealth also includes audio-only communication between a health care provider and a patient. Telehealth does not include communication between a health care provider and a patient that consists solely of an email or facsimile transmission. Telehealth does not include telemonitoring services. Optometrists are included in the definition of health care providers.

**Summary of factual data and analytical methodologies:**

The Optometry Examining Board reviewed and seeks to revise its rules to provide greater clarity for optometrists with regards to the practice of telehealth.

**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.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

**Effect on small business:**

These rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator, Jennifer Garrett, may be contacted by calling (608) 266-2112.

**Agency contact person:**

Jake Pelegrin, 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 608-267-0989; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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

Comments may be submitted to Jake Pelegrin, 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](mailto:DSPSAdminRules@wisconsin.gov). Comments must be received on or before the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Opt 1.02 (7m) is created to read:

**Opt 1.02 (7m)** “Telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 2. Opt 1.03 is amended to read:

**Opt 1.03 Delegation and supervision.** Except as provided under s. Opt 5.03 (19) and (20), an optometrist may direct an unlicensed person working under the optometrist's supervision to perform any act that is within the optometrist's scope of practice. This includes performing telehealth with patients, as defined in s. Opt 1.02 (7m). The optometrist continues to be responsible for interpretation of test findings, as well as the diagnosis and management of any condition related to the care of the patient.

SECTION 3. Opt 5.03 (8) is amended to read:

**Opt 5.03 (8)** Practicing while knowingly having an infectious or contagious disease, except when practicing telehealth, as defined in s. Opt 1.02 (7m).

SECTION 4. Opt 5.20 is created to read:

**Opt 5.20 Telehealth**

**(1)** The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.



(2) An optometrist who uses a telehealth visit to provide optometry services to a patient located in this state shall either be licensed as an optometrist by the board, shall apply for a temporary credential under the requirements of s. 440.094, Stats, or shall have endorsement and licensure by the board under s. 449.055, Stats and ch. Opt 4.

SECTION 5. 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.

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(END OF TEXT OF RULE)

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**1. Do we want to stick with the same definition of telehealth given in the DSPS statute? It is relatively broad. Or create something more specific for optometrists?**

440.01(1)(hm) “Telehealth” means a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used either during a patient visit or a consultation or are used to transfer medically relevant data about a patient. “Telehealth” includes asynchronous telehealth services, interactive telehealth, and remote patient monitoring.

**2. In Opt 1.03 - Delegation and Supervision: should the trainee be allowed to be supervised remotely? Or only supervised in-person?**

(6) “Supervision” means availability to coordinate, direct, and inspect the practice of an unlicensed person on a regular basis, as determined by the supervising optometrist.

**And, should the trainee be allowed to practice telehealth with patients?**

**3. Do we need to add language to specify that telehealth is not unprofessional conduct under appropriate circumstances? Or is this not necessary?** We already say that the same standards of practice and professional conduct apply during telehealth.

**4. The scope statement also mentioned informed consent. Does the board want to include language about informed consent related to telehealth?** I wasn’t sure where, or if any, language should be added.

Opt 5.045 Informed Consent.

(1) Any 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. The reasonable optometrist standard is the standard for informing a patient under this section. The reasonable optometrist standard requires disclosure only of information that a reasonable optometrist would know and disclose under the circumstances.

(2) The optometrist's duty to inform the patient under this section does not require disclosure of any of the following:

- (a) Detailed technical information that in all probability a patient would not understand.
  - (b) Risks apparent or known to the patient.
  - (c) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
  - (d) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
  - (e) Information in cases where the patient is incapable of consenting.
  - (f) Information about alternate modes of treatment for any condition the optometrist has not included in his or her diagnosis at the time the optometrist informs the patient.
- (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. [\(1\)](#).

## **Motions for Optometry Examining Board – January 25, 2024**

### **FINAL RULE DRAFT: Clearinghouse Rule 23-040 for Opt 8, Relating to Continuing Education**

MOTION: First moved by \_\_\_\_\_, seconded by \_\_\_\_\_, to approve Final Rule Draft and Report to the Legislature for CR 23-040 to be submitted to the Governor's Office and the Legislature. Motion carried unanimously.

### **PRELIMINARY RULE DRAFT: Opt 1, 5, and 6 Relating to Telehealth**

MOTION: First moved by \_\_\_\_\_, seconded by \_\_\_\_\_, to authorize the Chair (or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to approve the preliminary rule draft of Opt 1, 5, and 6 for posting for Economic Impact Analysis comments and submittal to the Clearinghouse. Motion carried unanimously.