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Division of Policy Development
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Scott Walker, Governor
Laura Gutiérrez, Secretary

OPTOMETRY EXAMINING BOARD
Room 121A, 1400 East Washington Avenue, Madison
Contact: Thomas Ryan (608) 266-2112
May 31, 2018

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 record 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 – February 15, 2018 (4–9)

C. Conflicts of Interest

D. Administrative Updates
1) Department and Staff Updates
2) Update Regarding the Occupational Licensure Study
3) Board Member – Board Member Status
   a. Ann Meier Carli – 7/1/2014
   b. Richard Foss – 7/1/2017
   c. Brian Hammes – 7/1/2019 *(reappointed, not yet confirmed)*
   d. Mark Jinkins – 7/1/2016
   e. Robert Schulz – 7/1/2020 *(reappointed, not yet confirmed)*
   f. Peter Sorce – 7/1/2020
   g. John Sterling – 7/1/2021 *(appointed, not yet confirmed)*

E. 9:00 A.M. PUBLIC HEARING – Clearinghouse Rule 18-021, Opt 8, Relating to Continuing Education (10–24)
1) Review and Respond to Clearinghouse Report and Public Hearing Comments

F. Legislative and Administrative Rule Matters – Discussion and Consideration
1) 2017 Wisconsin Act 262: Requires a Report on the Issue of Opioid Abuse Due November 1, 2018 **(25–26)**
2) 2017 Wisconsin Act 108: Requires a Report on the Board's Administrative Rules Due March 31, 2019 **(27–28)**
3) Update on Rule Projects: SPS 10 / Opt 6, Relating to the Use of Pharmaceutical Agents by Optometrists**(29–31)**
4) Opt 4, Relating to Licensure by Endorsement**(32)**
5) Update on Legislation and Pending or Possible Rulemaking Projects

G. New Technology – Potential for Practice and Safety Concerns – John Sterling

H. National Board of Examiners in Optometry (NBEO) Update (33–34)

I. Optometry School Approval – Board Discussion

J. Association of Regulatory Boards of Optometry (ARBO) Matters – Discussion and Consideration

K. Speaking Engagement(s), Travel, or Public Relation Request(s) – Discussion and Consideration

L. Informational Items

M. Items Added After Preparation of the Agenda:
1) Introductions, Announcements and Recognition
2) Nominations, Elections, and Appointments
3) Board Liaison Training and Appointment of Mentors
4) Administrative Updates
5) Education and Examination Matters
6) Credentialing Matters
7) Practice Matters
8) Legislation/administrative Rule Matters
9) Liaison, Panel, and Committee Report(s)
10) Informational Item(s)
11) Disciplinary Matters
12) Presentations of Petition(s) for Summary Suspension
13) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
14) Presentation of Proposed Decisions
15) Presentation of Interim Order(s)
16) Petitions for Re-Hearing
17) Petitions for Assessments
18) Petitions to Vacate Order(s)
19) Petitions for Designation of Hearing Examiner
20) Requests for Disciplinary Proceeding Presentations
21) Motions
22) Petitions
23) Appearances from requests Received or Renewed
24) Speaking Engagement(s), Travel, or Public Relation Request(s), and Reports

N. Future Agenda Items

O. 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.).

P. Division of Legal Services and Compliance (DLSC) Matters
1) Case Closing
a. 17 OPT 006 – P.I.A. **(35–38)**

Q. Deliberation on Items Added After Preparation of the Agenda
   1) Education and Examination Matters
   2) Credentialing Matters
   3) Division of Legal Services and Compliance (DLSC) Matters
   4) Monitoring Matters
   5) Professional Assistance Procedure (PAP) Matters
   6) Board Liaison Training
   7) Petition(s) for Summary Suspension
   8) Proposed Stipulations, Final Decision and Orders
   9) Administrative Warnings
   10) Proposed Final Decisions and Orders
   11) Matters Relating to Costs
   12) Case Closings
   13) Petition(s) for Extension of time
   14) Proposed Interim Orders
   15) Petitions for Assessments and Evaluations
   16) Petitions to Vacate Orders
   17) Remedial Education Cases
   18) Motions
   19) Petitions for Re-Hearing
   20) Appearances from Requests Received or Renewed

R. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

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

U. Credentialing Liaison Training

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

ADJOURNMENT

NEXT SCHEDULED MEETING: OCTOBER 11, 2018

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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 at 1400 East Washington Avenue, 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. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

OPTOMETRY EXAMINING BOARD
MEETING MINUTES
February 15, 2018

PRESENT: Ann Meier Carli, Brian Hammes *(via GoToMeeting)*, Mark Jinkins *(via GoToMeeting)*, Robert Schulz, Peter Sorce

EXCUSED: Richard Foss, John Sterling

STAFF: Thomas Ryan, Executive Director; Emily Handel, Bureau Assistant; Helen Leong, Administrative Rules Coordinator and other DSPS Staff

CALL TO ORDER

Ann Meier Carli, the Chair, called the meeting to order at 9:03 a.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

MOTION: Peter Sorce moved, seconded by Robert Schulz, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Robert Schulz moved, seconded by Peter Sorce, to approve the minutes of October 5, 2017 as published. Motion carried unanimously.

ADMINISTRATIVE MATTERS

Election of Officers

BOARD CHAIR

NOMINATION: Robert Schulz nominated Ann Meier Carli for the Office of Board Chair.

Thomas Ryan called for nominations three (3) times.

Ann Meier Carli was elected as Chair by unanimous consent.

VICE CHAIR

NOMINATION: Ann Meier Carli nominated Robert Schulz for the Office of Vice Chair.

Thomas Ryan called for nominations three (3) times.

Robert Schulz was elected as Vice Chair by unanimous consent.

SECRETARY

NOMINATION: Robert Schulz nominated Jinkins for the Office of Secretary.

Thomas Ryan called for nominations three (3) times.

Mark Jinkins was elected as Secretary by unanimous consent.

2018 ELECTION RESULTS	
Board Chair	Ann Meier Carli
Vice Chair	Robert Schulz
Secretary	Mark Jinkins

Appointment of Liaisons

2018 LIAISON APPOINTMENTS	
Credentialing Liaison(s)	Ann Meier Carli
Education and Exams Liaison(s)	Richard Foss
Monitoring Liaison	John Sterling
Professional Assistance Procedure (PAP) Liaison(s)	Mark Jinkins
Legislative Liaison	Peter Sorce Alternate: Ann Meier Carli
Travel Liaison	Ann Meier Carli Alternate: Brian Hammes
Occupational License Study Liaison	Ann Meier Carli Alternate: John Sterling
Prescription Drug Monitoring Program Liaison (PDMP)	Robert Schulz

2018 SCREENING PANEL APPOINTMENTS	
January-December 2017	Mark Jinkins, Robert Schulz, Brian Hammes

MOTION: Mark Jinkins moved, seconded by Brian Hammes, to affirm the Chair's appointment of liaisons for 2018. Motion carried unanimously.

Delegation of Authorities

Document Signature Delegation

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the Chair, chief presiding officer, or longest serving member of the Board, by order of succession, to sign documents on behalf of the Board. In order to carry out duties of the Board, the Chair, chief presiding officer, or longest serving member of the Board, has the ability to delegate this signature authority for purposes of facilitating the completion of assignments during or between meetings. The Chair, chief presiding officer, or longest serving member of the Board delegates the authority to Executive Director, or designee, to sign the name of any Board member on documents as necessary and appropriate. Motion carried unanimously.

Delegated Authority for Urgent Matters

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, that, in order to facilitate the completion of urgent matters between meetings, the Board delegates it's authority to the Chair, in the absence of the Chair, the highest-ranking officer or longest serving board member, by order of succession, to appoint liaisons to the Department to act in urgent matters. Motion carried unanimously.

Monitoring Delegation

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to adopt the "Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor" as presented. Motion carried unanimously.

Credentialing Authority Delegations

Delegation of Authority to Credentialing Liaison

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the Credentialing Liaison(s) to make all credentialing decisions. Motion carried unanimously.

Delegation of Authority to DSPS When Rule and Statute Criteria is Met

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate credentialing authority to DSPS to act upon applications that meet the criteria of Rule and Statute and thereby would not need further Board or Board liaison review. Motion carried unanimously.

Delegated Authority for Application Denial Reviews

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, that the Board Counsel or another department attorney is formally authorized to serve as the Board's designee for purposes of Wis. Admin Code § SPS 1.08(1). Motion carried unanimously.

Voluntary Surrenders

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the assigned case advisor to accept or refuse a request for voluntary surrender of a license by a licensee who has a pending complaint or disciplinary matter per Wis. Stat. § 440.19. Motion carried unanimously.

Continuing Education and/or Education Delegations

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the Office of Education and Examination Liaison(s) to address all issues related to CE, education, and examinations. Motion carried unanimously.

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

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to authorize Department staff to provide national regulatory related organizations with all Board member contact information that the Department retains on file. Motion carried unanimously.

Optional Renewal Notice Insert Delegation

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to designate the Chair, the highest-ranking officer or longest serving board member by order of 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: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the Legislative Liaisons to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

Travel Delegation

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the Travel Liaison to approve any Board Member travel. Motion carried unanimously.

Occupational Licensure Study Liaison

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to designate Ann Meier Carli as the Board's liaison, and John Sterling as the alternate, to represent and speak on behalf of the Board regarding occupational license review and related matters. Motion carried unanimously.

PDMP Delegation

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to delegate authority to the Prescription Drug Monitoring Program (PDMP) Liaison for all matters relating to PDMP. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Review of the Preliminary Rule Drafts of OPT 6 and SPS 10, Relating to the Use of Pharmaceutical Agents by Licensed Optometrists

MOTION: Ann Meier Carli moved, seconded by Peter Sorce, to authorize the Chair to approve the preliminary rule draft of Opt 6, relating to use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from an eye or from an appendage to the eye, for posting of economic impact comments and submission to the Clearinghouse. Motion carried unanimously.

MOTION: Ann Meier Carli moved, seconded by Robert Schulz, to authorize the Chair to make recommendations for amendment to the Secretary of DSPS regarding the preliminary rule draft of SPS 10, relating to use of pharmaceutical agents by licensed optometrists, for posting of economic impact comments and submission to the Clearinghouse. Motion carried unanimously.

Position Statement, Review and Discussion

MOTION: Mark Jinkins moved, seconded by Peter Sorce, to approve the removal of the position statements and FAQs, related to Optometry from the Optometry Examining Board page on the DSPS website. Motion carried. Opposed: 2

99th ARBO Annual Meeting on June 17-19th, 2018 in Denver, CO – Board Consideration of Attendance and Scholarship Offer

MOTION: Ann Meier Carli moved, seconded by Robert Schulz, to designate Peter Sorce, as the Board's delegate, to attend the 99th ARBO Annual Meeting on June 17-19th in Denver, CO and to approve travel. Motion carried unanimously.

CLOSED SESSION

MOTION: Ann Meier Carli moved, seconded by Robert Schulz, to convene to Closed Session to deliberate on cases following hearing (§ 19.85(1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats. and § 440.205, Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.). Ann Meier Carli, Chair, read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Ann Meier Carli-yes; Brian Hammes-yes; Mark Jinkins-yes; Robert Schulz-yes and Peter Sorce-yes. Motion carried unanimously.

The Board convened into Closed Session at 10:39 a.m.

RECONVENE TO OPEN SESSION

MOTION: Robert Schulz moved, seconded by Peter Sorce, to reconvene in to Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 10:41 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Ann Meier Carli moved, seconded by Robert Schulz, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the closed session motions stand for the purposes of the affirmation vote.)

DIVISION OF LEGAL SERVICES AND COMPLIANCE MATTERS

Case Closing

16 OPT 012

MOTION: Robert Schulz moved, seconded by Peter Sorce, to close DLSC Case Number 16 OPT 012, against C.J.B., for Insufficient Evidence. Motion carried unanimously.

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

MOTION: Peter Sorce moved, seconded by Ann Meier Carli, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Ann Meier Carli moved, seconded by Robert Schulz, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:44 a.m.

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request:	2) Date When Request Submitted:
Helen Leong, Administrative Rules Coordinator	May 21, 2018 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting

3) Name of Board, Committee, Council, Sections:

Optometry Examining Board

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
May 31, 2018	☒ Yes ☐ No	Public Hearing on Clearinghouse Rule 18-021, Opt 8, Relating to Continuing Education 1) Review and Respond to Clearinghouse Report and Public Hearing Comments

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Hold Public Hearing at 9:00 am
Discuss any public hearing comments.
Included:

1) Proposed Order of the Optometry Examining Board
2) Fiscal Estimate and Economic Impact Analysis
3) Rules Clearinghouse Report
4) Clearinghouse Rule 18-021 Comments
5) Proposed Responses to Clearinghouse Comments

11) Authorization

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

PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 8.02 (2), (3), (4), (8), (9) and (10); to amend Opt 8.02 (1); to repeal and recreate Opt 8.03 and 8.03 (Note); and to create Opt 8.01 (4), Opt 8.02 (1c), (1g), (1n), and (1w), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

s. 449.06 (2m), Stats.

Statutory authority:

ss. 15.08 (5) (b) and 449.06 (2m), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides examining boards, "shall 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 immediate 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:

Section 1 adds a definition of "hour" to clarify how to calculate continuing education events for the purposes of this chapter.

Section 2 modifies the designated continuing education topics from 7 hours of glaucoma education to 20 of the 30 hours relating to ocular health, conditions, or disease management. This change expands the subject matter designation.

Section 3 creates five new sections for Opt 8.02. Section Opt 8.02 (1c) provides that at least 20 hours must be completed in person, allowing for an increase to 10 hours which may be completed in alternative methods. Any course which is not in person must be approved by the Council on Optometric Practitioner Education (COPE), Joint Accreditation for Interprofessional Continuing Education, or by the Board. Section Opt 8.02 (1g) allows for additional hours to be completed by methods other than in person for cases of hardship. Section Opt 8.02 (1n) provides a clearer standard of what continuing education is required for a new licensee's first renewal. Sections Opt 8.02 (1r) and (1w) clarify that licensees who are not authorized to use diagnostic and therapeutic agents may not use continuing education courses on those topics to satisfy their renewal requirements.

Section 4 repeals provisions relating to topics which have been clarified by new provisions in Section 3. Sections Opt 8.02 (2) and (3) have been clarified by the new sections Opt 8.02 (1r) and (1w). The revision in Section 2 eliminates the need for Section Opt 8.02 (4). Section Opt 8.02 (1n) simplifies the repealed Section Opt 8.02 (8), which required licensees who are licensed in the middle of a biennium to prorate their continuing education. Lastly, Sections Opt 8.02 (9) and (10), related to alternative delivery methods, are repealed as the topic is now addressed in Section Opt 8.02 (1c).

Section 5 lists the organizations which provide approved continuing education. If a continuing education course is provided by an organization not on the approved list then the organization can apply for approval by supplying the listed information. The provider also agrees to provide a certificate of attendance to each participant. A Note is included with information on how to obtain the form referenced in Opt 8.03 (2).

Section 6 states that this rule change will take effect at the start of the next biennium.

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

None.

Comparison with rules in adjacent states:

Illinois: Illinois requires 30 hours of continuing education every two years. At least 12 hours of credit shall be certified by an approved optometry college, osteopathic or medical college, or pharmacy college. The remaining continuing education may be

earned through papers published, teaching students at an optometry school, and self-instruction or video teleconferencing that is sponsored by any approved optometry college, institution or national or state optometry association. A program sponsor requesting approval shall submit an application with a list of all courses and programs offered, including a description, location, date and time the course is offered. [Section 1320.80, Illinois Admin Code]

Iowa: Iowa requires 50 hours of continuing education every two years. Only 10 hours of credit is allowed for correspondence or local study group programs. There is also a limit on the number of credit hours in the following topics: practice management courses (limit of 6 hours); dependent adult abuse and child abuse identification (limit of 2 hours) and postgraduate study courses (limit of 20 hours). Continuing education may be taken through programs sponsored by COPE, associations, and optometry schools. [Chapter 181, Iowa Admin. Rules]

Michigan: Michigan requires 40 hours of continuing education every two years. A licensee who holds a certification to administer topical ocular diagnostic pharmaceutical agents or certification to administer and prescribe therapeutic pharmaceutical agents or both shall complete 20 hours of board approved continuing education in pharmacological management of ocular conditions. Each licensee is required to complete at least 1 hour of continuing education in pain and symptom management. Approved continuing education includes courses approved by COPE or other continuing education programs that are approved by the Board. A program sponsor requesting approval shall submit an application with the clinical optometry program content, instructor credentials, description of delivery method and of physical facilities used, number of lecture hours on the content, and attendance monitoring plan. [R 338.319, Mich. Admin. Code]

Minnesota: Minnesota requires 40 continuing education credits every two years. Licensees may acquire up to 15 hours through home study, up to 6 hours on practice management, and up to 7 by providing medical eye care and eyeglasses helping underserved people. Licensees may also obtain continuing education credits for presentation of a lecture or for preparation of articles or books accepted for publication. A program sponsor requesting approval from the Board must submit a program, schedule, and course description to the Board. [Minnesota Rules Parts 6500.0900 to 6500.1700]

Summary of factual data and analytical methodologies:

The Optometry Examining Board reviewed and updated the rule.

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 Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, 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 Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before May 31, 2018 at 9:00 am to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 8.01 (4) is created to read:

(4) "Hour" means a 50 to 60 minute period of lecture.

SECTION 2. Opt 8.02 (title) and (1) are amended to read:

Opt 8.02 Continuing education requirements. (1) A licensee shall complete 30 hours of approved continuing education in each biennial registration period. A minimum of ~~7~~ 20 of the 30 hours shall ~~be approved glaucoma education.~~ relate to ocular health, conditions, or disease management.

SECTION 3. Opt 8.02 (1c), (1g), (1n), (1r), and (1w) are created to read:

(1c) At least 20 of the 30 hours of approved continuing education required under sub. (1) shall be completed by attending programs in person. Any programs not completed in person shall be COPE approved programs or programs approved under s. Opt 8.03 (2).

(1g) In cases of hardship, a licensee may apply to the board for any of the following:

(a) Approval of less than 20 hours of in person continuing education under sub (1g).

(b) Approval of a continuing education program under s. Opt 8.03 (2).

(1n) 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.

(1r) An optometrist who is not authorized to use therapeutic pharmaceutical agents may not satisfy the continuing education requirements with programs relating to the use of therapeutic pharmaceutical agents or the removal of foreign bodies from any eye or from an appendage to the eye.

(1w) An optometrist who is not authorized to use diagnostic pharmaceutical agents may not satisfy the continuing education requirements with programs relating to the use of diagnostic pharmaceutical agents.

SECTION 4. Opt 8.02 (2), (3), (4), (8), (9) and (10) are repealed.

SECTION 5. Opt 8.03 and Opt 8.03 (Note) are repealed and recreated:

Opt 8.03 Continuing education approval. (1) The board shall accept the following in satisfaction of continuing education for each biennium:

(a) Any continuing education program approved by COPE or Joint Accreditation for Interprofessional Continuing Education™.

(b) Any in person continuing education program relevant to the practice of optometry provided by one of the following organizations:

1. Wisconsin Optometric Association.
2. American Optometric Association.
3. American Academy of Optometry.
4. Optometric Extension Program Foundation.
5. Neuro-Optometric Rehabilitation Association.
6. College of Optometrists in Vision Development.
7. A school or college of optometry accredited by the Accreditation Council on Optometric Education.

(2) The board may approve a continuing education program not accepted under sub. (1). To apply for approval of a continuing education program, a provider shall submit to the board an application on forms provided by the department at least 30 days prior to the program. An application filed under this subsection or s. Opt 8.02 (1c) or (1g) (b) shall include all of the following:

(a) Title of the program.

(b) Date of the program.

(c) General description and timed outline of the program.

(d) Name and qualifications of the instructor.

(e) Sponsoring organization of the program.

(f) Category of the program relevant to the practice of optometry.

(g) Approved number of continuing education program hours requested.

(h) Delivery method of the program.

(3) The provider of the continuing education program under sub. (1) (b) or (2) agrees to monitor the attendance and furnish a certificate of attendance to each participant. The certificate of attendance shall certify successful completion of the program.

Note: An application for continuing education program approval may be obtained from the board office at the Department of Safety and Professional Services, Office of Education and Examinations, P.O. Box 8366, Madison, Wisconsin 53708, or from the department's website at: http://dsps.wi.gov.

SECTION 6. EFFECTIVE DATE. The rules adopted in this order shall take effect on December 15, 2019.

(END OF TEXT OF RULE)

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1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Opt 8

3. Subject

Continuing Education for Optometrists

4. Fund Sources Affected
☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected
20.165(1)(g)

6. Fiscal Effect of Implementing the Rule
☐ No Fiscal Effect ☐ Increase Existing Revenues ☒ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☒ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
☐ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than $20 million?
☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

This will rule update provides greater clarity for Optometrists in scheduling and completing their required continuing education. The update reflects the current practice of Optometry, the current offerings of continuing education, and updated technological methods of delivery available.

Section 1 adds a definition of "hour" to clarify how to calculate continuing education events for the purposes of this chapter.

Section 2 modifies the designated continuing education topics from 7 hours of glaucoma education to 20 of the 30 hours relating to ocular health, conditions, or disease management. This change expands the subject matter designation.

Section 3 creates five new sections for Opt 8.02. Section Opt 8.02 (1c) provides that at least 20 hours must be completed in person, allowing for an increase to 10 hours which may be completed in alternative methods. Any course which is not in person must be approved by the Council on Optometric Practitioner Education (COPE), Joint Accreditation for Interprofessional Continuing Education, or by the Board. Section Opt 8.02 (1g) allows for additional hours to be completed by methods other than in person for cases of hardship. Section Opt 8.02 (1n) provides a clearer standard of what continuing education is required for a new licensee's first renewal. Sections Opt 8.02 (1r) and (1w) clarify that licensees who are not authorized to use diagnostic and therapeutic agents may not use continuing education courses on those topics to satisfy their renewal requirements.

Section 4 repeals provisions relating to topics which have been clarified by new provisions in Section 3. Sections Opt 8.02 (2) and (3) have been clarified by the new sections Opt 8.02 (1r) and (1w). The revision in Section 2 eliminates the need for Section Opt 8.02 (4). Section Opt 8.02 (1n) simplifies the repealed Section Opt 8.02 (8), which required licensees who are licensed in the middle of a biennium to prorate their continuing education. Lastly, Sections Opt 8.02 (9) and (10), related to alternative delivery methods, are repealed as the topic is now addressed in Section Opt 8.02 (1c).

Section 5 lists the organizations which provide approved continuing education. If a continuing education course is provided by an organization not on the approved list then the organization can apply for approval by supplying the listed information. The provider also agrees to provide a certificate of attendance to each participant. A Note is included with information on how to obtain the form referenced in Opt 8.03 (2).

Section 6 states that this rule change will take effect at the start of the next biennium.

10. 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.

11. Identify the local governmental units that participated in the development of this EIA.

No local governmental units participated in the development of the EIA.

12. 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)

This 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.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The primary benefits of implementing this rule include providing transparent and consistent approval of continuing education, which additionally provides Optometrists greater assurance that the time and money spent on such continuing education satisfies the requirements of the administrative code.

If the rule is not implemented, then Optometrists will continue to have uncertainty when enrolling in continuing education credits.

14. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule is providing transparency and consistency in the approval of continuing education for Optometrists.

15. Compare With Approaches Being Used by Federal Government

None.

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

Illinois: Illinois requires 30 hours of continuing education every two years. At least 12 hours of credit shall be certified by an approved optometry college, osteopathic or medical college, or pharmacy college. The remaining continuing education may be earned through papers published, teaching students at an optometry school, and self-instruction or video teleconferencing that is sponsored by any approved optometry college, institution or national or state optometry association. A program sponsor requesting approval shall submit an application with a list of all courses and programs offered, including a description, location, date and time the course is offered. [Section 1320.80, Illinois Admin Code]

Iowa: Iowa requires 50 hours of continuing education every two years. Only 10 hours of credit is allowed for correspondence or local study group programs. There is also a limit on the number of credit hours in the following topics: practice management courses (limit of 6 hours); dependent adult abuse and child abuse identification (limit of 2 hours) and postgraduate study courses (limit of 20 hours). Continuing education may be taken through programs sponsored by COPE, associations, and optometry schools. [Chapter 181, Iowa Admin. Rules]

Michigan: Michigan requires 40 hours of continuing education every two years. A licensee who holds a certification to administer topical ocular diagnostic pharmaceutical agents or certification to administer and prescribe therapeutic pharmaceutical agents or both shall complete 20 hours of board approved continuing education in pharmacological management of ocular conditions. Each licensee is required to complete at least 1 hour of continuing education in pain and symptom management. Approved continuing education includes courses approved by COPE or other continuing education programs that are approved by the Board. A program sponsor requesting approval shall submit an application with the clinical optometry program content, instructor credentials, description of delivery method and of physical facilities used, number of lecture hours on the content, and attendance monitoring plan. [R 338.319, Mich. Admin. Code]

Minnesota: Minnesota requires 40 continuing education credits every two years. Licensees may acquire up to 15 hours through home study, up to 6 hours on practice management, and up to 7 by providing medical eye care and eyeglasses helping underserved people. Licensees may also obtain continuing education credits for presentation of a lecture or for preparation of articles or books accepted for publication. A program sponsor requesting approval from the Board must submit a program, schedule, and course description to the Board. [Minnesota Rules Parts 6500.0900 to 6500.1700]

17. Contact Name	18. Contact Phone Number
Helen Leong, Administrative Rules Coordinator	608-266-2112

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

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **18-021**

AN ORDER to repeal Opt 8.02 (2), (3), (4), (8), (9), and (10); to amend Opt 8.02 (1); to repeal and recreate Opt 8.03 and 8.03 (Note); and to create Opt 8.01 (4), 8.02 (1c), (1g), (1n), and (1w), relating to continuing education.

Submitted by **OPTOMETRY EXAMINING BOARD**

04-06-2018 RECEIVED BY LEGISLATIVE COUNCIL.

05-01-2018 REPORT SENT TO AGENCY.

SG:JN

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☐ NO ☑

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 18-021

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

In s. Opt 8.02 (1g), it appears the cross-references should be to sub. (1c).

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

a. Under the proposed definition of "hour", would a 300-minute period of lecture qualify as five or six hours of continuing education? May increments of less than one hour count toward the continuing education requirements?

b. Will the initial applicability of the proposed rule result in application to any licensees already in a two-year reporting cycle? If so, does the agency anticipate any conflicts or hardships that may be imposed during the initial applicability of the rule changes? For example, would any hardship arise for an optometrist who anticipated allocating seven hours of continuing education for "glaucoma education" under current s. Opt 8.02 (1) but is instead required to allocate 20 hours of continuing education related to "ocular health, conditions, or disease management"? Or, is it the agency's intent that the previously required glaucoma education would also qualify as education relating to ocular health, conditions, or disease management?

c. The agency should clarify the relationship between a licensee's hardship application for approval of a program under s. Opt 8.02 (1g) and a provider's application for approval under s. Opt 8.03 (2). Is it the agency's intent that a licensee may apply under the hardship provision but a provider must apply under s. Opt 8.03 (2)? If so, several of the conditions of application, such as the attendance requirements under s. Opt 8.03 (3), may not be easily satisfied by a licensee.

Proposed Responses to Clearinghouse Comments

Recommendations to the Board

2. *Form, Style and Placement in Administrative Code*

In s. Opt 8.02 (1g), it appears the cross-references should be to sub. (1c).

Accept.

(1g) In cases of hardship, a licensee may apply to the board for any of the following:
(a) Approval of less than the 20 hours of in person continuing education required under sub. ~~(1g)~~ (1c).
(b) Approval of a continuing education program under s. Opt 8.03 (2).

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

a. Under the proposed definition of "hour", would a 300-minute period of lecture qualify as five or six hours of continuing education? May increments of less than one hour count toward the continuing education requirements?

Accept.

Adding a definition of "hour" was recommended by the Wisconsin Optometric Association. Due to the raised concern, we could accept this comment and amend the definition to:

(4) "Hour" means a minimum of 50 ~~to 60 minute period~~ minutes of lecture.

b. Will the initial applicability of the proposed rule result in application to any licensees already in a two-year reporting cycle? If so, does the agency anticipate any conflicts or hardships that may be imposed during the initial applicability of the rule changes? For example, would any hardship arise for an optometrist who anticipated allocating seven hours of continuing education for "glaucoma education" under current s. Opt 8.02 (1) but is instead required to allocate 20 hours of continuing education related to "ocular health, conditions, or disease management"? Or, is it the agency's intent that the previously required glaucoma education would also qualify as education relating to ocular health, conditions, or disease management?

Not Accept.

To prevent any potential hardship, the rule changes take effect at the start of a new biennium. Additionally, the new rules provide more flexibility in the subject matter by expanding the topics from "glaucoma education" to "ocular health, conditions, or disease management." "Glaucoma education"

continuing education would be a topic under the broader category of "ocular health, conditions, or disease management." This revision should provide additional flexibility to licensees in how to fulfill the continuing education requirements.

c. The agency should clarify the relationship between a licensee's hardship application for approval of a program under s. Opt 8.02 (1g) and a provider's application for approval under s. Opt 8.03 (2). Is it the agency's intent that a licensee may apply under the hardship provision but a provider must apply under s. Opt 8.03 (2)? If so, several of the conditions of application, such as the attendance requirements under s. Opt 8.03 (3), may not be easily satisfied by a licensee.

Accept.

To address this concern, and to provide additional flexibility for the Board in cases of hardship, the following can be added:

(4) In cases of hardship under s. 8.02 (1g), the board may waive any requirement under this section as deemed appropriate by the board.

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request:	2) Date When Request Submitted:
Helen Leong, Administrative Rules Coordinator	May 21, 2018 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting

3) Name of Board, Committee, Council, Sections:

Optometry Examining Board

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
May 31, 2018	☒ Yes ☐ No	Legislative and Administrative Rule Matters 1) 2017 Wisconsin Act 262: Requires a report on the issue of opioid abuse due November 1, 2018 2) 2017 Wisconsin Act 108: Requires a report on the Board's administrative rules due March 31, 2019 3) Update on rule projects: SPS 10 / Opt 6, relating to the use of pharmaceutical agents by Optometrists 4) Opt 4, relating to Licensure by Endorsement

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☒ Yes, by PDMP staff ☐ No	

10) Describe the issue and action that should be addressed:

11) Authorization

Signature of person making this request **Date**

Helen Leong May 21, 2018

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.

credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(c) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(d) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

(2) Except as otherwise permitted in chs. 440 to 480, an examining board or affiliated credentialing board attached to the department or an examining board may require a credential holder to submit proof of the continuing education programs or courses that he or she has completed only if a complaint is made against the credential holder.

(2m) (a) In this subsection, "controlled substance" has the meaning given in s. 961.01 (4).

(b) The medical examining board, the podiatry affiliated credentialing board, the board of nursing, the dentistry examining board, or the optometry examining board may issue guidelines regarding best practices in prescribing controlled substances for persons credentialed by that board who are authorized to prescribe controlled substances.

(c) 1. The medical examining board, the podiatry affiliated credentialing board, the board of nursing, the dentistry examining board, and the optometry examining board shall, by November 1, 2018, and annually thereafter, submit a report to the persons specified in subd. 2. that does all of the following:

a. Details proactive efforts taken by the board to address the issue of opioid abuse. The board shall specify whether the board has required, or otherwise encouraged, continuing education related to prescribing controlled substances for persons credentialed by that board who are authorized to prescribe controlled substances.

b. Sets goals for addressing the issue of opioid abuse, as that issue pertains to or implicates the practices of the professions regulated by the board.

c. Describes the actions taken by the board so that the goals described in subd. 1. b. that were identified in the board's previous reports under this paragraph can be achieved, whether those goals have been achieved, and, if the goals have not been achieved, the reasons therefor.

2. A report under subd. 1. shall be submitted to all of the following:

a. Any committee, task force, or other body or person designated by the governor.

b. To the appropriate standing committees of the legislature with jurisdiction over health issues under s. 13.172 (3).

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27, 191, 237; 2015 a. 269; 2017 a. 59, 262.

440.04 Duties of the secretary. The secretary shall:

(1) Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(3) Control the allocation, disbursement, and budgeting of the funds received by the examining boards and affiliated credentialing boards in connection with their credentialing and regulation, including the reimbursement of board members for actual and necessary expenses, including travel expenses, incurred in the performance of their duties.

(4) Employ, assign and reassign such staff as are required by the department and the attached examining boards and affiliated credentialing boards in the performance of their functions.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333; 2003 a. 270; 2011 a. 32; 2017 a. 329.

440.042 Advisory committees. **(1)** The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards, and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107; 1997 a. 156; 1999 a. 32; 2005 a. 292; 2015 a. 192.

440.043 Behavioral health review committee. **(1)** The secretary shall appoint an advisory committee under s. 440.042 to provide advice concerning behavioral health. The advisory committee shall semiannually conduct a review of the requirements for obtaining a credential under s. 440.88 or ch. 457 or for other credentials related to behavioral health.

(2) The advisory committee shall accept comments from the public related to its review under sub. (1). Before conducting a review under sub. (1), the department shall publish a class 1 notice under ch. 985 and shall publish notice on its Internet site announcing the opportunity for public comment.

(3) The advisory committee established under sub. (1) may propose changes in statutes and rules to the department; the marriage and family therapy, professional counseling, and social work examining board; or other appropriate credentialing board.

History: 2017 a. 262.

(L) *Emergency rules.* If the committee suspends an emergency rule under this section, the agency may not submit to the legislature under s. 227.19 (2) the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is suspended.

(3) PUBLIC HEARINGS BY STATE AGENCIES. By a majority vote of a quorum of the committee, the committee may require any agency to hold a public hearing in respect to recommendations made under sub. (2) and to report its action to the committee within the time specified by the committee. The agency shall publish a class 1 notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

(4) REPEAL OF UNAUTHORIZED RULES. (a) In this subsection, "unauthorized rule" means a rule that an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation.

(b) Notwithstanding ss. 227.114 to 227.117 and 227.135 to 227.19, an agency that promulgated or that otherwise administers a rule that the agency determines is an unauthorized rule shall petition the joint committee for review of administrative rules for authorization to repeal that rule by using the following process:

1. The agency shall submit a petition with a proposed rule that repeals the rule the agency has determined is an unauthorized rule to the legislative council staff for review. The proposed rule shall be in the form required under s. 227.14 (1) and shall include the material required under s. 227.14 (2) (a) 1., 2., and 7. and a statement that the agency is petitioning the joint committee for review of administrative rules to use the process under this subsection to repeal a rule the agency has determined to be an unauthorized rule. The agency shall also send an electronic copy of the petition and the proposed rule to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register.

2. The legislative council staff shall review the petition and proposed rule in accordance with s. 227.15 (2) and submit to the joint committee for review of administrative rules the petition and proposed rule with a written report including a statement of its determination as to whether the proposed rule proposes to repeal an unauthorized rule. The legislative council staff shall send the agency a copy of its report with an indication of the date on which the petition and proposed rule were submitted to the committee.

3. Following receipt of the petition and proposed rule submitted by the legislative council staff under subd. 2., the joint committee for review of administrative rules shall review the petition and proposed rule and may do any of the following:

a. Approve the agency's petition if the committee determines that the proposed rule would repeal an unauthorized rule.

b. Deny the agency's petition.

c. Request that the agency make changes to the proposed rule and resubmit the petition and proposed rule under subd. 1.

4. The committee shall inform the agency in writing of its decision as to the petition.

(c) If the joint committee for review of administrative rules approves a petition to repeal an unauthorized rule as provided in par. (b) 3. a., the agency shall promulgate the proposed rule by filing a certified copy of the rule with the legislative reference bureau under s. 227.20, together with a copy of the committee's decision.

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249; 2017 a. 108.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. Martinez v. DILHR, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Atty. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should concurrently employ the various forms of notice available that best fit the particular circumstances. 62 Atty. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.

Legislative committee review of administrative rules in Wisconsin. Bunn and Gallagher. 1977 WLR 935.

227.265 Repeal or modification of rules. If a bill to repeal or modify a rule is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply. Instead, the legislative reference bureau shall publish the repeal or modification in the Wisconsin administrative code and register as required under s. 35.93, and the repeal or modification shall take effect as provided in s. 227.22.

History: 2013 a. 125, 136, 210, 277, 278, 295, 320, 332, 361, 363.

227.27 Construction of administrative rules. (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.

(2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau under s. 227.20 or modified under s. 227.265, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

History: 1983 a. 544; 1985 a. 182 ss. 22, 55 (2), (3); Stats. 1985 s. 227.27; 2005 a. 249; 2007 a. 20; 2013 a. 125, 136, 210, 277, 278, 295, 320, 332, 361, 363.

227.29 Agency review of rules and enactments. (1) By March 31 of each odd−numbered year, each agency with any rules published in the code shall submit a report to the joint committee for review of administrative rules listing all of the following rules promulgated or otherwise administered by that agency:

(a) Unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency's authority to promulgate any such rule.

(b) Rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority.

(c) Rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary.

(d) Rules that 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, together with a citation to or the text of any such statute, regulation, or ruling.

(e) Rules that the agency determines are economically burdensome.

(2) The report under sub. (1) shall also include all of the following:

(a) A description of the agency's actions, if any, to address each rule listed in the report. If the agency has not taken any action to address a rule listed in the report, the agency shall include an explanation for not taking action.

(b) A description of the status of each rule listed in the previous year's report not otherwise listed.

(c) If the agency determines that there is no rule as described under sub. (1) (a), (b), (c), (d), or (e), a statement of that determination.

(3) If an agency identifies an unauthorized rule under sub. (1) (a) and is not otherwise in the process of promulgating a rule that repeals the unauthorized rule, the agency shall, within 30 days after the agency submits the report, submit a petition to the legislative council staff under s. 227.26 (4) (b) 1. to repeal the unauthorized rule if the agency has not previously done so.

(4) (a) In this subsection, "enactment" means an act or a portion of an act that is required to be published under s. 35.095 (3) (a).

(b) Each agency shall review enactments to determine whether any part of an enactment does any of the following:

1. Eliminates or restricts the agency's authority to promulgate any rules promulgated or otherwise administered by that agency.

2. Renders any rules promulgated or otherwise administered by that agency obsolete or unnecessary.

3. Renders, for any reason, any rules promulgated or otherwise administered by that agency not in conformity with or superseded by a state statute, including due to statutory numbering or terminology changes in the enactment.

4. Requires or otherwise necessitates rule making by the agency.

(c) If an agency determines that any consequence specified in par. (b) 1. to 4. results from an enactment or part of an enactment, within 6 months after the applicable effective date for the enactment or part of the enactment, the agency shall do one or more of the following, as applicable, to address the consequence identified by the agency and notify the joint committee for review of administrative rules of its action:

1. Submit a statement of the scope of a proposed rule under s. 227.135 (2), unless the enactment requires otherwise or unless the agency submits a notice to the committee explaining why it is unable to submit the statement of scope within that time period and an estimate of when the agency plans to submit the statement of scope.

2. In the case of an affected rule that the agency determines is an unauthorized rule, as defined in s. 227.26 (4) (a), submit a petition to the legislative council staff under s. 227.26 (4) (b) 1.

3. In the case of a consequence specified under par. (b) 3. that can be addressed by the legislative reference bureau using its authority under s. 13.92 (4) (b), submit a request to the legislative reference bureau to use that authority.

History: 2017 a. 108.

227.30 Review of administrative rules or guidelines. (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.

(2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:

(a) The continued need for the rule or guideline.

(b) The nature of the complaints and comments received from the public regarding the rule or guideline.

(c) The complexity of the rule or guideline.

(d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.

(e) The length of time since the rule or guideline has been evaluated.

(f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.

(3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.

History: 2003 a. 145; 2005 a. 249.

SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross−reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings. (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.

(2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:

(a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded.

(b) Criminal prosecutions.

(c) Proceedings or prosecutions for violations of county or municipal ordinances.

(d) Habeas corpus proceedings relating to criminal prosecution.

(e) Proceedings under s. 66.191, 1981 stats., or s. 40.65 (2), 106.50, 106.52, 303.07 (7) or 303.21 or ss. 227.52 to 227.58 or under ch. 102, 108 or 949 for review of decisions and orders of administrative agencies if the validity of the rule involved was duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered.

(f) Proceedings under s. 227.114 (6m).

(3) In any judicial proceeding other than one set out above, in which the invalidity of a rule is material to the cause of action or any defense thereto, the assertion of such invalidity shall be set forth in the pleading of the party so maintaining the invalidity of such rule in that proceeding. The party so asserting the invalidity of such rule shall, within 30 days after the service of the pleading in which the party sets forth such invalidity, apply to the court in which such proceedings are had for an order suspending the trial of said proceeding until after a determination of the validity of said rule in an action for declaratory judgment under sub. (1) hereof.

(a) Upon the hearing of such application if the court is satisfied that the validity of such rule is material to the issues of the case, an order shall be entered staying the trial of said proceeding until the rendition of a final declaratory judgment in proceedings to be instituted forthwith by the party asserting the invalidity of such rule. If the court shall find that the asserted invalidity of a rule is not material to the case, an order shall be entered denying the application for stay.

(b) Upon the entry of a final order in said declaratory judgment action, it shall be the duty of the party who asserts the invalidity

Chapter SPS 10

USE OF PHARMACEUTICAL AGENTS BY LICENSED OPTOMETRISTS

Note: Chapter RL 10 was renumbered chapter SPS 10 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 10.01 Definitions. As used in the rules in this chapter:

(1) "Adverse drug reaction" means an adverse, physical or psychological reaction experienced by a person resulting from diagnostic or therapeutic pharmaceutical agents administered by an optometrist which occurs within 24 hours after the drug is administered. An adverse drug reaction may be indicated by symptoms which include, but are not limited to, the following: red eye, painful eye, decrease in vision, pale or red swelling of the periocular or periorbital tissues, nausea, vomiting, fainting, mental confusion or cessation of respiration.

(2) "Adverse drug reaction referral plan" means a plan submitted to the department on an approved form in which the optometrist agrees to: a) refer patients who notify the optometrist of an adverse drug reaction to appropriate medical specialists or facilities; b) routinely advise the patient to immediately contact the optometrist if the patient experiences adverse reactions; and c) place in a patient's permanent record information describing any adverse drug reactions experienced by the patient and the date and time that any referral was made. Such plan shall include the names of at least 3 physicians, physician clinics or hospitals to whom the optometrist agrees to refer patients who experience an adverse drug reaction. At least one of these physicians shall be skilled in the diagnosis and treatment of diseases of the eye.

(3) "Approved institution" means a college of optometry accredited by the American council on optometric education approved by the optometry examining board which offers a course of study in general and ocular pharmacology meeting the requirements of s. 449.17 (1m) (b), Stats., or a course of study relating to the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye meeting the requirements of s. 449.18 (2), Stats.

Note: The optometry examining board annually reviews for approval the colleges of optometry accredited by the council on optometry education of the American optometric association or other accrediting bodies. A list of board approved colleges of optometry is available from the board upon request.

(4) "Classroom hour": For the purpose of determining whether a course of study meets the requirements of s. 449.17 (1m) (b), Stats., "classroom hour" means a 50−60 minute period of lecture, group discussion or laboratory directly associated with a course in pharmacology; time spent working in a clinic other than as part of a laboratory directly associated with a course in pharmacology does not qualify as a "classroom hour".

(5) "Course of study in pharmacology" means a course of study completed in an approved institution after 1973 in general and clinical pharmacology as it relates to optometry with the characteristics described in s. 449.17 (1m) (b), Stats. For courses, such as continuing education courses, which do not lead to a degree in optometry to qualify as part of a course of study in pharmacology, the courses must include at least one examination on course content.

(6) "DPA certificate" means a certificate issued by the department to an optometrist approving an adverse reaction referral plan submitted by the optometrist and as evidence that the optometrist has completed all requirements in s. SPS 10.03 and is entitled to use diagnostic pharmaceutical agents in accordance with ss. 449.17 and 449.19, Stats.

(8) "Diagnostic pharmaceutical agent" means any topical ocular diagnostic pharmaceutical agent which is an optometric means used to determine the visual efficiency of the human visual system, including refractive and functional abilities, or to diagnose the presence of ocular disease or ocular manifestations of systemic disease and other departures from normal. "Diagnostic pharmaceutical agents" include but are not limited to:

(a) *Mydriatics.*
1. Phenylephrine 2.5%.
2. Hydroxyamphetamine 1%.

(b) *Cycloplegics.*
1. Tropicamide 1%.
2. Cyclopentolate 1%.

(c) *Topical anesthetics.*
1. Benoxinate 0.4%.
2. Proparacaine 0.5%.
3. Tetracaine 0.5%.
4. Benoxinate 0.4% − Fluorescein 0.25% Combination.

(d) *Dyes.*
1. Fluorescein 0.25% − Benoxinate 0.4% Combination.
2. Rose Bengal.

(e) *Miotics.*
1. Dapiprazole HCl.
2. Pilocarpine .125%.

(f) Any drug which is used for an ophthalmic diagnostic purpose and which is the subject of a new drug application approved by the food and drug administration under section 505 (c) (1) of the federal food, drug and cosmetic act, 21 USC 355, as amended.

(g) Any drug which is used for an ophthalmic diagnostic purpose and which is generally exempt from the new drug application approval requirement contained in section 505 of the federal food, drug and cosmetic act, 21 USC 355, as amended.

(9) "TPA certificate" means a certificate granted by the optometry examining board to an optometrist as evidence that the optometrist is certified to use therapeutic pharmaceutical agents in accordance with s. 449.18, Stats.

(10) "Therapeutic pharmaceutical agent" means a drug which is prescribed or administered for ocular therapeutic purposes. Except as provided in par. (am), therapeutic pharmaceutical agents include all of the following:

(a) Oral analgesics.
1. Acetaminophen.
2. Aspirin.
3. Salicylates.
4. Schedule III, IV and V narcotic analgesics.

(am) Controlled substances in schedule II, limited to either of the following:

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.

(b) Topical decongestant agents and decongestant combinations.

1. Epinephrine HCl.
2. Hydroxyamphetamine HBr.
3. Naphazoline HCl.
4. Oxymetazoline HCl.
5. Phenylephrine HCl.
6. Tetrahydrozoline HCl.
7. Combinations of the above agents with antihistamines or zinc sulfate.

(c) *Antiallergy agents.*

1. Topical and oral antihistamine agents in the following drug categories.

a. Alkyamines.
b. Ethanolamines
c. Ethylenediamines.
d. Phenothiazines.
e. Piperazines.
f. Piperidines.
g. Terfenadines.

2. Cromolyn sodium, a mast cell stabilizing agent.

(d) Artificial tear solutions, ophthalmic irrigants and ocular lubricants.

(e) Hypertonic sodium chloride, a topical hyperosmotic agent.

(f) Yellow mercuric oxide, a miscellaneous preparation and product.

(g) Topical anesthetics.

1. Benoxinate HCl.
2. Benoxinate HCl and sodium fluorescein.
3. Proparacaine HCl.
4. Tetracaine HCl.

(h) Antibiotics.

1. Topical antibiotics.

a. Aminoglycosides.
b. Bacitracin.
c. Cephalosporins.
cm. Ciprofloxacin HCl.
d. Erythromycin.
e. Gramicidin.
em. Norfloxacin
f. Penicillins.
g. Polymyxin B.
h. Sulfonamides.
i. Tetracyclines.
j. Trimethoprim.
k. Zinc sulfate.

2. Oral antibiotics.

a. Erythromycin.
b. Tetracycline.

3. Topical antiviral agents.

a. Acyclovir.
b. Idoxuridine.
c. Trifluridine.
d. Vidarabine.

4. Acyclovir, an oral antiviral agent.

(i) *Anti−inflammatory agents.*

1. Oral non−steroidal anti−inflammatory agents.

a. Fenoprofen.
b. Ibuprofen.
c. Ketoprofen.
d. Naproxen.

2. Topical corticosteroid agents.

a. Dexamethasone.
b. Fluoromethalone.
c. Medrysone.
d. Prednisolone.
e. Prednisolone and atropine combinations.
f. Topical corticosteroid and antibiotic combinations.
g. Topical corticosteroid and mydriatic combinations.

3. Topical non−steroidal agent, diclofenac sodium.

(j) *Topical anticholinergic agents.*

1. Atropine.
2. Atropine sulfate.
3. Cyclopentolate.
4. Homatropine.
5. Homatropine hydrogen bromide.
6. Scopolamine.
7. Tropicamide.

(k) *Antiglaucomatous agents.*

1. Sympathomimetics.

a. Dipivefrin.
b. Epinephrine.

2. Miotics, direct acting.

a. Acetylcholine.
b. Carbachol.
c. Pilocarpine.

3. Miotics, cholinesterase inhibitors.

a. Demecarium bromide.
b. Echothiophate.
c. Isoflurophate.
d. Physostigmine.

4. Topical beta−adrenergic blocking agents.

a. Betaxolol.
am. Carteolol HCl.
b. Levobunolol.
bm. Metipranolol HCl.
c. Timolol.

5. Oral carbonic anhydrase inhibitors.

a. Acetazolamide.
b. Dichlorphenamide.
c. Methazolamide.

(L) Any drug which is used for an ophthalmic therapeutic purpose and which is the subject of a new drug application approved by the food and drug administration under section 505 (c) (1) of the federal food, drug and cosmetic act, 21 USC 355, as amended.

(m) Any drug which is used for an ophthalmic therapeutic purpose and which is generally exempt from the new drug application approval requirement contained in section 505 of the federal food, drug and cosmetic act, 21 USC 355, as amended.

(n) Any drug which is used for an ophthalmic therapeutic purpose and which is certified by the food and drug administration pursuant to s. 507 (a) of the federal food, drug and cosmetic act, 21 USC 357, or is exempt from certification under section 507 (c) of the act, as amended.

Note: Section 961.39, Stats., contains certain limitations relating to the prescribing and administering of controlled substances by optometrists certified under section 449.18, Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; am. (2) and (5), r. (9) (d) 2., Register, April, 1979, No. 280, eff. 5−1−79; r. (7), renum. (8) and (9) to be (7) and (8), Register, November, 1986, No. 371, eff. 12−1−86; r. (7), Register, August, 1990, No. 416, eff. 9−1−90; am. (intro.), (1) and (8), cr. (9) and (10), Register, November, 1990, No. 419, eff. 12−1−90; cr. (8) (d) 2., (e), (10) (h) 1. cm. and em., (i) 3., (k)

4. am. and bm., Register, June, 1993, No. 450, eff. 7−1−93; am. (3), r. and recr. (8) (intro.) and (10) (intro.), cr. (8) (f), (g), (10) (L) to (n), Register, April, 1994, No. 460, eff. 5−1−94; corrections in (3), (4) and (5) made under s. 13.93 (2m) (b) 7., Stats., Register November 2007 No. 623; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; **EmR1605: emerg. cr. (10) (am), eff. 1−16−16; CR 15−100: am. (10) (intro.), cr. (10) (am) Register July 2016 No. 727, eff. 8−1−16.**

SPS 10.02 Restrictions and reports. (1) RESTRICTIONS. (a) *Certification and education.* Therapeutic pharmaceutical agents may be prescribed or administered by an optometrist who holds a current TPA certificate and who satisfies the continuing education requirements specified in s. Opt 6.04. Diagnostic pharmaceutical agents may be administered by an optometrist who holds a current DPA certificate and who successfully completes biennially a minimum of 1 hour of continuing education approved by the optometry examining board relating to new drugs which are used for ophthalmic diagnostic purposes and which are approved by the food and drug administration, or other topics as designated by the optometry examining board.

Note: Completion of the continuing education required in s. Opt 6.04 for TPA certification satisfies the continuing education requirement under this section for an optometrist who holds both a DPA and a TPA certificate.

(b) *Prescribing.* Therapeutic pharmaceutical agents may be prescribed or administered by an optometrist only for the ocular therapeutic purposes for which the drugs are intended. These drugs shall be prescribed or administered in accordance with minimum standards and procedures established in the optometric profession. An optometrist shall not prescribe or administer a therapeutic pharmaceutical agent which is not allowed under s. SPS 10.01 (10). Approved agents may be used in combination only with other approved agents when appropriate. Prior to prescribing beta blockers or carbonic anhydrase inhibitors for the treatment of glaucoma, or any oral antiviral, or any other therapeutic pharmaceutical agent, as may be identified and designated in the future by the optometry examining board, which might prove to have significant systemic adverse reactions, the optometrist shall inform the patient's primary physician of his/her treatment plans and document that contact on the patient's chart. If the patient does not identify a primary physician, the patient shall be referred to a physician to determine the presence or absence of any systemic contraindications to the intended therapeutic agent. Following that assessment, and prior to prescribing, the prescribing optometrist shall contact the examining physician, documenting that contact on the patient's chart. Closed−angle glaucoma shall be considered an emergency in which the treating optometrist shall make immediate referral directly to a physician who specializes in the treatment of diseases of the eye and shall institute such emergency procedures as are directed by that physician.

(2) REPORTING REQUIRED. (a) Any optometrist certified to use therapeutic pharmaceutical agents shall file with the department within 10 working days of its occurrence a report on any adverse reaction resulting from the optometrist's administration of such agents. This report shall include the optometrist's name, address and license number, the patient's name, address and age, the patient's presenting problem, the diagnosis, the agent administered and the method of administration, the reaction and the subsequent action taken.

(b) Any optometrist certified to use diagnostic or therapeutic pharmaceutical agents shall file a revised adverse drug reaction plan with the department within 10 working days after the optometrist designates a new physician, physician clinic or hospital to which he or she agrees to refer patients who experience adverse drug reactions.

History: Cr. Register, November, 1990, No. 419, eff. 12−1−90; renum. (1) and (2) to be (1) (b) and (2) (a) and am. (1) (b), cr. (1) (a) and (2) (b), r. (3), Register, April, 1994, No. 460, eff. 5−1−94; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

SPS 10.03 Statement of approval required. A licensed optometrist may not use diagnostic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form and received a DPA certificate from the department. A licensed optometrist may not use therapeutic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form, met the requirements under s. 449.18, Stats., and received a TPA certificate from the optometry examining board.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; am. Register, November, 1986, No. 371, eff. 12−1−86; renum. from RL 10.02 and am. Register, November, 1990, No. 419, eff. 12−1−90; CR 01−068: am. Register January 2002 No. 553, eff. 2−1−02.

SPS 10.04 Application for certificate. To obtain a DPA certificate, an optometrist must submit evidence to the department showing that the optometrist has:

(1) Completed a course of study in pharmacology.

(2) Successfully completed one of the following examination requirements:

(a) Obtained a score of not less than 75 on the pharmacology section of the examination administered prior to 1994 by the national board of examiners in optometry.

(b) Obtained passing scores on parts I and II of the examination administered after 1986 by the national board of examiners in optometry.

(c) Obtained a passing score on an examination approved by the department of safety and professional services and the optometry examining board.

(3) Established an adverse reaction referral plan.

Note: The required score of "not less than 75" relates only to the pharmacology section of the national examination. Therefore, if all sections of the national examination were taken at once, the 75 score minimum applies only to the pharmacology section and not to the other sections of the examination.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; r. and recr. (2), Register, August, 1990, No. 416, 9−1−90; renum. from RL 10.03, Register, November, 1990, No. 419, eff. 12−1−90; am. (2), Register, April, 1994, No. 460, eff. 5−1−94; am. (1), r. and recr. (2), Register, May, 1996, No. 485, eff. 6−1−96; CR 01−068: am. (2) (a), r. (2) (b) (intro.), renum. (2) (b) 1. and 2. to be (2) (b) and (c) and am. (2) (b), Register January 2002 No. 553, eff. 2−1−02; correction in (2) (c) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.

Chapter Opt 4

LICENSURE BY ENDORSEMENT

History: Chapter Opt 5 as it existed on March 31, 1989 was repealed, and a new chapter Opt 4 was created effective April 1, 1989.

Opt 4.01 Qualifications. An optometrist holding a license, in good standing, to practice optometry in another state that has substantially similar requirements may become licensed and registered in Wisconsin if the applicant submits evidence satisfactory to the board that he or she satisfies all of the following criteria:

(1) Has graduated from an accredited school or college of optometry approved and recognized by the board.

(2) Has passed the examination of the national board of examiners in optometry as required under s. Opt 4.03 (2).

(3) Has practiced optometry in the other state for at least 5 years.

(4) Has passed the required state law examination administered by the board as required under s. Opt 4.03 (1).

(5) Has never been disciplined by the licensing authority in any other state, territory of the United States, or another country for any misconduct or violations which evidence lack of competence to practice optometry in Wisconsin as determined by the board.

(6) Is not aware of any pending complaints against the applicant or investigations of the applicant that relate to the practice of optometry.

(7) Does not have an arrest or a conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats.

(8) Pays the fee specified in s. 440.05 (1), Stats.

(9) Has completed the study specified in ss. 449.17 (1m) (b) and 449.18 (2) (a) 2., Stats., and passed the examinations specified in ss. 449.17 (1m) (c) and 449.18 (2) (a) 3., Stats.

Note: Applicants who engaged in the practice of optometry for at least 5 years prior to 1996 are required to take and pass Parts I and II of the national board examination. Applicants who engaged in the practice of optometry for less than 5 years prior to 1996 and applicants who graduated from an approved college of optometry after December 31, 1995 are required to take and pass Parts I, II and III of the national board examination. It is the responsibility of the applicant to contact the national board to request that verification of the applicant's successful completion of the requisite examination be forwarded to the board. An application will not be considered complete until after the board receives the examination verification and other required information.

History: Cr. Register, March, 1989, No. 399, eff. 4−1−89; am. Register, April, 1996, No. 484, eff. 5−1−96; am. (intro.), (4) and (6), Register, September, 1997, No. 501, eff. 10−1−97; am. (2) and (4), Register, December, 1998, No. 516, eff. 1−1−99; CR 06−116: am. (intro.), (1) to (5) and (7), cr. (8) and (9), Register May 2007 No. 617, eff. 6−1−07.

Opt 4.02 Application procedures. (1) An applicant for licensure under this chapter shall file with the board a completed application on a form provided by the board. The application shall include:

(a) The signature of the applicant.

(b) Notice as to whether the applicant has been disciplined in any state in which he or she has held a license.

(c) The fees authorized in s. 440.05 (1), Stats.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations. Application forms for licensure may be obtained from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(d) A certified transcript of the coursework completed by the applicant submitted directly to the board by an accredited school or college of optometry approved and recognized by the board.

Note: The board annually reviews for approval the colleges of optometry accredited by the council on optometry education of the American optometric association or other accrediting bodies. A list of board approved colleges of optometry is available from the board upon request. It is the responsibility of the applicant to contact the appropriate college to request that the college forward a certified transcript to the board office. An application will not be considered complete until after the board receives a copy of the transcript and other required information.

(e) Verification of the applicant's licensure submitted directly to the board by all states in which the applicant has ever held a license.

Note: It is the responsibility of the applicant to contact the appropriate state licensing agencies to request that verification of the applicant's licensure be forwarded to the board. An application will not be considered to be complete until after the board receives verification of licensure from all state licensing agencies and other required information.

(2) Applicants who have a pending criminal charge or have been convicted of any crime shall provide the board all related information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the circumstances of the licensed activity.

History: Cr. Register, March, 1989, No. 399, eff. 4−1−89; am. (1) (intro.) and (c), Register, June, 1990, No. 414, eff. 7−1−90; am. (1) (c), Register, July, 1994, No. 463, eff. 8−1−94; am. (1) (c), Register, April, 1996, No. 484, eff. 5−1−96; am. (1), renum. (2), (3) and (4) to be (1) (d), (e) and (2) and am. (1) (d) and (e), Register, September, 1997, No. 501, eff. 10−1−97; CR 06−116: am. (1) (intro.) and (c) Register May 2007 No. 617, eff. 6−1−07.

Opt 4.03 Examinations. (1) An applicant for a license by endorsement under this chapter shall take and pass the state law examination as set forth in s. Opt 3.02 (4).

(2) An applicant for a license by endorsement under this chapter shall successfully complete one of the following:

(a) Parts I and II of the national board examination, if the applicant has engaged in the practice of optometry for at least 5 years prior to January 1, 1996.

(b) Parts I, II and III of the national board examination, if the applicant has engaged in the practice of optometry for less than 5 years prior to January 1, 1996, or if applicant graduated from an approved college of optometry after December 1, 1995.

(3) The passing grade for the examinations shall be as specified in s. Opt 3.07.

Note: The conduct of examinations administered by the board is specified in ch. Opt 3.

History: Cr. Register, March, 1989, No. 399, eff. 4−1−89; am. (1), Register, April, 1996, No. 484, eff. 5−1−96; am. (1), renum. (2) to be (3) and am., cr. (2), Register, December, 1998, No. 516, eff. 1−1−99; CR 06−116: am. (1) and (2) (intro.) Register May 2007 No. 617, eff. 6−1−07; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register December 2016 No. 732.**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request:	2) Date When Request Submitted:
Helen Leong, Administrative Rules Coordinator	May 21, 2018 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting

3) Name of Board, Committee, Council, Sections:

Optometry Examining Board

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
May 31, 2018	☒ Yes ☐ No	National Board of Examiners in Optometry (NBEO) Update

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes ☒ No	

10) Describe the issue and action that should be addressed:

11) Authorization

Signature of person making this request **Date**

Helen Leong May 21, 2018

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.

NATIONAL BOARD OF EXAMINERS IN OPTOMETRY

For Immediate Release

NEWS FROM THE NBEO

The National Board of Examiners in Optometry (NBEO) announces upcoming changes to examination eligibility.

Charlotte, NC, April 6, 2018 – The National Board of Examiners in Optometry will make changes to its Examination Eligibility Policy effective August 1, 2019. Candidates taking NBEO examinations will be limited to a total of six attempts for each examination (Part I Applied Basic Science, Part II Patient Assessment and Management, Treatment and Management of Ocular Disease, Part III Clinical Skills Examination, and Injections Skills Examination), including but not limited to all attempts prior to August 1, 2019.

The National Board of Examiners in Optometry serves to protect the public and the optometric profession through the development, administration, scoring and reporting of valid examinations that evaluate competence. "We believe these changes are appropriate," said NBEO President Elizabeth Hoppe, OD, MPH, DrPH. "After much discussion and consultation with the Association of Regulatory Boards of Optometry (ARBO), and their member boards, it became apparent that this is a critical step towards ensuring protection of the public and the integrity of the examinations."

The NBEO examinations are designed to assure state boards that those candidates who pass the three parts demonstrate entry level competence to practice the profession of optometry. ARBO President Dr. Richard Orgain states, "This step shows that the NBEO takes its responsibility and commitment to the state boards very seriously. We are pleased to see NBEO following medicine in its adoption of a six-time attempt limit."

The NBEO will have an appeals process including submission of a remediation plan for individuals who wish to appeal beyond the six-time limit. Information regarding this process will become available on the NBEO website at www.optometry.org prior to the August 1, 2019 effective date.

About NBEO

Established in 1951, the NBEO is an independent, non-governmental, non-profit organization whose examinations are universally accepted for optometric licensure in the United States and accepted internationally. NBEO's mission is to serve the public and profession of optometry by developing, administering, scoring and reporting results of valid examinations that assess competence.