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**OPTOMETRY EXAMINING BOARD**  
**Room N208, 4822 Madison Yards Way, 2<sup>nd</sup> Floor, Madison**  
**Contact: Tom Ryan (608) 266-2112**  
**January 24, 2019**

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

**AGENDA**

**9:00 A.M.**

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

**A. Adoption of Agenda (1-4)**

**B. Approval of Minutes of October 11, 2018 (5-6)**

**C. Administrative Matters – Discussion and Consideration (7-14)**

- 1) Election of Officers
- 2) Appointment of Liaisons and Alternates
- 3) Delegation of Authorities
- 4) Staff Updates
- 5) Board Members – Term Expiration Date
  - a. Ann Meier Carli – 7/1/2014 (*reappointed, not yet confirmed*)
  - b. Richard Foss – 7/1/2017
  - c. Mark Jenkins – 7/1/2016
  - d. Robert Schulz – 7/1/2020
  - e. Peter Sorce – 7/1/2018
  - f. John Sterling – 7/1/2021
  - g. Optometrist Member – Vacant

**D. 9:00 A.M. PUBLIC HEARING: Clearinghouse Rule 18-021 – Opt 8, Relating to Continuing Education (15-29)**

- 1) Review and Respond to Public Hearing Comments and Clearinghouse Report

**E. Legislative and Administrative Rule Matters (30)**

- 1) Annual Report Submitted November 1, 2018 Under § 440.035 (2m)(c), Stats. **(31-32)**
- 2) Schedule Public Hearing on Scope Statement for Opt 3, 4, 6, and 7, Relating to the Examination on the Treatment and Management of Ocular Disease **(33-34)**

- 3) Draft of Act 108 Report Due March 31, 2019 Under § 227.29, Stats. **(35-38)**
- 4) Review of Preliminary Rule Draft for SPS 10, Relating to the Use of Pharmaceutical Agents by Licensed Optometrists **(39-51)**
- 5) Preliminary Rule Draft, Opt 6, Relating to the Use of Diagnostic and Therapeutic Pharmaceutical Agents and Removal of Superficial Foreign Bodies From an Eye or From an Appendage to the Eye **(52-66)**
- 6) Preliminary Rule Draft, Opt 4, Relating to Licensure by Endorsement **(67-71)**
- 7) Review of, and Possible Scope Statement for, Opt 5, Relating to Unprofessional Conduct **(72-75)**
- 8) Updates on Legislation and Pending or Possible Rulemaking Projects

**F. Board Review of the Wisconsin Occupational Licensing Study Legislative Report (76-159)**

**G. Education and Examination Matters**

- 1) Discussion of Continuing Education Study Group Credit

**H. Deliberation on Items Added After Preparation of Agenda**

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

I. 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.).**

**J. Deliberation on DLSC Matters**

**1) Administrative Warnings**

a. 18 OPT 001 – N.R.K. **(160-161)**

**2) Case Closings**

a. 17 OPT 005 – W.V. and J.L. **(162-169)**

K. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) DLSC Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Orders
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings
- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Case Closings
- 15) Board Liaison Training
- 16) Petitions for Assessments and Evaluations
- 17) Petitions to Vacate Orders
- 18) Remedial Education Cases
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

L. Consulting with Legal Counsel

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

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

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

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

**ADJOURNMENT**

**NEXT SCHEDULED MEETING: MAY 30, 2019**

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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 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**OPTOMETRY EXAMINING BOARD  
MEETING MINUTES  
OCTOBER 11, 2018**

**PRESENT:** Ann Meier Carli, Richard Foss (*arrived at 9:40 a.m.*), Mark Jenkins (*via teleconference*), Robert Schulz, Peter Sorce

**EXCUSED:** John Sterling

**STAFF:** Thomas Ryan, Executive Director; Helen Leong, Administrative Rules Coordinator; Kate Stolarzyk, Bureau Assistant; and other DSPS Staff

**CALL TO ORDER**

Ann Meier Carli, Chair, called the meeting to order at 9:12 a.m. A quorum of four (4) 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 OF JUNE 18, 2018**

**MOTION:** Mark Jenkins moved, seconded by Robert Schulz, to approve the minutes of June 18, 2018 as amended. Motion carried unanimously.

**ADMINISTRATIVE MATTERS**

**Appointment of Liaisons**

<b>2018 LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaison(s)</b>	Ann Meier Carli <i>Alternate: Richard Foss as of 9/25/18</i>

**MOTION:** Peter Sorce moved, seconded by Robert Schulz, to affirm the Chair's appointment of Richard Foss as the Credentialing Liaison alternate. Motion carried unanimously.

**LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS**

**Opt 8, Relating to Continuing Education, Preliminary Rule Draft**

**MOTION:** Robert Schulz moved, seconded by Peter Sorce, to authorize the Chair to approve the preliminary rule draft of Opt 8, relating to continuing education, for posting for a second public hearing. Motion carried unanimously.

**2017 Wisconsin Act 262: Review Draft Report on Opioid Abuse Due November 1, 2018**

**MOTION:** Ann Meier Carli moved, seconded by Peter Sorce, to approve the Act 262 report, relating to the issue of opioid abuse, for submission to the Governor’s designee and the Chief Clerks of the Legislature. Motion carried unanimously.

*(Richard Foss arrived at 9:40 a.m.)*

**Part II, Treatment and Management of Ocular Disease (TMOD) Examination Discussion – Ss. 449.04 And 449.055, Stats., and Opt 3 and 7**

**MOTION:** Ann Meier Carli moved, seconded by Robert Schulz, to request DSPS staff draft a Scope Statement for emergency and permanent rules revising OPT 3.02, 4.03, 7.05 and any other relevant rules relating to the TMOD examination section embedded in Part II of the National Board of Examiners in Optometry (NBEO) examination, and to designate the Chair to approve the Scope Statement for submission to the Governor’s Office and publication and for implementation no less than 10 days after publication. Motion carried unanimously.

**MOTION:** Ann Meier Carli moved, seconded by Robert Schulz, to authorize the Chair to approve the final draft emergency rule relating to clarifying the requirement for passage of the TMOD examination section embedded in Part II of the National Board of Examiners in Optometry (NBEO) examination, for examination and certification for submission to the Governor’s Office and publication. Additionally, the Board authorizes the Chair to approve the permanent rule draft for posting for economic comments and submission to the Clearinghouse. Motion carried unanimously.

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

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

**ADJOURNMENT**

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

The meeting adjourned at 10:52 a.m.

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b> Maximilian Turner, Bureau Assistant		<b>2) Date When Request Submitted:</b> 1/14/19 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
<b>3) Name of Board, Committee, Council, Sections:</b> Optometry Examining Board			
<b>4) Meeting Date:</b> 1/24/2019	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Administrative Matters: 1) Election of Officers 2) Appointment of Liaisons and Alternates 3) Delegation of Authorities	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	<b>8) Is an appearance before the Board being scheduled?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A	
<b>10) Describe the issue and action that should be addressed:</b> 1) The Board should conduct Election of its Officers for 2019 2) The new Chairperson should review and appoint/reappoint Liaisons and Alternates as appropriate 3) The Board should review and then consider continuation or modification of previously delegated authorities			
<b>11) Authorization</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)			
Date			
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

## OPTOMETRY EXAMINING BOARD

### 2018 Elections and Liaison Appointments

<b>2018 ELECTION RESULTS</b>	
<b>Board Chair</b>	Ann Meier Carli
<b>Vice Chair</b>	Robert Schulz
<b>Secretary</b>	Mark Jinkins
<b>2018 LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaison(s)</b>	Ann Meier Carli <i>Alternate: Richard Foss as of 9/25/18</i>
<b>Education and Exams Liaison(s)</b>	Richard Foss
<b>Monitoring Liaison</b>	John Sterling
<b>Professional Assistance Procedure (PAP) Liaison(s)</b>	Mark Jinkins
<b>Legislative Liaison</b>	Peter Sorce <i>Alternate: Ann Meier Carli</i>
<b>Travel Liaison</b>	Ann Meier Carli <i>Alternate: <del>Brian Hammes</del> Mark Jinkins as of 5/31/18</i>
<b>Occupational License Study Liaison</b>	Ann Meier Carli <i>Alternate: John Sterling</i>
<b>Prescription Drug Monitoring Program Liaison (PDMP)</b>	Robert Schulz
<b>2018 SCREENING PANEL APPOINTMENTS</b>	
<b>January-December 2018</b>	<i>Richard Foss as of 5/31/18, Mark Jinkins, Robert Schulz, <del>Brian Hammes</del></i>

## DELEGATION MOTIONS

### *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 its 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.

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Ashley Ayres  Monitoring and Intake Supervisor Division of Legal Services and Compliance		<b>2) Date When Request Submitted:</b>  December 20, 2018  Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>														
<b>3) Name of Board, Committee, Council, Sections:</b> Optometry Examining Board																
<b>4) Meeting Date:</b>  January 24, 2019	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b>  Appointment of Monitoring Liaison and Delegated Authority Motion														
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled?</b>  <input type="checkbox"/> Yes ( <a href="#">Fill out Board Appearance Request</a> ) <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>														
<b>10) Describe the issue and action that should be addressed:</b>  Adopt or reject the Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document as presented in today's agenda packet.																
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; vertical-align: top;"><b>11)</b></td> <td style="width: 60%; text-align: center; vertical-align: top;"> <b>Authorization</b>   </td> <td style="width: 30%; text-align: right; vertical-align: top;">                 December 20, 2018             </td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">                 Signature of person making this request             </td> <td style="border-top: 1px solid black; border-bottom: 1px solid black; text-align: right;">                 Date             </td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">                 Supervisor (if required)             </td> <td style="border-top: 1px solid black; border-bottom: 1px solid black; text-align: right;">                 Date             </td> </tr> <tr> <td colspan="3" style="border-top: 1px solid black; border-bottom: 1px solid black;">                 Executive Director signature (indicates approval to add post agenda deadline item to agenda)             </td> <td style="border-top: 1px solid black; border-bottom: 1px solid black; text-align: right;">                 Date             </td> </tr> </table>				<b>11)</b>	<b>Authorization</b>  	December 20, 2018	Signature of person making this request		Date	Supervisor (if required)		Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda)			Date
<b>11)</b>	<b>Authorization</b>  	December 20, 2018														
Signature of person making this request		Date														
Supervisor (if required)		Date														
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## **Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor**

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

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

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

1. Grant a temporary reduction in random drug screen frequency upon Respondent’s request if he/she is unemployed and is otherwise compliant with Board/Section order. The temporary reduction will be in effect until Respondent secures employment in the profession. The Department Monitor (“Monitor”) will draft an order and sign on behalf of the Liaison.
2. Grant a stay of suspension if Respondent is eligible per the Board/Section order. The Monitor will draft an order and sign on behalf of the Liaison.
3. Remove the stay of suspension if there are repeated violations or a substantial violation of the Board/Section order. In conjunction with removal of any stay of suspension, the Liaison may prohibit Respondent from seeking reinstatement of the stay for a specified period of time. The Monitor will draft an order and sign on behalf of the Liaison.
4. Grant or deny approval when Respondent proposes continuing/remedial education courses, treatment providers, mentors, supervisors, change of employment, etc. unless the order specifically requires full-Board/Section approval.
5. Grant a maximum of one 90-day extension, if warranted and requested in writing by Respondent, to complete Board/Section-ordered continuing education.
6. Grant a maximum of one extension or payment plan for proceeding costs and/or forfeitures if warranted and requested in writing by Respondent.
7. Grant full reinstatement of licensure if Respondent has fully complied with all terms of the order without deviation. The Monitor will draft an order and obtain the signature or written authorization from the Liaison.
8. Grant or deny a request to appear before the Board/Section in closed session.
9. Board Monitoring Liaison may determine whether Respondent’s petition is eligible for consideration by the full Board/Section.
10. (*Except Pharmacy*) Accept Respondent’s written request to surrender credential. If accepted by the Liaison, Monitor will consult with Board Counsel to determine if a stipulation is necessary. If a stipulation is not necessary, Monitor will draft an order and sign on behalf of the Liaison. If denied by the Liaison, the request to surrender credential will go to the full Board for review.
11. (*Except Pharmacy*) Grant Respondent’s petition for a reduction in drug screens per the standard schedule, below. If approved, Monitor will draft an order and sign on behalf of the Liaison.
  - a. Year 1: 49 screens (including 1 hair test, if required by original order)
  - b. Year 2: 36 screens (plus 1 hair test, if required by original order)
  - c. Year 3: 28 screens plus 1 hair test
  - d. Year 4: 28 screens plus 1 hair test
  - e. Year 5: 14 screens plus 1 hair test

12. (*Dentistry only*) – Ability to approve or deny all requests from a respondent.

13. (*Except Nursing*) – Board Monitoring Liaison may approve or deny Respondent's request to be excused from drug and alcohol testing for work, travel, etc.

**Current Authorities Delegated to the Department Monitor**

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

1. Grant full reinstatement of licensure if CE is the sole condition of the limitation and Respondent has submitted the required proof of completion for approved courses.
  2. Suspend the license if Respondent has not completed Board/Section-ordered CE and/or paid costs and forfeitures within the time specified by the Board/Section order. The Monitor may remove the suspension and issue an order when proof completion and/or payment have been received.
  3. Suspend the license (or remove stay of suspension) if Respondent fails to enroll and participate in an Approved Program for drug and alcohol testing within 30 days of the order, or if Respondent ceases participation in the Approved Program without Board approval. This delegated authority only pertains to respondents who must comply with drug and/or alcohol testing requirements.
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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b> Helen Leong, Administrative Rules Coordinator		<b>2) Date When Request Submitted:</b> January 11, 2019 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
<b>3) Name of Board, Committee, Council, Sections:</b> Optometry Examining Board			
<b>4) Meeting Date:</b> January 24, 2019	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Public Hearing on Clearinghouse Rule 18-021, Opt 8, relating to continuing education 1) Review and Respond to Public Comments	
<b>7) Place Item in:</b> <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	<b>8) Is an appearance before the Board being scheduled?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b>  Hold Public Hearing at 9:00 am Discuss any public hearing comments.  Included: <ol style="list-style-type: none"> <li>1. Proposed Order of the Optometry Examining Board Adopting Rules</li> <li>2. Fiscal Estimate &amp; Economic Impact Analysis</li> <li>3. Rules Clearinghouse Report</li> <li>4. Clearinghouse Rule 18-021 Comments: On May 31, 2018, the Board moved to reject Clearinghouse comment number 5.b. because the effective date of the rule will start with the next biennium, and to accept all remaining Clearinghouse comments. The proposed order incorporates the recommended changes in response to the accepted comments.</li> <li>5. Recommended Changes to the Public Hearing Proposed Order</li> </ol>			
<b>11) Authorization</b>			
Signature of person making this request <i>Helen Leong</i>		Date <i>January 11, 2019</i>	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date			
<b>Directions for including supporting documents:</b> <ol style="list-style-type: none"> <li>1. This form should be attached to any documents submitted to the agenda.</li> <li>2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director.</li> <li>3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.</li> </ol>			

STATE OF WISCONSIN  
OPTOMETRY EXAMINING BOARD

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD  
OPTOMETRY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 18-021)

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PROPOSED ORDER

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

Analysis prepared by the Department of Safety and Professional Services.

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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...”

**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 on the available topics of continuing education for licensees.

Section 3 requires that licensees obtain two hours of continuing education related to responsible prescribing of controlled substances for the 2019/2021 biennium.

Section 4 clarifies that licensees who are not authorized to use diagnostic and therapeutic agents may not use continuing education courses on the removal of superficial foreign bodies from an eye or from an appendage to the eye to satisfy the minimum of 20 of 30 continuing education hours on ocular health, conditions, or disease management requirement.

Section 5 creates three new sections for Opt 8.02. Section Opt 8.02 (3e) provides that at least 20 hours must be completed in person, allowing for an increase from the previous rule to 10 hours which may be completed by 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 (3m) allows for additional hours to be completed by methods other than in person for cases of hardship. Section Opt 8.02 (3s) provides a clearer standard of what continuing education is required for a new licensee's first renewal.

Section 6 repeals provisions relating to topics which have been clarified by new provisions in this rule project. The revision in Section 2 eliminates the need for Section Opt 8.02 (4). Section Opt 8.02 (3s) 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 (3e).

Section 7 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).

**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. There are no specific continuing education requirements on prescribing controlled substances.

**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. There are no specific continuing education requirements on prescribing controlled substances.

**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. 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. Beginning with the 2018 renewal cycle, and all renewal cycles thereafter, licensees are required to complete 2 hours of board approved continuing education in pain and symptom management.

**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. There are no specific continuing education requirements on prescribing controlled substances. However, the Board may, when compelled by an emerging public health issue, require all optometrists to attend specified subjects of continuing education for a biennium.

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

The Optometry Examining Board reviewed and updated the rule. A public hearing was held on May 31, 2018. Following the public hearing, on May 31, 2018, the Board moved unanimously to further amend Opt 8 to require all licensees to obtain two hours of continuing education for the 2019/2021 biennium and to sunset the requirement after the end of the 2019/2021 biennium. At the June 18, 2018 meeting, the Board moved to hold

a second public hearing on the new amendments to the rule made after the first public hearing.

**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](mailto: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, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-2112; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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

Comments may be submitted to Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov). Comments must be received on or before 9:00 am on January 24, 2019 to be included in the record of rule-making proceedings.

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TEXT OF RULE

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

(4) “Hour” means a minimum of 50 minutes 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 (1m) is created to read:

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

SECTION 4. Opt 8.02 (2) and (3) are amended to read:

**(2)** ~~Except as provided in sub. (4), approved~~ A minimum of 20 of the 30 hours of approved continuing education hours, as specified in sub. (1), required for optometrists who are allowed to use diagnostic and therapeutic pharmaceutical agents shall relate to ~~the diagnosis and management of eye disease~~ ocular health, conditions, or disease management, or the removal of superficial foreign bodies from an eye or from an appendage to the eye.

**(3)** ~~Except as provided in sub. (4), approved~~ A minimum of 20 of the 30 hours of approved continuing education hours, as specified in sub. (1), required for optometrists who are not allowed to use diagnostic and therapeutic pharmaceutical agents shall relate to ~~the diagnosis and management of eye disease~~ ocular health, conditions, or disease management.

SECTION 5. Opt 8.02 (3e), (3m), and (3s) are created to read:

**(3e)** 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).

**(3m)** 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. (3e).

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

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

SECTION 6. Opt 8.02 (4), (8), (9) and (10) are repealed.

SECTION 7. 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.

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

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

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(END OF TEXT OF RULE)

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis  
 Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number  
  
Opt 8

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3. Subject  
  
Continuing Education for Optometrists

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4. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	5. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)
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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

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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)**

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

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9. Policy Problem Addressed by the Rule

This 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 on the available topics of continuing education for licensees.

Section 3 requires that licensees obtain two hours of continuing education related to responsible prescribing of controlled substances for the 2019/2021 biennium.

Section 4 clarifies that licensees who are not authorized to use diagnostic and therapeutic agents may not use continuing education courses on the removal of superficial foreign bodies from an eye or from an appendage to the eye to satisfy the minimum of 20 of 30 continuing education hours on ocular health, conditions, or disease management requirement.

Section 5 creates three new sections for Opt 8.02. Section Opt 8.02 (3e) provides that at least 20 hours must be completed in person, allowing for an increase from the previous rule to 10 hours which may be completed by

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

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 (3m) allows for additional hours to be completed by methods other than in person for cases of hardship. Section Opt 8.02 (3s) provides a clearer standard of what continuing education is required for a new licensee's first renewal.

Section 6 repeals provisions relating to topics which have been clarified by new provisions in this rule project. The revision in Section 2 eliminates the need for Section Opt 8.02 (4). Section Opt 8.02 (3s) 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 (3e).

Section 7 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).

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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.

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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.

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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.

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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.

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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.

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

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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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. There are no specific continuing education requirements on prescribing controlled substances.

**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. There are no specific continuing education requirements on prescribing controlled substances.

**Michigan:** Michigan requires 40 hours of continuing education every two years. A licensee who holds a certification to administer topic 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. 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. Beginning with the 2018 renewal cycle, and all renewal cycles thereafter, licensees are required to complete 2 hours of board approved continuing education in pain and symptom management.

**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. There are no specific continuing education requirements on prescribing controlled substances. However, the Board may, when compelled by an emerging public health issue, require all optometrists to attend specified subjects of continuing education for a biennium.

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17. Contact Name

Helen Leong, Administrative Rules Coordinator

18. Contact Phone Number

608-266-2112

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



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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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



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Scott Grosz  
Clearinghouse Director

Margit Kelley  
Clearinghouse Assistant Director

Terry C. Anderson  
Legislative Council Director

Jessica Karls-Ruplinger  
Legislative Council Deputy Director

### 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.

## Recommended Changes to the Public Hearing Proposed Order

### Corrected Cross-References:

There are two places with incorrect cross-references in Section 7 of the proposed order:

#### Opt 8.03

(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 (3e) or (3m) (b)** shall include all of the following:

(4) In cases of hardship under **s. Opt 8.02 (3m)**, the board may waive any requirement under this section or **s. Opt 8.02 (3e)** as deemed appropriate by the board.

The Department is recommending the following format for the Note to be consistent with other administrative rule chapters:

**Note:** Application forms for continuing education program approval are available on the department's website at [dps.wi.gov](http://dps.wi.gov), or by request from the Department of Safety and Professional Services, P.O. Box 8366, Madison, Wisconsin 53708, or call (608) 266-2112.

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b> Helen Leong, Administrative Rules Coordinator		<b>2) Date When Request Submitted:</b> January 11, 2019 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
<b>3) Name of Board, Committee, Council, Sections:</b> Optometry Examining Board			
<b>4) Meeting Date:</b> January 24, 2019	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Legislative and Administrative Rule Matters 1) Annual Report Submitted November 1, 2018 under s. <a href="#">440.035 (2m)(c)</a> , Stats. 2) Update on Scope Statement for Opt 3, 4, 6, and 7, relating to the examination on the treatment and management of ocular disease 3) Draft of Act 108 Report due March 31, 2019 under s. <a href="#">227.29</a> , Stats. 4) Review of Preliminary Rule Draft for SPS 10, relating to the use of pharmaceutical agents by licensed Optometrists 5) Preliminary Rule Draft, Opt 6, relating to the use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from an eye or from an appendage to the eye 6) Preliminary Rule Draft, Opt 4, relating to Licensure by Endorsement 7) Review of, and Possible Scope Statement for, Opt 5, relating to unprofessional conduct 8) Update on legislative and administrative rule matters	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session		<b>8) Is an appearance before the Board being scheduled?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>
<b>10) Describe the issue and action that should be addressed:</b>    			
<b>11) Authorization</b>			
Signature of person making this request <i>Helen Leong</i>		Date <i>January 11, 2019</i>	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)      Date			
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

**Ann Meier Carli**  
Chairperson

**Robert Schulz**  
Vice Chairperson

**Mark Jinkins**  
Secretary

**WISCONSIN OPTOMETRY EXAMINING  
BOARD**



4822 Madison Yards Way  
PO Box 8366  
Madison WI 53705-8366

Email: [dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)  
Voice: 608-266-2112  
FAX: 608-251-3032

## **Wisconsin Optometry Examining Board Report on Opioid Abuse – October 2018**

**Scope and purpose of the report:** 2017 Wisconsin Act 262 requires the Optometry Examining Board to annually submit a report related to the issue of opioid abuse to the Legislature and Governor's Office. This preliminary report must include proactive efforts taken by the Board to address the issue of opioid abuse and goals for addressing the issue of opioid abuse as it relates to the practice of optometry in Wisconsin. Future reports must also include actions taken by the Board to achieve the goals identified in previous reports, and whether those goals have been achieved.

### **Proactive efforts taken by the Board to address the issue of opioid abuse:**

#### **Limited Prescribing Authority**

Optometrists have limited prescribing authority for controlled substances. Optometrists licensed prior to August 1, 2006 must obtain certificates to prescribe diagnostic pharmaceutical agents and therapeutic pharmaceutical agents. Those who are licensed after August 1, 2006 or have certificates to prescribe pharmaceutical agents may prescribe Schedule III, IV, or V controlled substances in accordance with ss. 449.18 and 961.39, Stats., and SPS 10, Admin. Code, and may also prescribe one Schedule II controlled substance:

- a. 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.
- b. 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.

#### **Controlled Substances Prescribing Guidelines**

The Board adopted the Best Practices for Prescribing Controlled Substances Guidelines on March 16, 2017, in response to 2015 Act 269. The Guidelines were developed using the Centers for Disease Control and Prevention's Guideline for Prescribing Opioids for Chronic Pain; the Wisconsin Medical Examining Board's Opioid Prescribing Guideline; National Transportation Safety Board recommendations; and other states' guidelines. The Best Practices for Prescribing

Controlled Substances Guidelines are available at [www.dsps.wi.gov](http://www.dsps.wi.gov) and were emailed to all licensees in June 2017.

### **Education on National Trends**

The Board annually sends at least one member to the Association of Regulatory Boards of Optometry, Inc. Annual Meeting to interact with regulatory colleagues and discuss the hot topics and shared concerns in the regulatory community.

### **Continuing Education Related to Prescribing Controlled Substances**

On May 31, 2018, the Board unanimously moved to amend Opt 8, relating to continuing education, to require licensees to complete 2 hours of continuing education relating to prescribing controlled substances in the 2019/2021 biennium. This requirement has been added to the on-going rule project for Opt 8, which is expected to take effect on December 15, 2019.

### **Goals for addressing the issue of opioid abuse as it relates to the practice of optometry in Wisconsin:**

#### **Education on the issue of opioid abuse**

The Board is working with PDMP staff to learn what data is available from the Prescription Drug Monitoring Program (PDMP) in order to learn how extensively the database is being used by licensees. Additionally, the Board is working with the Department of Safety and Professional Services to review the therapeutic pharmaceutical agents specified in SPS 10 to ensure the rule is up to date with minimum standards of care.

#### **Enforcement Action**

Currently, if an investigation of an optometrist's prescriptive practices occurs, it is done in response to a complaint filed against the optometrist. The Board's goal is to, in partnership with the Controlled Substances Board, begin proactively investigating optometrists whose prescriptive practices with controlled substances appear excessive relative to other medical professionals. The Controlled Substances Board will use reports generated from the Prescription Drug Monitoring Program to refer optometrists to the Board for possible investigation.

#### **Communications to Licensees**

The Board will disseminate updates to licensees relating to new continuing education requirements on prescribing controlled substances, changes relating to enforcement actions, and additional information relating to what the Board determines after examining the data available from the PDMP.

# STATEMENT OF SCOPE

## Optometry Examining Board

**Rule No.:** Opt 3, 4, 6, and 7

**Relating to:** Examination on the Treatment and Management of Ocular Disease

**Rule Type:** Both Permanent and Emergency

### 1. Finding/nature of emergency (Emergency Rule only):

The Optometry Examining Board requires that license applicants pass Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) examination. Part II of the NBEO has an embedded portion on the Treatment and Management of Ocular Disease (TMOD). The TMOD questions, "test knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye," in accordance with s. 449.04 (2), Stats. Therapeutic pharmaceutical agents include opioids, under s. 961.39, Stats. However, the passing score of Part II is determined as an overall score, so that applicants can fail the TMOD embedded questions yet pass Part II of the examination. The Board needs to amend the administrative rules for the health, safety, and welfare of the people of Wisconsin to clarify that applicants need to pass the TMOD portion as part of Part II.

If the administrative rules are not amended to require that new applicants have passed the TMOD portion, there will be licensed Optometrists who are authorized to prescribe therapeutic pharmaceutical agents, including opioids, who failed the TMOD questions on the board examination.

### 2. Detailed description of the objective of the proposed rule:

The objective of the rule project is to update the administrative rules to clarify a passing score on the NBEO examination to ensure that new licensees have successfully completed Parts I, II, and III including the embedded TMOD. For new applicants, applicants for licensure by endorsement, and for those who are submitting a late renewal, the rules identifying qualifying exams need to be updated to clarify that passage of the TMOD is required for licensure.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Optometrists licensed after 2006 have the authority under chapter 449 to prescribe controlled substances and remove foreign bodies from an eye or from an appendage to the eye. Under section 449.04 (2), Stats., applicants are required to be tested on, "knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye." The TMOD embedded questions in Part II are an essential component of evaluating new applicants' preparation for practicing Optometry competently in the State of Wisconsin.

Optometrists licensed before 2006 are required to pass the TMOD exam or its equivalent prior to being granted a therapeutic pharmaceutical agent (TPA) certificate, which provides the authority to prescribe controlled substances and remove foreign bodies from an eye or from an appendage to the eye. Thus, this rule project will ensure that the administrative rules are compliant with statute and consistent for all licensees.

Rev. 3/6/2012

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

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

Section 227.11 (2) (b), Stats., sets forth the parameters of an agency's rule-making authority, stating an agency, "may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure."

Section 449.04 (1) (c), Stats., requires that a, "person passes an examination approved or conducted by the examining board" in order to be granted a license. Subsection (2) states, "the examining board may do any of the following:

- (a) Prepare, administer, and grade the examination.
- (b) Approve in whole or in part an examination prepared, administered, and graded by the national board of examiners in optometry or another examination provider approved by the examining board.
- (c) Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry or another examination provider approved by the examining board."

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Department estimates approximately 80 hours will be needed to perform the review and develop any rule changes. The Department will assign existing staff to perform the review and develop the rule changes. No additional resources will be required.

**6. List with description of all entities that may be affected by the proposed rule:**

Applicants for licensure by exam, by endorsement, for TPA certificates, and late renewal.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

None.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The rule changes contemplated in this project are not expected to have any negative economic impacts on any of the affected entities.

**Contact Person:** Helen Leong, Administrative Rules Coordinator  
Division of Policy Development, Department of Safety and Professional Services  
(608) 266 – 0797 DSPSAdminRules@wisconsin.gov

  
\_\_\_\_\_  
Department Head or Authorized Signature

10/29/2018  
\_\_\_\_\_  
Date Submitted

**Ann Meier Carli**  
Chairperson

**Robert Schulz**  
Vice Chairperson

**Mark Jenkins**  
Secretary

**WISCONSIN OPTOMETRY  
EXAMINING BOARD**



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

Email: [dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)  
Voice: 608-266-2112  
FAX: 608-251-3032

March 29, 2019

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

Representative Joan Ballweg, Assembly Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 210 North, State Capitol  
Madison, WI 53702

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

Dear Senator Nass and Representative Ballweg:

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

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

Rules	Description of the legislation that eliminated the authority	Action taken to address or reason for not taking an action

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

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

Rule	Description of the legislation that restricted the authority	Action taken to address or reason for not taking an action

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

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

Rule	Description of why the rule is obsolete or has been rendered unnecessary.	Action taken to address or reason for not taking an action
s. Opt 5.11	The rule requires verification that ophthalmic lenses are produced to meet a 1995 ANSI standard, which was updated in 2015.	A Scope Statement was requested by the Board on [REDACTED].
s. Opt 5.14 (including s. Opt 5.02 (2), (Note), and 5.03 (23))	Extended-wear contact lenses are more commonplace and requiring a warranty may be unnecessary.	A Scope Statement was requested by the Board on [REDACTED].

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

Rule	Citation or the text of the statute, regulation, or ruling.	Action taken to address or reason for not taking an action
ss. Opt 3.02 (3), Opt 4.03 (2) (b), Opt 7.05 (2) (b) 2. a.	The rules for licensure need to be clarified to ensure applicants pass the embedded questions on the treatment and management of ocular disease, in accordance with the statutory requirements in s. 449.04 (2), Stats.	Scope Statement for emergency and permanent rules submitted to the Department of Administration and the Governor's Office on October 30, 2018.

**V. Rules that are economically burdensome:**

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

Thank you.

Sincerely,

Ann Meier Carli  
Chairperson  
Optometry Examining Board

Opt Chapter	Most Recent Project Status	<a href="#">s. 227.29, Stats., Review</a>	Section Notes / Comments
Opt 1, Authority and Definitions	Last Updated: <a href="#">CR 06-116</a> amended chapters 1, 3, 4, 5, 6, and 7 and created Opt 8, to incorporate the changes made by <a href="#">2005 Wisconsin Act 297</a> .		
Opt 3, Licensure	Last Updated: <a href="#">CR 15-078</a> amended chapters 3, 5, and 7, to incorporate the changes made by <a href="#">2013 Wisconsin Act 114</a> and <a href="#">2013 Wisconsin Act 345</a> .		
Opt 4, Licensure by Endorsement	Open Project: Draft preliminary rule will be considered at October 11, 2018.		
Opt 5, Unprofessional Conduct	Last Updated: <a href="#">CR 15-078</a> amended chapters 3, 5, and 7, to incorporate the changes made by <a href="#">2013 Wisconsin Act 114</a> and <a href="#">2013 Wisconsin Act 345</a> .		Opt 5.11 (2): ANSI Z80.1 – 1995 reference may be obsolete, standard was updated in 2015. Opt 5.14, Opt 5.02 (2) (Note), and 5.03 (23): Board raised the issue that mandating extended-wear contact lenses disclosure statements may be obsolete in light of current standard of practice. <i>June 18, 2018</i>
Opt 6, Use of Diagnostic and Therapeutic Pharmaceutical Agents and Removal of Superficial Foreign Bodies from an Eye or from an Appendage to the Eye	Open Project: Draft preliminary rule pending Board recommendations on SPS 10, Use of Pharmaceutical Agents by Licensed Optometrists.		
Opt 7, Renewal of Certificate of Registration	Last Updated: <a href="#">CR 15-078</a> amended chapters 3, 5, and 7, to incorporate the changes		

Opt Chapter	Most Recent Project Status	<a href="#">s. 227.29, Stats.,</a> Review	Section Notes / Comments
	made by <a href="#">2013 Wisconsin Act 114</a> and <a href="#">2013 Wisconsin Act 345</a> .		
Opt 8, Continuing Education	Open Project: 2 <sup>nd</sup> Public Hearing scheduled for October 11, 2018.		

STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND  
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES  
PROFESSIONAL SERVICES : ADOPTING RULES  
: (CLEARINGHOUSE RULE )  
-----

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal and recreate ch. SPS 10, relating to use of pharmaceutical agents by licensed optometrists.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

**Statutes interpreted:**

Sections 449.17, 449.18, and 961.39, Stats.

**Statutory authority:**

Sections 449.17 (5), 449.18 (6) (cm), and 961.39, Stats.

**Explanation of agency authority:**

Section 448.17 (5), Stats., provides that the department, “shall, after consultation with the examining board, the medical examining board and the pharmacy examining board, promulgate rules specifying the topical ocular diagnostic pharmaceutical agents which optometrists may utilize in this state.”

Section 449.18 (6) (cm), Stats., provides that the department, “shall, after consultation with the examining board, the medical examining board and the pharmacy examining board, promulgate rules specifying those therapeutic pharmaceutical agents that may or may not be prescribed or administered.”

Section 961.39, Stats., limits optometrists authorization to use therapeutic agents, to “controlled substances included in schedules III, IV, and V that are permitted for prescription or administration under the rules promulgated...”

**Related statute or rule:**

Chapter Opt 6, relating to use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from eye or from an appendage to the eye

### **Plain language analysis:**

The definitions for “adverse drug reaction,” “adverse drug reaction referral plan,” “approved institution,” “classroom hour,” and “course of study in pharmacology” have been removed from ch. SPS 10 and inserted into the proposed order for ch. Opt 6.

In order to conform the chapter to drafting standards, the definitions for “diagnostic pharmaceutical agent” and “therapeutic pharmaceutical agent” were repealed and recreated as substantive provisions.

The specific continuing education provisions, formerly included in s. SPS 10.02 (1) (a), have been repealed. Continuing education requirements have been consolidated into ch. Opt 8.

The content formerly included in ss. SPS 10.02 (1) (b) and SPS 10.02 (2) has been inserted in the proposed order for ch. Opt 6. The requirements of s. SPS 10.03 are addressed in the proposed order for ch. Opt 6. Since the authority for issuing DPA certificates have shifted from the Department to the Optometry Examining Board, s. SPS 10.04 has been repealed.

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

The federal government schedules therapeutic pharmaceutical agents through the Controlled Substances Act, which categorizes optometrists as mid-level practitioners under Title 21, Code of Federal Regulations, Section 1300.01.

### **Comparison with rules in adjacent states:**

#### **Illinois:**

Under Illinois law, optometrists may prescribe Schedule II (hydrocodone products only), III, IV, and V controlled substances and ocular pharmaceutical agents to patients without consulting a physician unless the patient is under 5 years of age. Ocular pharmaceutical agents include topical anesthetics, topical mydriatics, topical cycloplegics, topical miotics and mydriatic reversing agents, anti-infective agents, anti-allergy agents, anti-glaucoma agents (except oral carbonic anhydrase inhibitors, which may be prescribed only in a quantity sufficient to provide treatment for up to 30 days), anti-inflammatory agents (except oral steroids, which may be prescribed only in a quantity sufficient to provide treatment for up to 7 days), over-the-counter agents, analgesic agents, anti-dry eye agents, and agents for the treatment of hypotrichosis. The authority to prescribe a Schedule III, IV, or V controlled substance shall include analgesic agents only in a quantity sufficient to provide treatment for up to 72 hours. The prescription of a Schedule II controlled substance is prohibited, except for Dihydrocodeinone (Hydrocodone) with one or more active, non-narcotic ingredients only in a quantity sufficient to provide treatment for up to 72 hours, and only if such

formulations of Dihydrocodeinone are reclassified as Schedule II by federal regulation. The Illinois Optometric Licensing and Disciplinary Board may recommend additional pharmaceutical agents approved by the FDA to the Department of Financial and Professional Regulation, and the Department shall promulgate rules to allow for the prescribing or administering pharmaceutical agents. See 225 ILCS 80/15.1.

Illinois designates Optometrists to meet specific requirements to prescribe or distribute each type of pharmaceutical agents, depending on when they graduated from an approved school, including Diagnostic Ocular Pharmaceuticals (TN-D-OPT), Topical Therapeutics (TN-T-OPT) and Oral Therapeutic Medications (TN-T-OPT Oral Therapeutics). Illinois also requires a separate Controlled Substance license to prescribe controlled substances, and it must be renewed annually. Illinois's administrative rules relating to the practice are found in Title 68: Professions and Occupations, Chapter VII: Department of Financial and Professional Regulation Part 1320, Optometric Practice Act of 1987.

### **Iowa:**

Under Iowa law, the Board of Optometry Examiners is part of the Department of Public Health. An optometrist licensed by the Board of Optometry Examiners may employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of conditions of the human eye and adnexa, excluding the use of injections other than to counteract an anaphylactic reaction, and may without charge supply any of the above pharmaceuticals to commence a course of therapy. Iowa Code § 154.1 3. and 4. Optometrists can prescribe oral medications including antibiotics, antivirals, and DMARDs, prescribe Schedule II, III, IV, and V drugs, and prescribe oral steroids (for a maximum of 14 days without consultation of a physician). The Board of Pharmacy reviews requests for additions to the controlled substances schedules, and the Board's decision will amend Iowa Code section 124.201, subs. 4. 657-10.37, Iowa Admin. Code.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Iowa are substantially similar to the requirements in Wisconsin. Both Iowa and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to continuing education, Iowa and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Iowa requires optometrists who are not certified to use therapeutic pharmaceutical agents to complete 30 hours of continuing education, and optometrists who are certified to use therapeutic pharmaceutical agents to complete 50 hours of continuing education. Iowa's administrative rules relating to the practice of optometry are found in their chapters 179 to 183.

### **Michigan:**

In Michigan, the Board of Optometry requires optometrists to be certified to administer topical ocular diagnostic pharmaceutical agents and to prescribe therapeutic pharmaceutical agents. R 338.315 and R 338.317. The requirements are very similar to

those in Wisconsin. The authority to prescribe or administer pharmaceutical agents includes Schedule III, IV, and V drugs and dihydrocodeinone combination drugs. See 333.17401 (f), Michigan Stats. A controlled substances license is required to prescribe controlled substances. A management and emergency plan is also required. See Article 7 of Public Act 3.68 of 1978, as amended.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Michigan are substantially equivalent to the requirements in Wisconsin. In addition, both Michigan and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to continuing education, Michigan and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Wisconsin requires 30 hours of continuing education. Michigan requires 40 hours of continuing education. Michigan's administrative rules relating to the practice of Optometry are found in their sections R. 338.211 to 338.279 (General Rules) and R 338.291 (Ethical and Unprofessional Conduct).

### **Minnesota:**

Optometrists may prescribe or administer FDA approved drugs to aid in the diagnosis, cure, mitigation, prevention, treatment, or management of disease, deficiency, deformity, or abnormality of the human eye and adnexa included in the curricula of accredited schools or colleges of optometry, and as limited by Minnesota statute and adopted rules by the Board of Optometry. § 148.56 (a), Minn. Stats. Optometrists may not prescribe or administer Schedule II and III oral FDA approved drugs and oral steroids; oral antivirals to be prescribed for more than ten days; or oral carbonic anhydrase inhibitors to be prescribed or administered for more than seven days. § 148.56 (b), Minn. Stats. The Board of Pharmacy schedules substances. § 152.02, Minn. Stats.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Minnesota are substantially equivalent to the requirements in Wisconsin. Both states require applicants to be a graduate of an accredited college of optometry and to pass a qualifying examination in order to obtain a license. Both states allow for applicants holding equivalent licensure from another jurisdiction to apply for licensure. In addition, both Minnesota and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to experience required in order to obtain a certification to use therapeutic pharmaceutical agents, Minnesota requires 2 years of supervised clinical experience in differential diagnosis of eye disease or disorders as part of optometric training or one year of that experience and ten years of actual clinical experience as a licensed optometrist. Other than experience or training required in conjunction with an initial optometry degree program, Wisconsin does not require an applicant to complete experience in order to obtain a certificate to use therapeutic pharmaceutical agents. In reference to continuing education, Minnesota and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Wisconsin requires 30 hours of continuing education. Minnesota

requires 40 hours of continuing education. Minnesota's administrative rules relating to the practice of optometry are under their Chapter 6500.

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

Opt 6, relating to the Use of Diagnostic and Therapeutic Pharmaceutical Agents and Removal of Superficial Foreign Bodies From an Eye or From an Appendage to the Eye, was amended in 2007 to implement 2005 Wisconsin Act 297. The legislation shifted to the Optometry Examining Board from the Department of Safety and Professional Services the authority to determine which licensed optometrists may use pharmaceutical agents. The Department is also amending SPS 10 in order to fully enact 2005 Wisconsin Act 297. Staff have opened Opt 6 and SPS 10 concurrently to accurately and consistently implement this legislative shift. Revisions were reviewed by the Optometry Examining Board and DSPS staff to ensure accuracy.

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

**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, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

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

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TEXT OF RULE

SECTION 1. Chapter SPS 10 is repealed and recreated to read:

CHAPTER SPS 10  
USE OF PHARMACEUTICAL AGENTS BY LICENSED OPTOMETRISTS

**SPS 10.01 Authority.** The rules in ch. SPS 10 are adopted under the authority in ss. 449.17 (1), 449.18 (6) (cm), and 961.39, Stats., to authorize the pharmaceutical agents for use by licensed optometrists in Wisconsin.

**Note:** To determine whether a licensed optometrist is eligible to use pharmaceutical agents under this chapter, refer to ch. Opt 6, relating to diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from any eye or from an appendage to the eye.

**SPS 10.02 Diagnostic pharmaceutical agents.** (1) A licensed optometrist, authorized in accordance with ch. Opt 6, may use topical ocular diagnostic pharmaceutical agents 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 system disease and other departures from normal.

(2) Diagnostic pharmaceutical agents include:

(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 or device that is used for an ophthalmic diagnostic purpose and that 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 or device that is used for an ophthalmic diagnostic purpose and that 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.

**SPS 10.03 Therapeutic pharmaceutical agents.** (1) A licensed optometrist, authorized in accordance with Opt 6, may prescribe or administer a drug, as specified in sub. (2), for ocular therapeutic purposes.

(2) For the purposes of this chapter, therapeutic pharmaceutical agents are limited to:

- (a) Oral analgesics.
  - 1. Acetaminophen.
  - 2. Aspirin.
  - 3. Salicylates.
  - 4. Schedule III, IV and V narcotic analgesics.
- (b) Controlled substances in schedule II with limitations, as specified in s. 961.39 (2m), Stats.
- (c) 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.
- (d) Antiallergy agents.
  - 1. Topical and oral antihistamine agents in the following drug categories.
    - a. Alkylamines.
    - b. Ethanolamines
    - c. Ethylenediamines.
    - d. Phenothiazines.
    - e. Piperazines.
    - f. Piperidines.
    - g. Terfenadines.
  - 2. Cromolyn sodium, a mast cell stabilizing agent.
- (e) Artificial tear solutions, ophthalmic irrigants and ocular lubricants.
- (f) Hypertonic sodium chloride, a topical hyperosmotic agent.
- (g) Yellow mercuric oxide, a miscellaneous preparation and product.
- (h) Topical anesthetics.
  - 1. Benoxinate HCl.
  - 2. Benoxinate HCl and sodium fluorescein.
  - 3. Proparacaine HCl.
  - 4. Tetracaine HCl.
- (i) Antibiotics.
  - 1. Topical antibiotics.
    - a. Aminoglycosides.
    - b. Bacitracin.
    - c. Cephalosporins.
    - d. Ciprofloxacin HCl.
    - e. Erythromycin.
    - f. Gramicidin.
    - g. Norfloxacin

- h. Penicillins.
  - i. Polymyxin B.
  - j. Sulfonamides.
  - k. Tetracyclines.
  - L. Trimethoprim.
  - m. 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.
- (j) 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.
- (k) Topical anticholinergic agents.
1. Atropine.
  2. Atropine sulfate.
  3. Cyclopentolate.
  4. Homatropine.
  5. Homatropine hydrogen bromide.
  6. Scopolamine.
  7. Tropicamide.
- (L) 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.
    - b. Carteolol HCl.
    - c. Levobunolol.
    - d. Metipranolol HCl.
    - e. Timolol.
  5. Oral carbonic anhydrase inhibitors.
    - a. Acetazolamide.
    - b. Dichlorphenamide.
    - c. Methazolamide.
- (m) Any drug or device that is used for an ophthalmic therapeutic purpose and that 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.
- (n) Any drug or device that is used for an ophthalmic therapeutic purpose and that 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.
- (o) Any drug or device that is used for an ophthalmic therapeutic purpose and that is certified by the food and drug administration pursuant to section 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.
- (3) A licensed optometrist authorized to use therapeutic pharmaceutical agents may dispense a contact lens that delivers therapeutic pharmaceutical agents that are permitted under sub. (2).

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

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 (END OF TEXT OF RULE)  
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**SPS 10 Rule Revision**

<b>Current Rule Language</b>	<b>Revision</b>	<b>Comments</b>
<p><b>SPS 10.01 (1)</b> “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.</p>	<p>Moved to Opt 6.02, Definitions</p>	<p>No longer referenced in SPS 10, therefore, there is no need to keep it in the rule.</p> <p>Due to drafting standards, this definition was reformatted, but the content is the same.</p>
<p><b>SPS 10.01 (2)</b> “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.</p>	<p>Moved to Opt 6.025</p>	<p>No longer referenced in SPS 10, therefore, there is no need to keep it in the rule.</p> <p>Due to the substantive nature of the definition, it is re-drafted as a new section of Opt 6, which also captures the content of (<i>former</i>) SPS 10.02 (2) (a) and (b). [see below]</p>
<p><b>SPS 10.01 (3)</b> “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.</p> <p><b>Note:</b> 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.</p>	<p>Moved to Opt 6.02, Definitions</p> <p>Repealed the definition since this process is ending.</p>	<p>No longer referenced in SPS 10.</p> <p>Re-drafted the definition to reflect the meaning provided in s. 449.17 and 449.18, Stats.</p>
<p><b>SPS 10.01 (4)</b> “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”.</p>	<p>Moved to Opt 6.02, Definitions</p>	<p>Re-drafted the definition to remove the parts specific to, “a course in pharmacology.” This allows the definition to be more widely applicable within the new chapter Opt 6.</p>

**SPS 10 Rule Revision**

<b>Current Rule Language</b>	<b>Revision</b>	<b>Comments</b>
<p><b>SPS 10.01 (5)</b> “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.</p>	<p>Moved to Opt 6.02, Definitions</p>	<p>Content in the new Opt 6.02 is identical, except the tense in the last sentence was changed from plural to singular.</p>
<p><b>SPS 10.01 (6)</b> “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.</p>	<p>Removed from SPS 10</p>	<p>This definition is not relied upon in the new SPS 10 nor Opt 6, therefore, it was not kept.</p>
<p><b>SPS 10.01 (8)</b> “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:</p>	<p>Repealed and recreated as SPS 10.03</p>	<p>Drafting rules prohibit substantive provisions being listed as definitions, therefore, the content was moved from definition list into a substantive provision.</p>
<p><b>SPS 10.01 (9)</b> “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.</p>	<p>Removed from SPS 10</p>	<p>This definition is not relied upon in the new SPS 10 nor Opt 6, therefore, it was not kept.</p>
<p><b>SPS 10.01 (10)</b> “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:</p>	<p>Repealed and recreated as SPS 10.02</p>	<p>Drafting rules prohibit substantive provisions being listed as definitions, therefore, the content was moved from definition list into a substantive provision.</p> <p>Some items were renumbered when the definition was repealed and the section recreated. In the <i>(former)</i> SPS 10, certain paragraphs had been added to the definition, and were listed as (am), for example. Those have been renumbered to avoid the use of insertion letters.</p>

**SPS 10 Rule Revision**

<b>Current Rule Language</b>	<b>Revision</b>	<b>Comments</b>
<p><b>SPS 10.02 Restrictions and reports.</b></p> <p><b>(1) RESTRICTIONS.</b></p> <p><b>(a) Certification and education.</b> 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.</p> <p><b>Note:</b> 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.</p> <p><b>(b) Prescribing.</b> 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.</p> <p><b>(2) REPORTING REQUIRED.</b></p>	<p>Removed from SPS 10:</p> <p>Section (1) (a) has been repealed. Continuing education requirements are consolidated in ch. Opt 8.</p> <p>Section (1) (b) is recreated as Opt 6.05.</p> <p>Sections (2) (a) and (b) were incorporated as the new Opt 6.025 (3) and (4).</p>	<p>Section 449.06 (2m), Stats., states that rules shall include CE requirements for optometrists who are able to use DPA and TPA. That has been incorporated into s. Opt 8.</p>

**SPS 10 Rule Revision**

<b>Current Rule Language</b>	<b>Revision</b>	<b>Comments</b>
<p><b>(a)</b> 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.</p> <p><b>(b)</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.</p>		
<p><b>SPS 10.03 Statement of approval required.</b> 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.</p>	<p>Removed from SPS 10</p>	<p>The requirements in this rule are addressed in the new Opt 6.03 and Opt 6.04.</p>
<p><b>SPS 10.04 Application for certificate.</b> To obtain a DPA certificate, an optometrist must submit evidence to the department showing that the optometrist has:</p> <p><b>(1)</b> Completed a course of study in pharmacology.</p> <p><b>(2)</b> Successfully completed one of the following examination requirements:</p> <p><b>(a)</b> 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.</p> <p><b>(b)</b> Obtained passing scores on parts I and II of the examination administered after 1986 by the national board of examiners in optometry.</p> <p><b>(c)</b> Obtained a passing score on an examination approved by the department of safety and professional services and the optometry examining board.</p> <p><b>(3)</b> Established an adverse reaction referral plan.</p>	<p>Removed from SPS 10</p>	<p>The authority for the issuance of such a certificate has now shifted to the Optometry Examining Board, and is incorporated into the new Opt 6.03 (2)</p>

STATE OF WISCONSIN  
OPTOMETRY EXAMINING BOARD

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

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PROPOSED ORDER

A proposed order of the Optometry Examining Board to repeal Opt 6.02 (1m); to renumber and amend Opt 6.02 (1); to amend Opt 6.01 and Opt 6.02 (3) and (6); to repeal and recreate Opt 6.03 and 6.04; and to create Opt 6.01 (Note), 6.02 (1) (a) to (i), 6.02 (1e), (1n), and (1s), 6.025, 6.025 (Note), and 6.05, relating to the use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from an eye or from an appendage to the eye.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Sections 449.17 and 449.18, Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 449.17 (1m) (a), and 449.18 (2) (a), 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 449.17 (1m) (a), Stats., provides that the “examining board shall certify an optometrist to use topical ocular diagnostic pharmaceutical agents...”

Section 449.18 (2) (a), Stats., provides the “examining board shall certify an optometrist to use therapeutic pharmaceutical agents and remove foreign bodies from an eye or from an appendage to the eye...”

**Related statute or rule:**

Chapter SPS 10, relating to the use of pharmaceutical agents by licensed optometrists

**Plain language analysis:**

Section 1 is amended to include s. 961.39, Stats., which outlines the limitations on optometrists in the Uniform Controlled Substances Act.

Section 2 adds a note to cross-reference ch. SPS 10, relating to the use of pharmaceutical agents by licensed optometrists.

Sections 3 and 4 amend the definition of “adverse drug reaction,” amending to accommodate the revisions of ch. SPS 10, relating to the use of pharmaceutical agents by licensed optometrists, a concurrent rule project. The definition for “adverse drug reaction” is being repealed from ch. SPS 10, so the content is being moved to ch. Opt 6.

Section 5 repeals the definition for “adverse drug reaction referral plan” because the content of the definition, which previously referenced ch. SPS 10, is being recreated as s. Opt 6.025.

Section 6 moves three new definitions for “approved institution,” “classroom hour,” and “course of study in pharmacology” into ch. Opt 6, which was previously in ch. SPS 10.

Sections 7 and 9 amends the definitions for “DPA” and “TPA” to correct the reference to the revised ch. SPS 10, a concurrent rule project.

Section 8 repeals the definition for “100 hours of approved study.” This definition is unnecessary and the content has been directly incorporated into the recreated s. Opt 6.04.

Section 10 creates a new section in ch. Opt 6 for the Adverse Drug Reaction Referral Plan, this information is moved from ch. SPS 10. It also adds a note to s. Opt 6.025 to state where a user can get the forms necessary to comply with s. Opt 6.025, Adverse Drug Reaction Referral Plan.

Section 11 repeals ss. Opt 6.03 and Opt 6.04 and recreates them. Section Opt 6.03 was a repeat of s. 449.17, Stats. The recreated s. Opt 6.03 distills the statutory language to the process and procedure used by the Optometry Examining Board in certifying optometrists for DPA. Section Opt 6.04 was a repeat of s. 449.18, Stats. The recreated s. Opt 6.04 distills the statutory language to the process and procedure used by the Optometry Examining Board in certifying optometrists for TPA and to remove foreign bodies from eyes.

Section 12 moves a section from ch. SPS 10 into ch. Opt 6 for Prescribing Therapeutic Pharmaceutical Agents.

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

The federal government schedules therapeutic pharmaceutical agents through the Controlled Substances Act, which categorizes optometrists as mid-level practitioners under Title 21, Code of Federal Regulations, Section 1300.01.

## **Comparison with rules in adjacent states:**

### **Illinois:**

Under Illinois law, optometrists may prescribe Schedule II (hydrocodone products only), III, IV, and V controlled substances and ocular pharmaceutical agents to patients without consulting a physician unless the patient is under 5 years of age. Ocular pharmaceutical agents include topical anesthetics, topical mydriatics, topical cycloplegics, topical miotics and mydriatic reversing agents, anti-infective agents, anti-allergy agents, anti-glaucoma agents (except oral carbonic anhydrase inhibitors, which may be prescribed only in a quantity sufficient to provide treatment for up to 30 days), anti-inflammatory agents (except oral steroids, which may be prescribed only in a quantity sufficient to provide treatment for up to 7 days), over-the-counter agents, analgesic agents, anti-dry eye agents, and agents for the treatment of hypotrichosis. The authority to prescribe a Schedule III, IV, or V controlled substance shall include analgesic agents only in a quantity sufficient to provide treatment for up to 72 hours. The prescription of a Schedule II controlled substance is prohibited, except for Dihydrocodeinone (Hydrocodone) with one or more active, non-narcotic ingredients only in a quantity sufficient to provide treatment for up to 72 hours, and only if such formulations of Dihydrocodeinone are reclassified as Schedule II by federal regulation. The Illinois Optometric Licensing and Disciplinary Board may recommend additional pharmaceutical agents approved by the FDA to the Department of Financial and Professional Regulation, and the Department shall promulgate rules to allow for the prescribing or administering pharmaceutical agents. See 225 ILCS 80/15.1.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Illinois are substantially equivalent to the requirements in Wisconsin. Both Illinois and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to continuing education, Illinois requires licensees to complete 24 hours of continuing education. Optometrists who are certified to use therapeutic ocular pharmaceuticals are required to complete an additional 6 hours of continuing education in the treatment of ocular disease. Illinois's administrative rules relating to the practice are found in Title 68: Professions and Occupations, Chapter VII: Department of Financial and Professional Regulation Part 1320, Optometric Practice Act of 1987.

### **Iowa:**

Under Iowa law, the Board of Optometry Examiners is part of the Department of Public Health. An optometrist licensed by the Board of Optometry Examiners may employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of conditions of the human eye and adnexa, excluding the use of injections other than to counteract an anaphylactic reaction, and may without charge supply any of the above pharmaceuticals to commence a course of therapy. Iowa Code § 154.1 3. and 4.

Optometrists can prescribe oral medications including antibiotics, antivirals, and DMARDs, prescribe Schedule II, III, IV, and V drugs, and prescribe oral steroids (for a maximum of 14 days) without consultation of a physician. The Board of Pharmacy reviews requests for additions to the controlled substances schedules, and the Board's decision will amend Iowa Code section 124.201, subs. 4. 657-10.37, Iowa Admin. Code.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Iowa are substantially similar to the requirements in Wisconsin. Both Iowa and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to continuing education, Iowa and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Iowa requires optometrists who are not certified to use therapeutic pharmaceutical agents to complete 30 hours of continuing education, and optometrists who are certified to use therapeutic pharmaceutical agents to complete 50 hours of continuing education. Iowa's administrative rules relating to the practice of optometry are found in their chapters 179 to 183.

### **Michigan:**

In Michigan, the Board of Optometry requires optometrists to be certified to administer topical ocular diagnostic pharmaceutical agents and to prescribe therapeutic pharmaceutical agents. R 338.315 and R 338.317. The authority to prescribe or administer pharmaceutical agents includes Schedule III, IV, and V drugs and dihydrocodeinone combination drugs. See 333.17401 (f), Michigan Stats. A controlled substances license is required to prescribe controlled substances. A management and emergency plan is also required. See Article 7 of Public Act 3.68 of 1978, as amended.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Michigan are substantially equivalent to the requirements in Wisconsin. Both Michigan and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to continuing education, Michigan and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Michigan requires 40 hours of continuing education. Michigan's administrative rules relating to the practice of Optometry are found in their sections R. 338.211 to 338.279 (General Rules) and R 338.291 (Ethical and Unprofessional Conduct).

### **Minnesota:**

Optometrists may prescribe or administer FDA approved drugs to aid in the diagnosis, cure, mitigation, prevention, treatment, or management of disease, deficiency, deformity, or abnormality of the human eye and adnexa included in the curricula of accredited schools or colleges of optometry, and as limited by Minnesota statute and adopted rules by the Board of Optometry. § 148.56 (a), Minn. Stats. Optometrists may not prescribe or

administer Schedule II and III oral FDA approved drugs and oral steroids; prescribe oral antivirals for more than ten days; or prescribe or administer oral carbonic anhydrase inhibitors for more than seven days. § 148.56 (b), Minn. Stats. The Board of Pharmacy schedules substances. § 152.02, Minn. Stats.

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Minnesota are substantially equivalent to the requirements in Wisconsin. Both states require applicants to be a graduate of an accredited college of optometry and to pass a qualifying examination in order to obtain a license. Both states allow for applicants holding equivalent licensure from another jurisdiction to apply for licensure. In addition, both Minnesota and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination. In reference to experience required in order to obtain a certification to use therapeutic pharmaceutical agents, Minnesota requires 2 years of supervised clinical experience in differential diagnosis of eye disease or disorders as part of optometric training or one year of that experience and ten years of actual clinical experience as a licensed optometrist. Other than experience or training required in conjunction with an initial optometry degree program, Wisconsin does not require an applicant to complete experience in order to obtain a certificate to use therapeutic pharmaceutical agents. In reference to continuing education, Minnesota and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Minnesota requires 40 hours of continuing education. Minnesota's administrative rules relating to the practice of optometry are under their Chapter 6500.

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

Opt 6, relating to the Use of Diagnostic and Therapeutic Pharmaceutical Agents and Removal of Superficial Foreign Bodies From an Eye or From an Appendage to the Eye, was amended in 2007 to implement 2005 Wisconsin Act 297. The legislation shifted to the Optometry Examining Board from the Department of Safety and Professional Services the authority to determine which licensed optometrists may use pharmaceutical agents. The Department is also amending SPS 10 in order to fully enact 2005 Wisconsin Act 297. Staff have opened Opt 6 and SPS 10 concurrently to accurately and consistently implement this legislative shift. Revisions were reviewed by the Optometry Examining Board and DSPS staff to ensure accuracy.

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

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

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

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

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TEXT OF RULE

SECTION 1. Opt 6.01 is amended to read:

**Opt 6.01 Authority.** The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 449.17 ~~and~~ , 449.18, and 961.39, Stats.

SECTION 2. Opt 6.01 (Note) is created to read:

**Note:** To determine which pharmaceutical agents may be used by licensed optometrists, refer to ch. SPS 10, relating to the use of pharmaceutical agents by licensed optometrists.

SECTION 3. Opt 6.02 (1) is renumbered Opt 6.02 (1) (intro.) and amended to read:

**(1)** "Adverse drug reaction" ~~has the meaning given under s. SPS 10.01.~~ means an adverse, physical or psychological reaction experienced by a person resulting from diagnostic or therapeutic pharmaceutical agents administered by an optometrist that occurs within 24 hours after the drug is administered. An adverse drug reaction may be indicated by symptoms that include any of the following:

SECTION 4. Opt 6.02 (1) (a) to (i) are created to read:

- (a) Red eye.
- (b) Painful eye.
- (c) Decrease in vision.

- (d) Pale or red swelling of the periocular or periorbital tissues.
- (e) Nausea.
- (f) Vomiting.
- (g) Fainting.
- (h) Mental confusion.
- (i) Cessation of respiration.

SECTION 5. Opt 6.02 (1m) is repealed.

SECTION 6. Opt 6.02 (1e), (1n), and (1s) are created to read:

**(1e)** "Approved institution" means an institution approved by the board and accredited by a regional or professional accrediting organization which is recognized by the Council for Higher Education Accreditation or its successor or the federal department of education, in accordance with ss. 449.17 (1m) (b) and 449.18 (2) (a) 2., Stats.

**(1n)** "Classroom hour" means a minimum of 50 minutes of lecture, group discussion, or laboratory. "Classroom hour" does not include time spent working in a clinic other than as part of a laboratory directly associated with a course in pharmacology.

**(1s)** "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 a course, such as a continuing education course, that does not lead to a degree in optometry to qualify as part of a course of study in pharmacology, the course must include at least one examination on course content.

SECTION 7. Opt 6.02 (3) is amended to read:

**(3)** "DPA" or "~~diagnostical~~ diagnostic pharmaceutical agent" ~~has the meaning given under s. SPS 10.01.~~ means an agent authorized under s. SPS 10.02.

SECTION 8. Opt 6.02 (4) is repealed.

SECTION 9. Opt 6.02 (6) is amended to read:

**(6)** "TPA" or "therapeutic pharmaceutical agent" ~~has the meaning given under s. SPS 10.01.~~ means an agent authorized under s. SPS 10.03.

SECTION 10. Opt 6.025 and Opt 6.025 (Note) are created to read:

**Opt 6.025 Adverse drug reaction referral plan. (1)** An optometrist who wants to use diagnostic pharmaceutical agents authorized under s. SPS 10.02 or therapeutic pharmaceutical agents authorized under s. SPS 10.03 shall submit an adverse drug

reaction referral plan prior to providing pharmaceutical agents. The plan shall be submitted to the department on an approved form in which the optometrist agrees to do all of the following:

(a) Refer any patient who notifies the optometrist of an adverse drug reaction to appropriate medical specialists or facilities.

(b) Routinely advise all patients to immediately contact the optometrist if the patient experiences adverse reactions.

(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.

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

(4) An optometrist authorized to use therapeutic pharmaceutical agents shall file with the department within 10 working days of its occurrence a report on any adverse drug reaction resulting from the optometrist's administration of the agents. This report shall include all of the following:

(a) The optometrist's name, address, and license number.

(b) The patient's name, address, and age.

(c) The patient's presenting problem, the diagnosis, the agent administered and the method of administration, the reaction, and the subsequent action taken.

**Note:** The TPA Adverse Reaction Report and DPA/TPA Certification Application are available on the department's website at [dps.wi.gov](http://dps.wi.gov), or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112.

SECTION 11. Opt 6.03 and Opt 6.04 are repealed and recreated to read:

**Opt 6.03. Certificate to use diagnostic pharmaceutical agents.** (1) A licensed optometrist who has submitted an adverse drug reaction referral plan in accordance with s. Opt 6.025 is authorized to use diagnostic pharmaceutical agents if any of the following applies:

(a) The board initially issued a license to practice optometry to the optometrist on or after August 1, 2006.

(b) The department issued a certificate to the optometrist under s. 449.17, 2003 Stats.

(c) The board issued a certificate under sub. (2) to an optometrist issued a license to practice optometry before August 1, 2006.

(2) An optometrist licensed prior to August 1, 2006 shall be certified by the board to use diagnostic pharmaceutical agents if all of the following are completed:

(a) The optometrist submits an application to the department.

(b) The optometrist submits satisfactory evidence of 60 classroom hours of a course of study that is in accordance with sub. (3) and that was completed prior to entering the examination required in par. (c).

(c) The optometrist submits satisfactory evidence of passing one of the following:

1. Basic Science: Pharmacology, National Board of Medical Examiners (NBME®).

2. Parts I and II, National Board of Examiners in Optometry administered only after 1986.

3. An exam administered as part of the course of study under par. (b) that, as determined by the board, satisfactorily assesses competency in the subject matter described in sub. (3). The board may require additional evidence to approve the exam.

(3) A satisfactory course of study under par. (2) (b) at an approved institution includes at least 30 classroom hours of a course of study in pharmacology and emphasizes the systemic effects of and reactions to pharmaceutical agents, including the treatment of any adverse reactions that may occur, in accordance with s. 449.17 (1m) (b), Stats.

**Opt 6.04. Certificate to use therapeutic pharmaceutical agents and remove foreign bodies from eyes.** (1) A licensed optometrist who has submitted an adverse drug reaction referral plan in accordance with s. Opt 6.025 is authorized to use therapeutic pharmaceutical agents and remove foreign bodies from an eye or from an appendage to the eye if any of the following applies:

(a) The board initially issued a license to practice optometry to the optometrist on or after August 1, 2006.

(b) The board issued a certificate to the optometrist under s. 449.18, 2003 Stats.

(c) The board issued a certificate under sub. (2) to an optometrist issued a license to practice optometry before August 1, 2006.

(2) An optometrist licensed prior to August 1, 2006 shall be certified by the board to use therapeutic pharmaceutical agents under this section if all of the following are completed:

(a) The optometrist has a certificate to use diagnostic pharmaceutical agents in accordance with s. Opt 6.03.

(b) The optometrist submits an application to the department.

(c) The optometrist has completed all of the following:

1. One hundred classroom hours of study in the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye, on or after January 1, 1987 at an approved institution and achieved a minimum passing score.

2. Passed the Treatment and Management of Ocular Disease, TMOD®, National Board of Examiners in Optometry exam with a minimum score of 75, or a minimum passing score as determined by the board.

(3) An optometrist authorized under this section may not remove a foreign body from an eye or from an appendage to an eye if the foreign body is deeper than Bowman's layer of the cornea or deeper than the conjunctiva, in accordance with s. 449.18 (5), Stats.

SECTION 12. Opt 6.05 is created to read:

**Opt 6.05. Prescribing therapeutic pharmaceutical agents.** (1) 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 may not prescribe or administer a therapeutic pharmaceutical agent which is not authorized under s. SPS 10.03. Approved agents may be used in combination only with other approved agents when appropriate.

(2) Prior to prescribing beta blockers or carbonic anhydrase inhibitors for the treatment of glaucoma, any oral antiviral, or any other therapeutic pharmaceutical agent under s. SPS 10.03 that may have significant systemic adverse drug reactions, the optometrist shall inform the patient's primary physician of the treatment plan 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.

(3) 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 any emergency procedures as are directed by that physician.

SECTION 13. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)  
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### Opt 6 Rule Revision

Current Rule Language	Revision	Comments
<p><b>Opt 6.01 Authority.</b> The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 449.17 and 449.18, Stats.</p>	<p>Amended to include s. 961.39, Stats.</p> <p>A note is added to cross-reference SPS 10, similar to the note in SPS 10 referencing Opt 6.</p>	<p>Section 961.39, Stats., is the section of the Uniform Controlled Substances Act which applies to optometrists.</p>
<p><b>Opt 6.02 (1)</b> “Adverse drug reaction” has the meaning given under s. SPS 10.01.</p>	<p>This definition is amended to incorporate the content of SPS 10.01 (1).</p>	<p>This has been amended to incorporate drafting standards: replaced “which” with “that,” replaced “but are not limited to” with “any of,” and the list of symptoms is itemized as (a) through (i).</p>
<p><b>Opt 6.02 (1m)</b> “Adverse drug reaction referral plan” has the meaning given under s. SPS 10.01.</p>	<p>This definition is repealed, and the content is incorporated into the new Opt 6.025.</p>	<p>Due to the substantive nature of this definition in SPS 10.01 (2), drafting standards require a new section. The new Opt 6.025 includes this definition and sections from the old SPS 10.02 (2).</p> <p>Some nonsubstantive changes were made to add “any of the following” twice, itemize elements in Opt 6.025 (4), and change the tense of a few sentences from plural to singular.</p>
	<p>Created “Approved institution” definition.</p>	<p>The definition is taken from ss. 449.17 and 449.18, Stats.</p> <p>Did not carry over the Note since the Board is no longer conducting the annual review of schools.</p>

### Opt 6 Rule Revision

Current Rule Language	Revision	Comments
	Created “Classroom hour” definition, adapted from SPS 10.01 (4)	The definition was amended to remove “associated with a course in pharmacology” to make the definition more useful in the chapter. Reworded the definition to be consistent with the definition in the proposed Opt 8.
	Created “Course of study in pharmacology” definition, taken from SPS 10.01 (5)	This definition was kept intact, with a change in tense from plural to singular in the second sentence and replaced “which” with “that.”
<b>Opt 6.02 (3)</b> “DPA” or “diagnostical pharmaceutical agent” has the meaning given under s. SPS 10.01.	Amended to correct the cross-reference to reflect the revision of SPS 10.	
<b>Opt 6.02 (4)</b> “100 hours of approved study” means a course of study offered on or after January 1, 1987 by an institution approved by the board in accordance with s. 449.18, Stats.	Removed.	Since this definition was only used once in the chapter, the content was directly incorporated into Opt 6.04 (2) (c) 1.
<b>Opt 6.02 (6)</b> “TPA” or “therapeutic pharmaceutical agent” has the meaning given under s. SPS 10.01.	Amended to correct the cross-reference to reflect the revision of SPS 10.	
	Created Opt 6.025 and Note, which incorporates the old Opt 6.02 (1m) and SPS 10.02 (2).	Some drafting changes to: itemize the list in (4), addition of “any of the following,” and changing the plural tense to singular.
<p><b>Opt 6.03 Use of diagnostic pharmaceutical agents.</b></p> <p><b>(1) APPLICABILITY.</b> An optometrist may use topical ocular diagnostic pharmaceutical agents only if the optometrist establishes an adverse reaction plan, as provided under sub. (3), and if one of the following applies:</p> <p><b>(a)</b> The board initially issues a license to practice optometry to the optometrist on or after August 1, 2006.</p> <p><b>(b)</b> The department issued a certificate to the optometrist under s. 449.17, 2003 Stats.</p> <p><b>(c)</b> The board issues a certificate under sub. (2) to an optometrist issued a license to practice optometry before August 1, 2006.</p>	This section is repealed and recreated.	<p>Drafting standards recommend against repeating statutory language in administrative rules.</p> <p>Thus, this section is recreated to provide specific procedure to apply for DPA certificates.</p>

### Opt 6 Rule Revision

Current Rule Language	Revision	Comments
<p><b>(2)</b> LICENSES ISSUED BEFORE AUGUST 1, 2006.</p> <p><b>(a)</b> The board shall certify an optometrist to use topical ocular diagnostic pharmaceutical agents if the optometrist was issued a license to practice optometry before August 1, 2006, and the optometrist satisfies the education requirements under par. (b) and successfully completes the examination required under par. (c).</p> <p><b>(b)</b> In addition to the requirements under par. (c), the board may issue certificates under par. (a) only to optometrists who successfully complete 60 classroom hours of study in general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents. At least 30 of the 60 classroom hours of study shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to pharmaceutical agents, including the treatment of any adverse reactions that may occur. The course of study shall be offered by an institution approved by the board and accredited by a regional or professional accrediting organization which is recognized by the Council for Higher Education Accreditation or its successor or the federal department of education, and shall be completed prior to entering the examination required under par. (c).</p> <p><b>(c)</b> The board may issue certificates under par. (a) only to optometrists who successfully complete an examination approved or conducted by the board on the subject of general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents. The examination shall be prepared or approved by the board. The board shall periodically review the validity, reliability, and appropriateness of the examination. The board may do any of the following:</p> <ol style="list-style-type: none"> <li><b>1.</b> Prepare, administer, and grade the examination.</li> <li><b>2.</b> Approve in whole or in part an examination prepared, administered, and graded by the national board of examiners in optometry or another examination provider approved by the board.</li> <li><b>3.</b> Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry or another examination provider approved by the board.</li> </ol>		

### Opt 6 Rule Revision

Current Rule Language	Revision	Comments
<p>(d) No fee may be charged for a certificate issued under this subsection. A certificate issued under this subsection or s. 449.17, 2003 Stats., remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the board.</p> <p>(3) ADVERSE REACTION PLAN. Topical ocular diagnostic pharmaceutical agents may be used only by optometrists who have established a plan for the referral of patients who experience adverse reactions from the application of those agents to appropriate medical services.</p> <p>(4) USE OF DIAGNOSTIC PHARMACEUTICAL AGENTS. An optometrist who is allowed under sub. (1) to use diagnostic pharmaceutical agents may not use any pharmaceutical agent that he or she is prohibited from using under ch. SPS 10.</p>		
<p><b>Opt 6.04 Use of therapeutic pharmaceutical agents and removal of foreign bodies from eyes.</b></p> <p>(1) APPLICABILITY. No optometrist may use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye unless one of the following applies:</p> <p>(a) The board initially issues a license to practice optometry to the optometrist on or after August 1, 2006.</p> <p>(b) The board issued a certificate to the optometrist under s. 449.18, 2003 Stats.</p> <p>(c) The board issues a certificate under sub. (2) to an optometrist issued a license to practice optometry before August 1, 2006.</p> <p>(2) LICENSES ISSUED BEFORE AUGUST 1, 2006.</p> <p>(a) The board shall certify an optometrist to use therapeutic pharmaceutical agents and remove foreign bodies from an eye or from an appendage to the eye if the optometrist was issued a license to practice optometry before August 1, 2006, and the optometrist satisfies all of the following:</p> <ol style="list-style-type: none"> <li>1. The optometrist is certified under s. 449.17, 2003 Stats., or s. 449.17 (1m) (a), Stats., to use topical ocular diagnostic pharmaceutical agents.</li> <li>2. The optometrist has successfully completed 100 hours of approved study in the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye. The course of study shall be offered by an institution approved by the board and accredited by a regional or professional accrediting organization that is recognized by the</li> </ol>	<p>This section is repealed and recreated.</p>	<p>Drafting standards recommend against repeating statutory language in administrative rules.</p> <p>Thus, this section is recreated to provide specific procedure to apply for TPA certificates.</p>

### Opt 6 Rule Revision

Current Rule Language	Revision	Comments
<p>Council for Higher Education Accreditation or its successor or the federal department of education.</p> <p><b>3.</b> The optometrist has passed an examination conducted or approved by the board. The board shall periodically review the validity, reliability, and appropriateness of the examination that it conducts or approves under this subdivision.</p> <p><b>(b)</b> No fee may be charged for the issuance of a certificate under par. (a).</p> <p><b>(c)</b> A certificate issued under par. (a) or s. 449.18, 2003 Stats., remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the board.</p> <p><b>(3) REMOVALS FROM EYES.</b> An optometrist who is allowed under sub. (1) to remove a foreign body from an eye or from an appendage to the eye may not remove a foreign body from an eye or from an appendage to the eye if the foreign body is deeper than Bowman's layer of the cornea or deeper than the conjunctiva.</p> <p><b>(4) USE OF THERAPEUTIC PHARMACEUTICAL AGENTS.</b></p> <p><b>(a)</b> An optometrist who is allowed under sub. (1) to use therapeutic pharmaceutical agents may not do any of the following:</p> <ol style="list-style-type: none"> <li><b>1.</b> Prescribe or administer any therapeutic pharmaceutical agent that he or she is prohibited from prescribing or administering under ch. SPS 10.</li> <li><b>2.</b> Dispense, as defined in s. 450.01 (7), Stats., other than by prescribing or administering. This subdivision does not prohibit the optometrist from providing a complimentary sample of a therapeutic pharmaceutical agent to a patient to whom the optometrist has rendered therapeutic care.</li> </ol> <p><b>(b)</b> An optometrist who is allowed under sub. (1) to use therapeutic pharmaceutical agents shall include with each prescription order all of the following:</p> <ol style="list-style-type: none"> <li><b>1.</b> A statement that he or she is allowed under sub. (1) to use therapeutic pharmaceutical agents.</li> <li><b>2.</b> The indicated use of the therapeutic pharmaceutical agent so prescribed.</li> </ol>		
	<p>Created Opt 6.05, which is taken from SPS 10.02 (1) (b).</p>	<p>Drafting changes to: correct references, remove “in the future” phrase, and replace “might prove to” with “that may.”</p>

STATE OF WISCONSIN  
OPTOMETRY EXAMINING BOARD

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

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PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 4.01 (Note), Opt 4.02 (1) (c) (Note 1) and (Note 2), Opt 4.02 (1) (e) (Note), and Opt 4.03 (Note); amend Opt 4.01 (1), Opt 4.01 (2), Opt 4.01 (6), Opt 4.02 (2), and Opt 4.03 (2) (a) and (b); repeal and recreate Opt 4.02 (1) (d) and (Note); and create Opt 4.02 (3).

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** s. 449.055, Stats.

**Statutory authority:** ss. 15.08 (5) (b), 227.11 (2) (b), Stats.

**Explanation of agency authority:**

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

Section 227.11 (2) (b), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.”

**Related statute or rule:**

s. 449.04, Stats., and Opt 3, relating to Licensure

**Plain language analysis:**

In order to clarify licensure by endorsement, this rule revision:

- Inserts cross-references into s. Opt 4.02 for relevant statutes to implement 2017 Act 278.
- Removes unnecessary notes.

- Simplifies the program approval process. The Board recognizes that programs that are accredited by the Accreditation Council on Optometric Education are approved for Wisconsin licensees. In order to prevent delays in the process of recognizing accredited programs, the Board is amending chapter Opt 4 to conform with chapter Opt 3 and remove the annual review of accredited programs.

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

None.

**Comparison with rules in adjacent states:**

**Illinois:**

For licensure by endorsement, an applicant must submit proof of graduation from an accredited program, or a program recommended by the Illinois Optometric Licensing and Disciplinary Board to the Department of Financial and Professional Regulation-Division of Professional Regulation for approval. The applicant may also be required to submit proof of five or ten years of practice, depending on when they graduated; education or practice related to pharmaceutical agents, depending on when they graduated; and proof of passage of Parts I, II, and III, including the TMOD, of the National Board of Examiners in Optometry exam. The Board may waive examination requirements after consideration of additional evidence of education, training, and experience.

**Iowa:**

For licensure by endorsement, an applicant must have been licensed in another jurisdiction for three years. This requirement may be waived under specific circumstances. The application must include a transcript from an accredited program, successful completion of the National Board of Examiners in Optometry exam in effect at the time of initial licensure, and verification from other jurisdictions of any disciplinary action taken against the licensee. Additionally, the application must provide information of any civil litigation relating to the practice of optometry. If an applicant is certified by the Council on Endorsed Licensure Mobility for Optometrists (CELMO), then the applicant has fulfilled the education requirement. If an applicant is not CELMO certified, the Board will review the transcript to determine if the education meets specific requirements as outlined in rule.

**Michigan:**

For licensure by endorsement, an applicant must have graduated from a program accredited by the Accreditation Council on Optometric Education and successfully completed an examination that assesses the diagnosis, treatment, and management of ocular diseases with pharmaceutical agents. The applicant must submit proof of license in another jurisdiction with any disciplinary action imposed or pending; achieve a

minimum score of 75 on Michigan's laws and rules related to optometry; and certification to use therapeutic pharmaceutical agents.

**Minnesota:**

For licensure by endorsement, an applicant must have been licensed in another jurisdiction for three years. The applicant must have graduated from a board approved school or college of optometry, pass the required exams of the state where licensed, successfully pass an exam on Minnesota laws, be in good standing both with continuing education requirements and other license requirements. Additionally, the applicant must meet the requirements to prescribe legend drugs, including having completed education, experience, and exam requirements, in accordance with s. 148.575, MN Stats. The applicant may use CELMO documentation to verify these requirements.

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

The Board reviewed their rules to ensure statutory compliance and that the rules are consistent with current practices.

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

**Fiscal Estimate and Economic Impact Analysis:**

The department is soliciting information and advice from businesses, local government units and individuals in order to prepare the Economic Impact Analysis.

**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](mailto: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, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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

Comments may be submitted to Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to

DSPSAdminRules@wisconsin.gov. Comments must be received on or before \* to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Opt 4.01 (1), (2), and (6) are amended to read:

**Opt 4.01 (1)** Has graduated from ~~an accredited school or college of optometry approved and recognized by the board~~ a program accredited by the Accreditation Council on Optometric Education.

**Opt 4.01 (2)** Has passed the examination of the ~~national board~~ National Board of examiners Examiners in optometry Optometry as required under s. Opt 4.03 (2).

**Opt 4.01 (6)** ~~Is not aware of~~ Does not have any pending complaints against the applicant or investigations of the applicant that relate to the practice of optometry.

SECTION 2. Opt 4.01 (Note) is repealed.

SECTION 3. Opt 4.02 (1) (c) (Note 1) and (Note 2) are repealed.

SECTION 4. Opt 4.02 (1) (d) and (Note) are repealed and recreated to read:

**Opt 4.02 (d)** A certified transcript of the coursework completed by the applicant submitted directly to the board from a program accredited by the Accreditation Council on Optometric Education.

**Note:** Application forms are available on the department's website at [dspd.wi.gov](http://dspd.wi.gov), or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112. An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 5. Opt 4.02 (1) (e) (Note) is repealed.

SECTION 6. Opt 4.02 (2) is amended to read:

**Opt 4.02 (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, subject to ss. 111.321, 111.322, and 111.335, Stats.

SECTION 7. Opt 4.02 (3) is created to read:

**Opt 4.02 (3)** An application may not be considered by the board until the application is complete, including the requisite verification of licensure from other state licensing agencies in accordance with subsection (1) (e), verification of examination scores from the National Board of Examiners in Optometry in accordance with s. Opt 4.03, or any other required information under this chapter.

SECTION 8. Opt 4.03 (2) (a) and (b) are amended to read:

**Opt 4.03 (2) (a)** Parts I and II of the ~~national board examination~~ National Board of Examiners in Optometry, 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~~ National Board of Examiners in Optometry, if the applicant has engaged in the practice of optometry for less than 5 years prior to January 1, 1996, or if the applicant graduated from ~~an approved college of optometry~~ a program accredited by the Accreditation Council on Optometric Education after December 1, 1995.

SECTION 9. Opt 4.03 (Note) is repealed.

SECTION 10. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)  
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## Chapter Opt 5

## UNPROFESSIONAL CONDUCT

Opt 5.01	Intent.
Opt 5.02	Definitions.
Opt 5.03	Unprofessional Conduct.
Opt 5.045	Informed Consent.

Opt 5.10	Patient records.
Opt 5.11	Verification.
Opt 5.14	Disclosure.

**History:** Chapter Opt 7 as it existed on January 31, 1971 was repealed, and a new chapter Opt 7 was created. Register, January, 1971, No. 181, effective 2-1-71; chapter Opt 6, Issuance of License as it existed on August 31, 1985 was repealed and chapter Opt 7 was repealed and recreated as chapter Opt 6, Register, August, 1985, No. 356, effective 9-1-85; Chapter Opt 6 was renumbered Chapter Opt 5, effective April 1, 1989.

**Opt 5.01 Intent.** The intent of the board in adopting the rules in this chapter is to establish minimum standards of conduct for optometrist and to specify reasons the board may reprimand, deny, limit, suspend, or revoke any license or certificate of registration.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; r. (1), renum. (2) to be Opt 5.01, Register, September, 1997, No. 501, eff. 10-1-97; CR 15-078; am. Register December 2016 No. 732, eff. 1-1-17.

**Opt 5.02 Definitions.** As used in this chapter:

(1) "Contact lens prescription" means a prescription order for a contact lens that includes all of the following:

- The specifications needed to adequately duplicate a contact lens.
- The name, signature and license number of the prescribing optometrist.
- The date of the prescription.
- The date of expiration.
- Provisions for a reasonable number of refills.

(2) "Extended-wear contact lenses" means contact lenses which have received federal food and drug administration approval for marketing for extended wear and are prescribed for use on an extended wear or overnight schedule.

**Note:** Extended-wear contact lenses require premarket approval under section 515 of the Federal Food, Drug and Cosmetic Act, 21 USC 360e (1985). A copy of this provision is available at the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) "Grossly incompetent" means the failure of a licensee or certificate holder to exercise that degree of care and skill which is exercised by the average practitioner who holds the same type of license or certificate, acting in the same or similar circumstances. Grossly incompetent specifically includes the failure to have in good working order adequate equipment and instruments as are necessary to perform the minimum eye examination.

(4) "Lens prescription" means a written or electronic order that contains the specifications for ophthalmic materials for a particular patient for the purpose of treating the refractive or functional abilities of the visual system or the enhancement of visual performance.

(5) "Limited eye screening" means an event where no spectacle prescription, contact lens prescription or treatment or management plan is generated.

(6) "Signature" means a handwritten mark or an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. cr. (1), eff. 12-17-85; renum. (1) to (3) to be (2) to (4), cr. (1), Register, June, 1986, No. 366, eff. 7-1-86; renum. Register, March, 1989, No. 399, eff. 4-1-89; renum. (1), (3) and (4) to be Opt 1.02 (1), (4) and (5), (2) to be (1), cr. (2), Register, June, 1990, No. 414, eff. 7-1-90; cr. (intro.) and (1), renum. (1) to be (1m) and am., Register, September, 1997, No. 501, eff. 10-1-97; CR 01-060; renum (1), (1m) and (2) to be (2) to (4) and am.

(4), cr. (1), Register December 2001 No. 552, eff. 1-1-02; CR 05-036; cr. (5) Register January 2006 No. 601, eff. 2-1-06; CR 06-116; cr. (6) Register May 2007 No. 617, eff. 6-1-07; CR 13-017; am. (4) Register November 2013 No. 695, eff. 12-1-13; CR 15-078; am. (3) Register December 2016 No. 732, eff. 1-1-17.

**Opt 5.03 Unprofessional Conduct.** Unprofessional conduct by an optometrist includes any of the following:

(1) Engaging in any practice which constitutes a danger to health, welfare, or safety of a patient or the public.

(2) Engaging in conduct in the practice of optometry which evidences a lack of knowledge or ability to apply professional principles or skills.

(3) Practicing or attempting to practice beyond the scope of practice.

(4) Practicing in a manner which demonstrates the optometrist is grossly incompetent.

(5) Obtaining a license through fraud.

(6) Obtaining or attempting to obtain anything of value by fraudulent representation in the practice of optometry.

(7) Practicing or attempting to practice while the ability to perform services is impaired by physical, mental or emotional disorder, drugs, or alcohol.

(8) Practicing while knowingly having an infectious or contagious disease.

(9) Any conduct of a character likely to deceive or defraud the public.

(10) Loaning of an optometric license or certificate to anyone.

(11) Splitting or dividing any fee for optometric service with any person, except an associate licensed optometrist.

(12) Using the title "Doctor", or the initials "Dr.", in printed form unless the optometrist has been granted the title of doctor of optometry by an optometric college and unless the optometrist indicates in printing in the same communication that he or she is an optometrist.

(13) Failing to notify the board of any change in address or change in location of practice within 30 days.

(14) Failing to furnish to the board upon request information concerning the mode and location of practice.

(15) Failing to permit the board or a board representative to inspect his or her office, equipment and records during regular office hours.

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

(17) (a) Except as provided in par. (b), failing to perform the minimum eye examination at any of the following:

- The patient's initial examination with the optometrist.
- Any examination conducted more than one year after a minimum eye examination.
- An examination for the fitting of contact lenses as defined in s. Opt 1.02 (4).

(b) It shall not be unprofessional conduct to fail to perform the minimum eye examination in any of the following instances:

1. Where the patient refuses or is unable to participate in any procedure of the minimum eye examination.

2. At an examination for the diagnosis and management of eye disease or for the removal of superficial foreign bodies from an eye or from an appendage to the eye.

3. Where written verification of all examination findings has been received from a licensed optometrist or an ophthalmologist, stating that a minimum eye examination, as defined in s. Opt 1.02 (5), has been performed for the patient within the 6 month period immediately preceding the date of the patient's visit.

4. Where a limited eye screening is performed.

**(18)** Advertising in a manner that is false, fraudulent, misleading, or deceptive including any of the following:

(a) Statements creating false, fraudulent, or unjustified expectations of favorable results including advertising professional superiority or the performance of professional services in a superior manner.

(b) Making comparisons with other optometrists which are false, fraudulent, misleading, or deceptive.

(c) Statements containing representations that would be likely to cause a reasonable person to misunderstand or be deceived.

(d) Seeking to obtain patients by advertising or other forms of solicitation in a manner that is false, fraudulent, misleading, or deceptive.

**(19)** Delegating the prescribing of pharmaceutical agents or the removal of foreign bodies from an eye or from an appendage to the eye, to an unlicensed person.

**(20)** Delegating the performance of tasks related to the practice of optometry to an unlicensed person that exceeds that person's competence, education, training, or experience.

**(21)** Failing to exercise supervision over an unlicensed person, as provided under s. Opt 1.03.

**(22)** Failing to record and include in each patient's record the information required under s. Opt 5.10.

**(23)** Failing to provide a written disclosure to any patient receiving extended-wear contact lenses as required under s. Opt 5.14.

**(24)** Failing to release, at no cost to the patient, a copy of the patient's spectacle lens prescription or contact lens prescription following release of the patient from contact lens fitting and initial follow-up care.

**Note:** Federal Trade Commission Rules 16 CFR 315.3 and CFR 456.2 require the release of spectacle and contact lens prescriptions.

**(25)** Failing to release a patient's records in accordance with s. 146.83, Stats.

**(26)** Failing to obtain informed consent under s. Opt 5.045.

**(27)** Violating any provision of ch. 449, Stats., or any rule of the board.

**History:** CR 15-078: cr. Register December 2016 No. 732, eff. 1-1-17.

**Opt 5.045 Informed Consent.** (1) Any optometrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable optometrist standard is the standard for informing a patient under this section. The reasonable optometrist standard requires disclosure only of information that a reasonable optometrist would know and disclose under the circumstances.

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

(a) Detailed technical information that in all probability a patient would not understand.

(b) Risks apparent or known to the patient.

(c) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(d) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(e) Information in cases where the patient is incapable of consenting.

(f) Information about alternate modes of treatment for any condition the optometrist has not included in his or her diagnosis at the time the optometrist informs the patient.

**History:** CR 15-078: cr. Register December 2016 No. 732, eff. 1-1-17.

**Opt 5.10 Patient records.** (1) An optometrist shall record and include in each patient's record all of the following information:

(a) Name and date of birth of the patient.

(b) Date of examination and examination findings, including a clear and legible record of the tests performed, the results obtained, the prescription ordered and the patient's far and near visual acuity obtained with the prescription ordered.

(c) Date of the prescription.

(d) Lens verification of lenses dispensed, including the date of verification and identification of the person verifying the lenses.

(e) Name, signature and license number of the examining optometrist.

(f) Documentation that alternate modes of treatment have been communicated to the patient and that informed consent has been obtained from the patient.

(2) Patient records shall be maintained for at least 6 years.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (3), cr. (4), Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (intro.) to (d), Register, September, 1997, No. 501, eff. 10-1-97; CR 01-060: am. (3), Register December 2001 No. 552, eff. 1-1-02; CR 15-078: am. (1) (intro.), cr. (1) (f), am. (2), r. (3), (4) Register December 2016 No. 732, eff. 1-1-17.

**Opt 5.11 Verification.** (2) It shall be unprofessional conduct for an optometrist to deliver ophthalmic lenses if the lenses do not meet requirements set forth in Table 1, ANSI Z80.1-1995, requirements for first-quality prescription ophthalmic lenses, approved January 3, 1995, by the American national standards institute, inc.

**Note:** The standard incorporated above as reference may be obtained from the Standards Institute located at 11 West 42nd Street, New York, NY 10036. A copy of the Standard is on file at the board office.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (2), Register, September, 1997, No. 501, eff. 10-1-97; CR 15-078: r. (1) Register December 2016 No. 732, eff. 1-1-17.

**Opt 5.14 Disclosure.** (1) An optometrist shall provide to any patient receiving extended-wear contact lenses a separate, written disclosure in not less than 12 point type, which includes the following language: "As with any drug or device, the use of extended-wear contact lenses is not without risk. A small, but significant, percentage of individuals wearing extended-wear lenses develop potentially serious complications which can lead to permanent eye damage. If you have any unexplained eye pain or redness, watering of the eye or discharge, cloudy or foggy vision, decrease in vision or sensitivity to light, remove your lenses and make arrangements to see your eye-care professional before wearing your lenses again. Regular inspection by a licensed eye-care professional is important to evaluate your eyes' tolerance of extended wear lenses."

(2) The disclosure shall in addition indicate that a regular schedule of cleaning and disinfection is necessary and indicate a recommended schedule of follow-up appointments for evaluation of adaptation to contact lens wear.

(3) Information about replacement lenses, service agreements, warranties, refunds and other business items should not be part of the required disclosure. Instructions for proper lens care and recommended solutions should also be distributed separately.

(4) The disclosure shall be signed by the patient prior to the patient's receipt of the lenses. If the patient is a minor or incompetent, the patient's parent or legal guardian shall sign the disclosure. The patient or the patient's parent or legal guardian, if the patient

is a minor or incompetent, shall be given a copy of the disclosure, and a signed copy of the disclosure shall be placed in the patient record of the individual for whom the lenses are dispensed.

**(5)** An optometrist may dispense replacement extended-wear lenses without providing the written disclosure required in sub. (1), if the patient for whom the lenses are dispensed already has a signed disclosure form in his or her patient file.

**History:** Emerg. cr. eff. 12-17-85; cr. Register, June, 1986, No. 366, eff. 7-1-86; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (4), Register, September, 1997, No. 501, eff. 10-1-97; **CR 15-078: am. (1) Register December 2016 No. 732, eff. 1-1-17.**

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

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b> Division of Policy Development Staff		<b>2) Date When Request Submitted:</b> 1/8/2019 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
<b>3) Name of Board, Committee, Council, Sections:</b> All Boards, Committees, Councils and Sections			
<b>4) Meeting Date:</b> 1 <sup>st</sup> Available Date	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Board Review of the Wisconsin Occupational Licensing Study Legislative Report	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	<b>8) Is an appearance before the Board being scheduled?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b> N/A	
<b>10) Describe the issue and action that should be addressed:</b> Board discussion.			
<b>11) Authorization</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)			
Date			
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



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# **Wisconsin Occupational Licensing Study**

## **Legislative Report**

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**Submitted by:**  
**Department of Safety and Professional Services**

**December 2018**

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December 28, 2018

The Honorable Scott Walker  
Wisconsin Governor  
115 East Capitol  
PO Box 7863  
Madison, WI 53707

Jeff Renk, Senate Chief Clerk  
Wisconsin State Legislature  
State Capitol, Room B20 Southeast  
PO Box 7882  
Madison, WI 53707

Patrick E. Fuller, Assembly Chief Clerk  
Wisconsin State Legislature  
17 West Main Street, Room 401  
PO Box 8952  
Madison, WI 53708

Dear Governor Walker and Chief Clerks Renk and Fuller:

The Wisconsin Department of Safety and Professional Services (DSPS) is charged with overseeing and regulating over 240 different types of credentials and the examining boards, affiliated boards, and councils that are required by Wisconsin State Statutes.

I have had the pleasure of leading this great agency since February 2017, and I am pleased to provide to Governor Scott Walker and the Wisconsin State Legislature a comprehensive report of our analysis of the occupational licenses regulated in Wisconsin.

DSPS was charged in 2017 Wis. Act 59 to complete a comprehensive review of Wisconsin's credentials and provide recommendations based on a variety of criteria by December 31, 2018.

I would like to thank the staff at the DSPS who have contributed countless hours to researching and extrapolating data related to not only Wisconsin's credentials, but those occupations licensed in other states. I would also like to thank the staff and leadership of those Wisconsin state agencies who contributed to the report research and data related to the occupations they credential.

Thank you,

Laura E. Gutiérrez  
Secretary  
Wisconsin Department of Safety and Professional Services

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## II. Introduction

### A. Requirements of 2017 Wisconsin Act 59

Wisconsin's 2017–19 biennial state budget, 2017 Wisconsin Act 59, required the Department of Safety and Professional Services (DSPS) to study occupational licenses and submit a report of findings to the Governor and Legislature by December 31, 2018.

The Act defines occupational license as:

(a) A license, permit, certification, registration, or other approval granted under section 167.10 (6m) or chapters 101, 145, or 440 to 480 of the statutes. (These statutes relate to building safety, plumbing, fire protection, fireworks, and professional occupations under DSPS, including the occupations regulated by the boards attached to DSPS.); or

(b) A license, permit, certification, registration, or other approval not included under par. (a) if granted to a person by the state in order that the person may engage in a profession, occupation, or trade in Wisconsin, or in order that the person may use one or more titles in association with his or her profession, occupation, or trade.

Pursuant to section 9139 (17w) of 2017 Wisconsin Act 59, the report is to include recommendations for the elimination of occupational licenses based on the following:

- 1) An evaluation of whether the unregulated practice of the profession, occupation, or trade can clearly harm or endanger the health, safety, or welfare of the public, and whether the potential for the harm is recognizable and not remote or speculative;
- 2) An evaluation of whether the public reasonably benefits from the occupational license requirement;
- 3) An evaluation of whether the public can be effectively protected by any means other than requiring an occupational license;
- 4) An analysis of whether licensure requirements for the regulated profession, occupation, or trade exist in other states;
- 5) An estimate of the number of individuals or entities that are affected by the occupational license requirement;
- 6) An estimate of the total financial burden imposed on individuals or entities as a result of the occupational licensure requirement, including education or training costs, examination fees, private credential fees, occupational license fees imposed by the state, and other costs individuals or entities incur in order to obtain the required occupational license;
- 7) Any statement or analysis provided by the agency or board administering the occupational license; and
- 8) An evaluation of the tangible or intangible barriers people may face in obtaining an occupational license.

## B. About the Report

This report consists of findings and recommendations from a statewide occupational licensure study that was conducted by DSPS. The purpose of the study was to offer recommendations to the legislature based on the requirements of 2017 Wisconsin Act 59. This report includes data and information from DSPS and other state agencies and boards with responsibility for regulating occupational licenses issued by the State of Wisconsin.

Pursuant to 2017 Wisconsin Act 59, DSPS was directed to provide recommendations for the elimination of occupational licenses based on established criteria set forth in the legislation. This report includes recommendations for the elimination and reform of 28 occupational licenses. It is recognized that any change to state law would be accomplished through the legislative process, which would include an opportunity for stakeholders and the public to provide input and comments at public hearings.

Wisconsin issues four different types of credentials, which are: *licenses, certificates, registrations, and permits*. All types collectively are commonly referred to as *credentials*. For the purposes of this report, the various types are generically referred to as a *license*, unless otherwise specified.

In addition, inaccuracy and misinterpretation are often found in the use of the terms *license, certification, registration, and permit*. Unfortunately, these terms are sometimes used interchangeably, resulting in confusion. Often what appear to be occupational licenses are actually business licenses. Occupational licenses are issued to individuals giving them the right to practice, whereas business licenses are issued to companies.<sup>7</sup>

This report only focuses on individual occupational licenses that fall under the definition of *occupational license* pursuant to 2017 Wisconsin Act 59. This report does not include entity, facility or business-related licenses, or other non-occupational type permits issued by the state of Wisconsin. While there are several state agencies that issue permits and other types of entity or business type licenses, only the agencies and the occupational licenses they administer are included in this report. Additionally, this report does not include licenses, certifications, permits, or registrations issued by local municipalities, counties, professional or trade organizations, or by the federal government.

The data presented in this report represents best efforts in the collection of data and information. Not all state regulatory agencies provided DSPS with comparative data for all 50 states as requested. Therefore, only the data that was made available is included in this report. Where available, comparable data was searched in all 50 states, including Washington, D.C., which is counted as a state for the purposes of this report. Due to a lack of available data, the report may exclude Washington, D.C. for some occupations.

In order to fill gaps with the lack of available data, data collectors researched information from news articles, trade and professional organizations, state and national research organizations, and other reputable sources. Data collectors found that occupational licensing information was difficult to come by for many states and a searchable database in a single location was an even rarer find. While there are some state and national databases that are comprehensive, there were several

searches that yielded limited or no useful information or resulted in outdated or unreliable data. Additionally, there appeared to be conflicts between many of the national databases relating to state comparative data, either due to the everchanging reforms or the ongoing licensing of new occupations. Therefore, confirming the validity or relying on data from these other out-of-state sources proved to be challenging.

Some states allow public access to a comprehensive occupational licensing directory that includes information such as job descriptions, licensing requirements, appropriate regulatory agency and contact information, wage data, number of active licensees, and authorizing statutes. However, this information was a rarity rather than the norm. In most states, occupational licensing information was contained over different web pages in different locations without links to connect these resources resulting in challenges to find similar occupational titles. Even in cases where the titles were similar in nature, the requirements varied vastly.

Some states defined occupational categories more broadly than others. For example, while one state may require licenses for *contractors* (of all kinds), others may require licenses for several specializations of contractors. Wisconsin issues licenses for seven classes of blasters, which determines which duties may be conducted, while several states issue only one blaster category or may have an “umbrella” licensure type. Therefore, this report may contain limited comparative data for some occupations. In other cases, similar occupation types were combined to form more general occupational licensing categories.

The occupational licensing data contained in this report is quantitative, not qualitative. The criteria used by data collectors was to determine whether or not a state requires a license for a comparable occupation. Although an attempt was made to compare other licensing requirements (fees, initial and continuing educational requirements, reciprocity, etc.) from one state to another, the information was not always available for all licensure types and thus is not included in this report.

Additionally, this report may also reflect an underrepresentation (undercount) of a license’s regulation in another state due to the difference in the state’s definition of the occupation. This study analyzed licensing requirements at the state level only. There are numerous other requirements at the local and federal levels in most states, which may also attribute to the inconsistencies between various databases and to the number of licensed occupations that may appear to be undercounted.

Lastly, governments across the country are continuously licensing more and new occupations. While it is rare that states abolish licensing requirements, there are several states that are currently undergoing occupational licensing reform. Because of this, state comparative data contained in this report may not reflect the current licensure status in that state.

### C. About the Statewide Occupational Licensing Study

To meet the requirements of 2017 Wisconsin Act 59, DSPS conducted a statewide study to determine which occupational licenses are needed to protect the public and explore areas where less restrictive alternatives may be appropriate. To assist with the collection of data, a 30-question survey was disseminated in early 2018 to all 35 state agencies, as shown in Table 1. Each agency was tasked with consulting their legal counsel to determine if their agency regulates licenses that fall under the *occupational license* definition pursuant to 2017 Wisconsin Act 59.

Of the 35 state agencies, responses revealed that 13 agencies regulate at least one license type. Of the 13 regulatory agencies, 11 agencies submitted data requested in the survey. Following an analysis of the submitted data, some license types were eliminated if it was determined that the license or permit was a business or firm and not related to an occupational license held by an individual. Therefore, this report contains an evaluation of the information supplied by 10 state regulatory agencies.

State agencies with regulatory responsibilities were asked to gather information relating to complaints and disciplinary data, educational requirements, fees, and other related costs, how the general public benefits from the regulation of that occupation, identify barriers or burdens associated with each of the regulated occupations, and research existing regulatory requirements in other states.

Lastly, agencies were asked to provide a summarizing statement to attest that the current level of governance was appropriate for each license type, if the license should be eliminated, or if a less restrictive or alternative reform should be considered while still ensuring public safety and consumer protection. Agency recommendations are included in this report.

**Table 1: List of Wisconsin agencies surveyed for occupational licensing study.**

State Agency	Regulates Occupational Licenses?
Administration, Department of	No
Agriculture, Trade and Consumer Protection, Dept. of	Yes
Children and Families, Department of	Yes
Corrections, Department of	No
Director of State Courts, Office of	Yes*
Educational Communications Board	No
Elections Commission	No
Employee Trust Funds, Department of	No
Ethics Commission	Yes
Financial Institutions, Department of	Yes
Health Services, Department of	Yes
Higher Educational Aids Board	No
Historical Society	No
Insurance, Office of the Commissioner	Yes
Investment Board, State of Wisconsin	No
Judicial Commission	No
Justice, Department of	No
Natural Resources, Department of	Yes
Public Instruction, Department of	Yes*
Public Lands, Board of Commissioners of	No
Public Service Commission	No
Railroads, Office of the Commissioner of	No
Revenue, Department of	Yes
Safety and Professional Services, Department of	Yes
Secretary of State, Office of the	No
State Public Defender	No
Tourism, Department of	No
Transportation, Department of	Yes
University of Wisconsin System	No
Veterans Affairs, Department of	No
Wisconsin Economic Development Corporation	No
Wisconsin Health and Educational Facilities Authority	No
Wis. Housing and Economic Development Authority	No
Wisconsin Technical College System	No
Workforce Development, Department of	Yes
<b>35 Agencies</b>	<b>13 Regulatory Agencies</b>

\* No information received.

In late 2018, a second survey was conducted to gather input from credential holders, members of the public, and stakeholders. This survey was posted on the DSPS website and disseminated to individual credential holders, stakeholders, and provided to the regulatory agencies who submitted data. This survey aimed to solicit feedback about the usefulness credential holders'

*primary* occupational license serves for: 1) getting a job; 2) keeping a job; 3) keeping employees marketable to employers or clients; 4) improving work skills; and 5) increasing wages or salary. Survey questions also asked credential holders to estimate the costs they incurred, hours of instruction required, and hardships or barriers they faced to obtain and retain their *primary* occupational license.

The survey asked credential holders, stakeholders, and non-credential holders (public) to rate the importance occupational licenses serve to protect public citizens from harm or danger. Individuals were also given the opportunity to provide specific instances where occupational licensing regulations may have impacted the cost of consumer goods or services. If individuals currently hold a similar license in another state, they were also asked to compare that state’s requirements, costs, and hardships with Wisconsin’s. Lastly, individuals were provided with an opportunity to share any additional comments. The survey results are included later in this report.

#### D. About Occupational Licensing in Wisconsin

Wisconsin’s regulation of occupations affects many professions. Wisconsin issues over one million occupational licenses for 280 different credential types. While DSPS issues 75 percent of the occupational licenses in Wisconsin, there are over a dozen other state agencies, along with attached boards, that also have occupational oversight responsibilities, as shown in Figure 1. Affiliated boards may also have regulatory, credentialing, and examining responsibilities. However, for the purposes of this report, the state agency that administers the occupational license is listed as the regulatory agency.

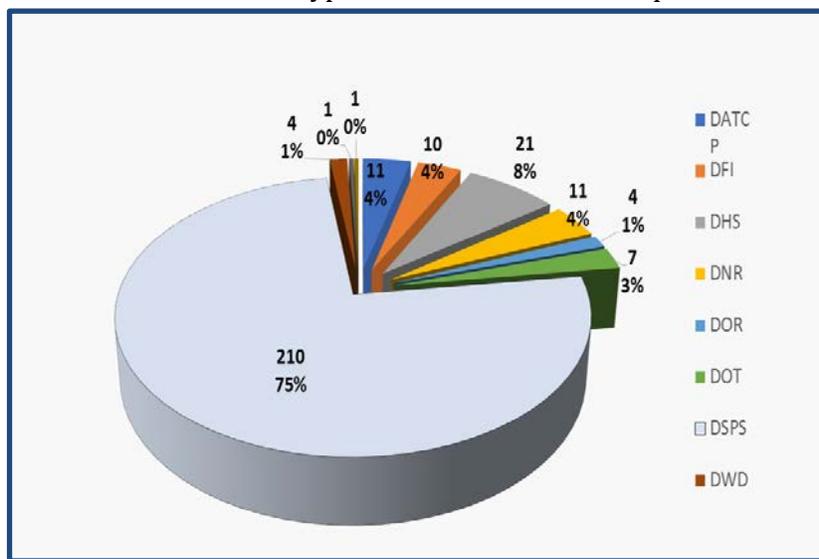


Figure 1: Wisconsin regulated occupational license types issued per state agency.

Occupational licensing in Wisconsin falls into three categories:

- 1) Occupations regulated by independent examining boards attached to a state agency or by affiliated credentialing boards attached to those boards;
- 2) Occupations regulated by semi-autonomous boards that share authority with the state agency; and
- 3) Occupations directly regulated by the state agency.

Wisconsin agencies and attached boards are responsible for ensuring the safe and competent practice of regulated health, social services, business, industry, and trades professionals. In addition to issuing licenses and providing oversight, state regulatory agencies provide administrative, legal, and enforcement services, assist in rulemaking and examinations of the credentialed professions, and

aid the boards in developing regulatory policies that protect the public. The four types of occupational credentials issued include *licenses, certificates, registrations, and permits*. These credentials are generally differentiated by qualification requirements, the use of a professional title, and the range of activities that a credential holder is allowed to perform (i.e. Scope of Practice). While there are additional state agencies that issue other types of permits, or variations of the types listed, for non-occupational or business-related entities, this report only focuses on occupational credentials issued to individuals.

*Licenses* are considered the most restrictive type of credential. Licenses encompass qualification requirements that typically include an examination, specialized education, and usually specific work experience. Cosmetologists, occupational therapists, and electricians are examples of occupations requiring formal licensure in order to practice in Wisconsin.

*Certificates* are similar to licenses. Certificates generally provide special recognition to individuals who have fulfilled certain required criteria for a profession, including successful completion of an examination. Examples of occupations requiring Wisconsin certification in order to practice are acupuncturists, substance abuse counselors, and lead sampling technicians.

*Registration* is generally the least restrictive form of credentialing. Registration simply requires an individual to file with the appropriate regulatory entity their name, address, and registration fee payment. A registration may also restrict the use of a professional title. Examples of occupations requiring Wisconsin registration are interior designers, art therapists, and pipe layers.

*Permits* are another form of credential issued by regulatory agencies. Permits can be used as a training credential or as a primary credential. Examples of occupations requiring a permit are private security persons, limited x-ray machine operators, and juvenile martial arts instructors.

While the distinctions among credentials help in understanding the general level of regulation of occupations, it is the statutes and administrative rule that outline specific requirements for each occupation's credential. Because individuals in certain occupations are required to *register*, this does not necessarily mean that the group is statutorily less restricted than another occupation where individuals must be *certified*. Common usage of credential terms may be misleading without reviewing the relevant statutes. For example, a "*certified* public accountant" and a "*registered* nurse" practicing in Wisconsin are both required to obtain a *license*. To determine what each license issuance entails, it is important to consult the statutes and administrative codes.<sup>5</sup>

## E. Wisconsin Selected for National Occupational Licensing Consortium

Wisconsin was one of 11 initial states chosen to participate in the National Occupational Licensing Learning Consortium, which is a multi-year program that explores ways to further reduce unnecessary barriers to the labor market. Other states selected include: Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Nevada, and Utah.

The consortium is supported by the National Conference of State Legislatures (NCSL), the National Governors Association Center for Best Practices (NGA), and the Council of State

Governments (CSG), as well as support from the U.S. Department of Labor (USDOL). These organizations assist participating states in improving their understanding of occupational licensure issues and best practices by providing an opportunity for state teams to engage with experts in the areas of occupational regulation, workforce development and populations with challenges, and developing a road map focused on reducing unnecessary barriers to the labor market.<sup>8</sup>

The 11 participating states (expanded to 15 states in 2018) convened in December 2017 to begin work on their goals and to learn, network, and discuss the practices, costs, opportunities, and challenges related to occupational licensing. The consortium states were required to create a core team of officials to participate in the consortium as well select members for a home team that consisted of a broader group of stakeholders to participate in the in-state learning and planning activities. Each state was required to select specific occupations and target populations to focus on through this work, as well the aspects of licensure regulation that they wanted to address in their action plan.<sup>8</sup>

The selection of these occupations focused on two primary criteria – occupations that are licensed in at least 30 states and occupations that require less than a bachelor’s degree, as well as two additional measures—projected employment growth rate for 2014-2024 at national average or higher and total current employment levels of 10,000 or greater. Through this process, the consortium identified 34 occupations, as shown in Table 2.

**Table 2: List of occupations selected by the National Consortium.**

TARGET OCCUPATIONS	
Barbers	Pharmacy Technicians
Bus Driver (City/Transit)	Physical Therapy Assistants
Bus Drivers, School or Special Client	Pipefitters and Steamfitters
Construction Managers	Plumbers
Construction and Building Inspectors	Preschool Teachers, Except Special Education
Dental Hygienists	Private Detectives and Investigators
Electricians	Radiologic Technologists
Emergency Medical Technicians and Paramedics	Real Estate Appraisers
Hairdressers, Hairstylists and Cosmetologists	Real Estate Sales Agents
Heating, Air Conditioning, and Refrigeration Mechanics and Installers	Respiratory Therapists
Heavy and Tractor-Trailer Truck Drivers	Security and Fire Alarm Systems Installers
Insurance Sales Agents	Security Guards
Licensed Practical and Licensed Vocational Nurses	Skin care Specialists
Manicurists and Pedicurists	Teacher Assistants
Massage Therapists	Veterinary Technologists and Technicians
Nursing Assistants	Vocational Education Teachers, Postsecondary
Occupational Therapy Assistants	Water and Wastewater Treatment Plant and System Operators

States were required to focus on at least four occupations in their proposed project work, a majority of which must be included on this list. However, states were welcome to include one or more other occupations that are particularly relevant to their state’s occupational licensing landscape and unique needs.<sup>8</sup>

The vision and goals chosen by Wisconsin’s core team were based on the Wisconsin Legislature and Governor Walker’s expressed interest in occupational licensure reform through legislation and proposed budgets. These desires for reform are based on national trends and bipartisan federal recommendations to all states to review their current occupational licensing practices.

Like Wisconsin, some of the states selected to participate in the national consortium had a history of making progress on this issue. Proactively, Wisconsin’s Legislature and Governor had already been looking to alternative ways to license occupations. Wisconsin’s participation in the

national consortium provided the team members with additional opportunities to learn from other progressive states. Inclusion in the consortium, along with this study, also provided an opportunity for Wisconsin stakeholders, such as associations, license holders, other state agencies, and citizens, to provide input and feedback on this issue. The end goal of Wisconsin’s participation in the National Occupational Licensure Consortium is to continue to provide meaningful feedback, data, and facts to legislators and ensure that all partners and stakeholders are included in these statewide conversations. Wisconsin’s consortium goals are listed in Table 3.

**Table 3. Wisconsin’s goals and action plan for the National Occupational Licensure Consortium.**

GOAL	ACTION PLAN
<b>Goal 1: EXAMINE THE STATE’S CURRENT OCCUPATIONAL LICENSING LANDSCAPE</b>	Conduct study of occupational licenses and regulations in Wisconsin and other states, and report findings to state policymakers.
<b>Goal 2: IDENTIFY THE BEST OPPORTUNITIES FOR OCCUPATIONAL LICENSURE REFORM</b>	Determine the specific occupational licenses and regulations that do not align with the team’s vision statement and prioritize in the order of most likely to least likely for achieving success in reducing or eliminating that license or regulation.
<b>Goal 3: DEVELOP A COMMUNICATIONS PLAN</b>	Incorporate research conducted by policy research institutions, as well as feedback from stakeholders and the public, to grow public awareness and expand the base of understanding for stakeholders and state policymakers.
<b>Goal 4: IMPROVE THE STATE’S LICENSING PRACTICES</b>	Provide coordination among state licensing agencies to maximize existing regulatory flexibility and efficiencies, and partner with the state Legislature and stakeholders to advance legislative proposals that promote occupational licensure reform.

### III. National Outlook on Occupational Licensing

#### A. The Rise of Occupational Licensure Laws

In the 1950s, roughly five percent of occupations required a government-issued license. Since then, especially in the past 20 years, states across the nation, including Wisconsin, have witnessed a dramatic growth in occupations that have become regulated.<sup>1</sup> In the last two decades, the number of Wisconsin credential holders has increased by 34 percent, with the total number of professional credential types increasing by over 80 percent. This growth far outpaces Wisconsin's growth in population (10.6 percent) and total employment (7.4 percent).<sup>3</sup>

The national growth of occupational licensing and the barriers it presents to job seekers have attracted mounting bipartisan concern. In recent years, occupational licensing reform has gained momentum. Among policymakers and advocates at both the state and national levels, interest in licensing reform is at an all-time high. Over the past few years, licensing reform has been championed at the state governmental level and by several public policy organizations and state research institutes. While some reforms have aimed at rolling back specific licensing barriers, others have sought to improve licensing practices more generally.<sup>2</sup>

In 2015, the U.S. Treasury Department, the Council of Economic Advisors and the Labor Department under former President Barack Obama issued a report documenting problems with licensing policy and calling for widespread reform. The Bureau of Labor Statistics has been collecting data on licensed workers through its population surveys and in early 2017 the Federal Trade Commission created an Economic Liberty Task Force focused in part on occupational licensing reform.<sup>8</sup>

In July 2017, the U.S. Secretary of Labor under President Donald Trump, highlighted the issue and encouraged state legislators to undertake occupational licensing reform. The Department of Labor's Employment and Training Administration awarded the National Conference of State Legislatures, in partnership with the Council of State Governments and National Governors Association Center for Best Practices, funding on a three-year project to:

- 1) Ensure that existing and new licensing requirements are not overly broad or burdensome and don't create unnecessary barriers to labor market entry.
- 2) Improve portability for selected occupational licenses across state lines. The national partners produced research and convened state policymakers and experts in the field of occupational licensing.<sup>9</sup>

Between 2017 and 2018, several states enacted laws to reform either the state's requirements or procedures to obtain an occupational license, with Wisconsin enacting nearly 30 laws related to strengthening employment growth and occupational licensing reform. (See Section V of this report for a full list of recent occupational licensing legislation.)

While most states enacted bills reducing the requirements and regulations of licenses, some reform efforts focus on addressing concerns certain demographics face when acquiring a license.<sup>1</sup> Some states also reformed requirements for those with criminal backgrounds and some reform bills

contained clauses for military personnel, making relevant experience in the military transferable to an occupational licensing requirement and streamlined the occupational licensing requirements for military spouses who obtained a license in another state.<sup>1</sup>

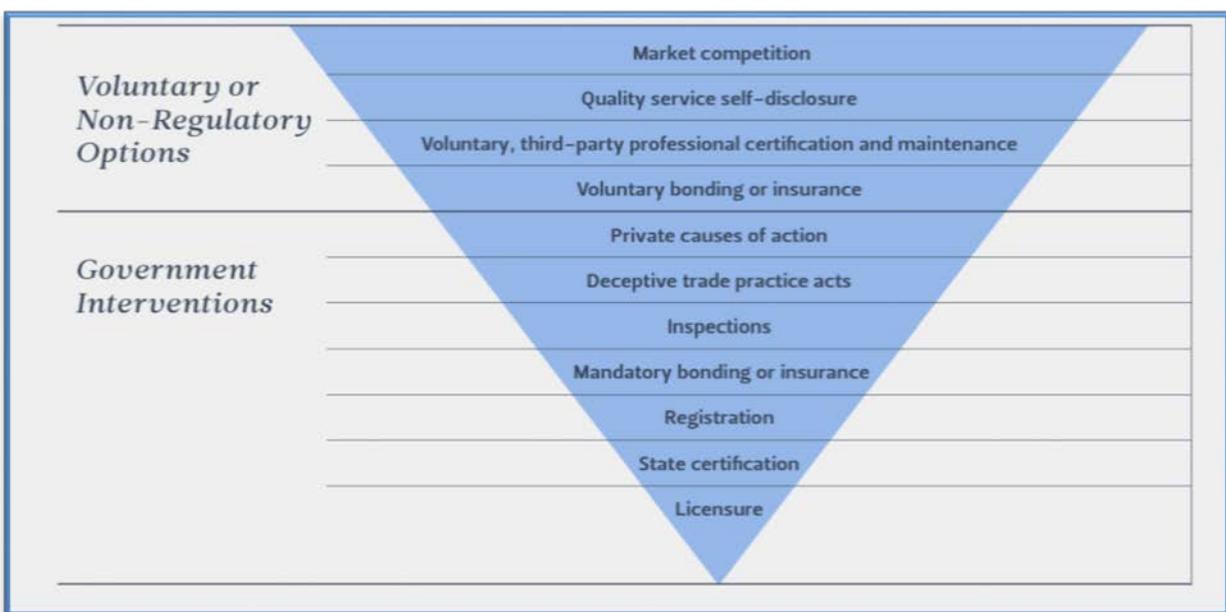
While several states have attempted to enact occupational licensure reform laws, the success rate is still considered low. One study’s research discovered only eight instances in the past 40 years of the successful *de-licensing* of an occupation at the state level. In four of these cases, attempts to relicense the occupations followed soon afterward. Most of these de-licensing proposals have not gone through a sunset review process. Instead, the proposals have been made in the context of legislative concern that excessive government regulation (of which occupational licensing is one example) may have inhibited job growth.<sup>7</sup>

Since the 1970s, approximately 36 sunset laws have passed nationally. These laws require the periodic review of certain programs and agencies (such as occupational licensing and licensing boards). The periodic reviews are commonly called performance audits or legislative audits, and they result in a recommendation to either continue or discontinue the licensing of the occupation under review.<sup>7</sup>

## B. Alternatives to Occupational Licensing

Advocates for occupational licensing reform have indicated that policymakers have several options for the regulation of occupational licensure. The regulatory options include a range from the option to license or not license, the least restrictive being *Market Competition* and the most restrictive being *Licensure*. To illustrate the alternatives, the Institute for Justice created an inverted pyramid figure that visually lists these options from least to most restrictive, as shown in Figure 2, with accompanying explanations of each option.<sup>2</sup>

***The Inverted Pyramid: A Hierarchy of Alternatives to Licensing<sup>2</sup>***



**Figure 2: The “Inverted Pyramid” is used to illustrate alternatives to licensing.**

In many cases, license alternatives can protect the public as well as or better than licensing without imposing its costs. When undergoing occupational reform, many states have adopted the concept of the inverted pyramid or have created a similar concept. The top four options, which can be considered voluntary or “non-regulatory,” are:

**1) Market competition.** Market competition takes the primary position in the inverted pyramid’s hierarchy because open markets with no or limited government intervention provide the widest range of consumer choices, allocate resources more efficiently and give businesses strong incentives to keep their reputations as providers of high-quality services. When service providers are free to compete, consumers weed out providers who fail to deliver safe and quality service. They do this by 1) denying repeat business to such service providers; and 2) telling others about their experience.<sup>2</sup>

**2) Quality service self-disclosure.** Service providers themselves can help solve the “information problem” through self-disclosure—that is, by proactively sharing information about how previous customers have rated the quality of their goods and services. Occupational practitioners can link to third-party evaluation sites from their websites to provide consumers with an important competitive “signal” that they are open to disclosure regarding their service quality. Practitioners without websites can exercise this option by providing prospective customers with lists of past customers or other references who can provide information about them. And consumers can spur disclosure by demanding such information as a condition of doing business.<sup>2</sup>

**3) Voluntary, third-party professional certification and maintenance.** Another way a service provider can help address the problem of asymmetrical information is by voluntarily pursuing and maintaining certification from a non-governmental organization. Like licensing, third-party certification sends a signal that an occupational practitioner has attained a certain degree of education or experience. But unlike licensing, it does so without creating any barriers to entry. It therefore provides the purported benefits of licensing while avoiding the pitfalls, including higher costs and fewer services for consumers. Third-party certification is used by many companies to voluntarily make certain certifications a requirement for employment.<sup>2</sup>

**4) Voluntary bonding or insurance.** Some occupations pose greater risks to consumers than others. Voluntary bonding and insurance allow practitioners of such occupations to outsource management of risks to bonding or insurance companies, which will provide a guarantee of protection against, respectively, a provider’s failure to fulfill an obligation (e.g., a moving company’s failure to deliver goods by the agreed date) or losses from theft or damage by the provider. This option is already in common use among temporary personnel agencies, janitorial companies, and companies with government contracts.<sup>2</sup>

The next six options are government interventions that, although more restrictive than the non-regulatory options above, are nevertheless less restrictive than licensure:<sup>2</sup>

**5) Private causes of action.** Private causes of action give consumers the right to bring lawsuits against service providers who have injured them. Where they do not already exist, legislators can create them. The existence of such rights may compel providers to adopt standards of quality to avoid litigation and an accompanying loss of reputation. The cost to consumers of obtaining

a remedy could be reduced by allowing them to sue in small claims court or, if suing in district court, to collect court and attorneys' fees when their claims are successful.<sup>2</sup>

**6) Deceptive trade practice acts.** All 50 states and the District of Columbia already have deceptive trade practice acts, consumer protection laws that allow attorneys general and consumers to sue service providers engaged in certain practices deemed false, misleading, or deceptive and permit enforcement agencies to prosecute them. Such deceptive trade practice acts are an important and frequently used means of protecting consumers from predatory and unscrupulous business practices.<sup>2</sup>

**7) Inspections.** Inspections are already common in some settings. For example, many municipalities use inspections to ensure restaurant hygiene, favoring them over onerous licensing of food preparers, wait staff, and dishwashers. In other settings where the state may have a legitimate interest in instrument or facility cleanliness, inspections may be sufficient and preferable to new or existing licensing. Periodic random inspections could also replace the licensing of various trades, such as electricians, carpenters, and other building contractors, where the application of skills is repeated and detectable to the experienced eye of an inspector. Where inspections are already used as a complement to licensing, states may find that inspections alone suffice.<sup>2</sup>

**8) Mandatory bonding or insurance.** For some occupations, a system of mandatory bonding or insurance can be a better alternative to full licensure. Voluntary bonding or insurance is generally preferable, but states may prefer a mandatory requirement when the risks associated with the services of certain firms extend beyond just the immediate consumer. For example, the state interest in regulating a tree trimmer is in ensuring that the service provider can pay for repairs in the event of damage to power lines or the home or other property of a party—a neighbor, for instance—not involved in the contract between the firm and the consumer. Because tree trimming presents few other threats, states can achieve this objective through bonding or insurance requirements while allowing workers to otherwise practice freely. Similarly, while many states require construction contractors to comply with expensive and burdensome licensing laws, Minnesota requires only bonding for HVAC contractors. If that occupation can be practiced freely and safely with only bonding as a requirement, the same is likely true of other trades both in Minnesota and in other states.<sup>2</sup>

**9) Registration.** Registration requires service providers to provide the government with their name, address, and a description of their services. Registration can complement private causes of action because it often requires providers to indicate where and how they take service of process in the event they are sued. However, the simple requirement to register with the state may be sufficient in and of itself to deter bad actors.<sup>2</sup>

**10) State certification.** Like voluntary, third-party certification, state certification overcomes the problem of asymmetrical information by sending a signal to potential customers and employers that an occupational practitioner meets certain standards. However, state certification differs from third-party certification in two major respects. First, the certifying body is the government rather than a private association. And second, state certification restricts the use of an occupational title—though not, as licensing does, the practice of an occupation. Under state certification, anyone can work in an occupation, but only those who meet the state's qualifications can use a designated title, such as certified interior designer or certified financial planner. Third-

party certification is generally preferable because state certification requires new or expanded government bureaucracy, which comes with costs. Further, third-party organizations are likely to be more responsive to industry and consumer trends. Nevertheless, state certification is less restrictive than occupational licensing and presents few costs in terms of increased unemployment and consumer prices.<sup>2</sup>

Finally, at the bottom of the inverted pyramid's hierarchy is licensure, the most restrictive form of occupational regulation. Only where there is proof of demonstrated, substantial harms from an occupation that cannot be mitigated by one of the less restrictive options in the above menu should policymakers consider this regulation of last resort.<sup>2</sup>

### C. Economic Impacts of Occupational Licensing

Research has found that licensing reduces access to jobs, inhibits geographic mobility, and raises the costs of services. Studies indicate that unnecessary licensing requirements reduce employment in licensed occupations and reduce wages for unlicensed workers relative to their licensed counterparts. These studies show that occupational licensing requirements present significant barriers to entering a licensed occupation and can reduce total employment in that profession.<sup>9</sup>

Occupational licensing often carries a cost in terms of opportunity. Wisconsin has several licenses that few other states regulate. For some occupations, Wisconsin's fees, and training requirements, are markedly different and more burdensome from other states. In terms of reciprocity, Wisconsin does not always accept the credentials of licensed professionals who happen to move from another state. In other words, Wisconsin's licensing requirements impose costs to the workforce—many who are of low and middle income—that do not exist in many other states.<sup>3</sup>

While the intent of occupational regulation is to protect the public from harm, some Wisconsin stakeholders agree this protection comes at a cost and burden to credential holders. One such stakeholder, who is a director of nurses, feels policymakers should remove burdensome regulations for Certified Nurse Aides (CNA). For example, Minnesota requires 70 hours of training. Her recommendation is to allow training requirements for certification to be accepted in Wisconsin if the individual trained in Minnesota. Also, current regulations do not allow CNAs under the age of 18 to operate mobility equipment (lifts and stands) alone. This stakeholder feels individuals old enough to drive a car should be able to move residents with this type of equipment. Additionally, the stakeholder wants Wisconsin to accept the testing at the conclusion of the CNA course instead of the cumbersome requirement to find a testing site to get certified, which require some students to travel up to 100+ miles and wait weeks or months to find a testing site to schedule their test in order to get certified to then be placed on the registry.

## D. Protection of Public Health, Safety, and Welfare

The intent of occupational licensure is to safeguard public health and safety and protect consumers by guaranteeing minimum educational requirements and industry oversight, support career development and pathways for licensed workers and enhanced professionalism for licensed workers, and step in when competitive market forces (e.g. litigation or reputation) fail to achieve desired outcomes.<sup>9</sup>

However, many studies have found that unnecessary licensing requirements reduce employment in licensed occupations, reduce geographic mobility, reduce wages for unlicensed workers relative to their licensed counterparts, reduce market competition and innovation, increase the price of goods and services, and disproportionately burden low-income, military veterans and their families, people with criminal history, immigrants with work authorization, and dislocated and unemployed workers.<sup>9</sup>

Researchers have found little evidence that licensure improves the quality of services or protects consumers from harm. In fact, evidence suggests that the most onerous licensure laws may lead to lower-quality services and increased public safety risks.<sup>9</sup> Licensing reduces the supply of service providers while simultaneously increasing the average operating costs for professionals. The result of limited consumer choice and increased prices could be that consumers forego necessary services because prices are too high, or no one is available for hire. This situation can pose a threat to public safety in certain occupations. For example, the inability to legally hire an electrician for repairs may lead to electrocution or fire. Similarly, licensing that limits the supply and increases the cost of veterinarians may prevent animal owners from vaccinating against contagious diseases like rabies.<sup>9</sup>

According to several studies, research revealed little tangible evidence of public benefit. In theory, licensing should improve the consumer experience and protect public health and safety by weeding out incompetent practitioners, especially in fields where consumers might be unable to tell good providers from bad ones on their own. Yet most research has failed to find a connection between licensing and service quality or safety.<sup>2</sup>

When implemented appropriately, licensing can offer important health and safety benefits and consumer protections and provide workers with clear professional development and training guidelines, as well as a career path.<sup>9,10</sup> For decades, policymakers have adopted licensure policies to achieve a variety of goals. The Federal Trade Commission's 1990 report on the costs and benefits of licensure found that well-designed occupational licensing "can protect the public's health and safety by increasing the quality of professionals' services through mandatory entry requirements—such as education—and business practice restrictions—such as advertising restrictions."<sup>9,11</sup> The report found that occupational licensing helps consumers when they cannot easily assess the professional's skills, and when the costs related to poor quality are especially high, as is the case with emergency health care providers. Economist Jason Furman testified to Congress in 2016 that the argument for licensing "is strongest when low-quality practitioners can potentially inflict serious harm, or when it is difficult for consumers to evaluate provider quality beforehand." Furman points out that the threats to consumers from incompetent commercial pilots and physicians justify a government

intervention; whereas, they face less harm and are better able to assess the quality of florists, barbers, or decorators.<sup>9,12</sup>

Today's information-sharing economy and the growth of online consumer review websites help consumers evaluate provider quality and reputation. The enhanced access to information and strong provider incentives to deliver high-quality services bolster claims by experts that alternate regulatory approaches could achieve the same goals as licensing.<sup>9</sup> Harvard and Stanford researchers found that, while licensure is not directly associated with improved quality of goods or services, there is a relationship between licensing and increased consumer confidence that can lead to increased economic activity. Additionally, the study argues that licensure can lead to consumers becoming more informed about the licensed service, which makes it more likely that they will “upgrade to higher quality services.” As a result, the researchers find an indirect improvement in the average level of quality provided in a market because of licensing.<sup>9</sup>

While survey responses from state agencies unveiled very few cases in Wisconsin where the public was harmed, many agencies attested that the public does benefit from regulatory oversight and the licenses they regulate are warranted for the protection of public health, safety, and welfare. In some cases, regulatory state agencies acknowledged that certain licensed occupations were of no public benefit and felt that deregulating these would not affect consumers, and therefore, recommended to eliminate them.

## E. Evaluation of Barriers to Licensure

A report by the Institute for Justice (IJ) suggests that numerous occupations in various states are licensed unnecessarily. Among the occupations listed were: auctioneer, funeral attendant, and interior designer. Most of these occupations are licensed by only a handful of states, including Wisconsin. Proponents of occupational licensure reform make the argument that if a license were necessary to protect public health and safety, one would expect to see greater consistency in which occupations are licensed across states. For example, only seven states license tree trimmers, but it is highly unlikely that trees in those states—or the tasks required to trim them—are any more complex or dangerous than those in the other 44 that require no license.<sup>2</sup>

On average, the 102 occupations studied by the IJ are licensed by just 27 states. Only 23 of these occupations are licensed by 40 states or more. The vast majority of these occupations are practiced in at least one state without need of permission from the state and without evidence of widespread harm.<sup>2</sup> The IJ report cites that legislators rarely create licenses at the behest of consumers seeking protection from a

### **Benefits and Costs<sup>8</sup>**

#### **The intent of occupational licensure is to:**

- Safeguard public health and safety
- Protect consumers by guaranteeing minimum educational requirements and industry oversight
- Support career development and pathways for licensed workers and enhanced professionalism for licensed workers
- Step in when competitive market forces (e.g., litigation or reputation) fail to achieve desired outcomes

#### **However, unnecessary licensing requirements have been found to:**

- Reduce employment in licensed occupations
- Reduce geographic mobility
- Reduce wages for unlicensed workers relative to their licensed counterparts
- Reduce market competition and innovation
- Increase the price of goods and services
- Disproportionately burden low-income populations, military veterans and families, people with a criminal history, immigrants with work authorization, and dislocated and unemployed workers.

demonstrated threat to health and safety from an occupation. Instead, they most often create licenses in response to lobbying by those already at work in an occupation and their industry associations.<sup>1</sup>

Several studies have shown that such regulations disproportionately harm the low income and minority populations, who generally have less work experience and fewer employment opportunities than the rest of the population. These studies show that laws that make it more difficult for these populations to obtain certain jobs or start their own businesses only make it that much harder for them to work their way up the economic ladder.<sup>6</sup>

According to a report by the Reason Foundation, the low income populations, who are in most need of economic opportunity and can least afford to jump through regulatory hoops, are harmed by prohibitively costly licensing requirements.<sup>6</sup> Many occupations that would otherwise be attractive options for those looking to improve their economic position and quality of life—including entry-level positions, jobs that require little or no formal education, and businesses that require little start-up capital for entrepreneurs—are needlessly regulated and price the poor out of the market. Thus, they must settle for fewer (and less desirable) jobs and lower wages, and the poorest of the poor are prevented from getting back on their feet.<sup>6</sup>

## IV. Occupational Licensing Study and Survey Results

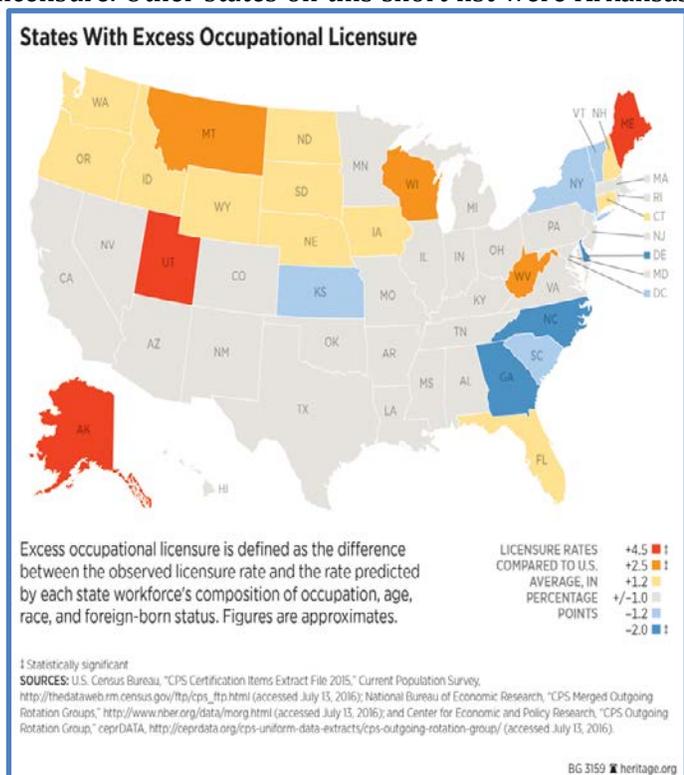
### A. How Wisconsin Compares to Other States

A 2017 study by the Institute for Justice (IJ) found that Wisconsin licenses 42 of the 102 low- and medium-wage occupations selected for the study.<sup>2</sup> The report ranked Wisconsin as the 36<sup>th</sup> *most broadly and onerously licensed* state in the nation and the 42<sup>nd</sup> *most burdensome*. According to the IJ report—*Licensed to Work, 2<sup>nd</sup> Edition*—Wisconsin’s licensing laws require, on average, \$259 in fees, 214 days of education and experience, and around one exam.<sup>2</sup> A report published by the Reason Foundation in 2007 ranked Wisconsin as the 9<sup>th</sup> highest state in the nation to license the most job categories, only behind California, Connecticut, Maine, New Hampshire, Arkansas, Michigan, Rhode Island, and New Jersey.<sup>6</sup>

Wisconsin's National Rankings		
42	42nd	36th
Number of lower-income occupations licensed	Most burdensome licensing laws	Most broadly and onerously licensed state

Source: Institute for Justice, License to Work 2nd Edition

According to 2016 data from the U.S Census Bureau, Wisconsin is among the states identified as having the most excessive occupational licensure. Other states on this short list were Arkansas, Maine, and Utah—as the top three—with Montana and West Virginia joining Wisconsin to round out the top six. The data also identifies Wisconsin as a state with a high percentage of licensed workforce. According to data from the Wisconsin Department of Workforce Development, nearly 3.1 million people are employed in Wisconsin. Although Wisconsin issues over one million occupational licenses, some credential holders are not required to hold an occupational license by their employer. Rather, they voluntarily choose to hold one or more occupational licenses for a variety of reasons. Nevertheless, license types have increased nearly 85 percent over the past 20 years. This growth outpaces the national average and outpaces Wisconsin’s growth in population.<sup>3</sup>



Wisconsin issues several occupational license types that are unique to Wisconsin or are regulated by only a handful of other states, many of which are being recommended for elimination. Nearly 60 license types that are currently licensed in Wisconsin were found to be regulated in less than 10 other states. For example, interior designers are only regulated in four other states. DSPS regulates seven classes of blasters, whereas few states regulate more than one class. No other state besides Wisconsin regulates Designer of Engineering Systems. Only one other state regulates Dance Therapists and just a few others regulate Art Therapists and Music Therapists.

Additionally, Wisconsin regulates several “sub-specialty” type occupations that were not found to be regulated in other states, if at all. For example, DSPS administers licenses for “assistants”, “helpers”, and “trainers”. These license types are most prevalent in the trades occupations (electrician, plumber, fire sprinkler, and elevator categories), and social services professions (therapists and social workers).

In addition to DSPS, other state regulatory agencies also regulate occupations that fall in the “unique to Wisconsin” category. For example, Department of Agriculture, Trade and Consumer Protection (DATCP) administers three license types that are not regulated by any other state, including cheesemakers. As *America’s Dairyland* and the *Cheese Capitol* of the world, one may think it’s only logical for Wisconsin to be the only state in the country to require its cheesemakers to be licensed in order to make cheese in a licensed facility for public sale. According to DATCP, to become a licensed cheesemaker, individuals are required to have one of five different experience options, complete 240 hours interning under a licensed cheesemaker, and pass an exam.

Wisconsin is also the only state in the nation to license buttermakers. According to DATCP, to become a licensed buttermaker, individuals are required to pass an exam plus have one of six different experience options, complete 120 hours of internship under a licensed buttermaker plus department-approved courses. With only 43 licensed buttermakers in Wisconsin, proponents of change say this places Wisconsin’s butter industry at risk.<sup>14</sup>

Additionally, DATCP administers three other licenses that few states regulate. In all states but Wisconsin, a humane officer is regulated at the county level. A veterinarian-faculty license is only licensed by four other states, and the veterinarian-temporary consulting permit is only regulated by one other state. Both latter licenses are recommended for elimination.

Under the licenses administered by the Department of Workforce Development, no other states regulate a certified private rehabilitation specialist or require a “License to Appear at a Worker’s Compensation Hearing Agent/Representative”. Only one other state regulates Registered Private Employment Agents. Consequently, all three of these occupations are also being recommended for elimination.

## B. State Agency Survey

As mentioned in the introductory section of this report, two surveys were conducted as part of the Wisconsin Occupational Licensing Study, with the first issued to state agencies. This report contains information and recommendations from 10 of the 13 state regulatory agencies.

In addition to a request to supply certain data related to each of the licenses they administer, each agency was asked to provide a summary statement to attest if the license should be retained and is appropriate to protect consumer health, safety, and welfare. Most agencies felt the licenses they currently administer were appropriate to protect consumers and that the public benefits from the regulation of the occupation.

The Department of Agriculture, Trade and Consumer Protection (DATCP) relayed that while there was no quantitative data available for buttermakers or cheesemakers, it is logical to assume that the common baseline requirements for buttermakers and cheesemaker increase knowledge of the proper procedures for making consistent, high-quality, safe butter and cheese. Over a five-year period, DATCP received no complaints against either occupation. DATCP indicated some industry advocates want the agency to retain the regulation of these occupations.

The Department of Financial Institutions (DFI) feels the regulation of their occupational licenses helps to protect the public from misappropriation, excessive fees, theft, and fraud, enables the delivery of clear and informative information, and ensures the consumer receives the services for which they paid. Like DFI, many of the occupations licensed by state regulatory agencies must also abide by federal regulations.

In the case of certified nurse aides, the Department of Health Services (DHS) stated that federal legislation (Omnibus Budget Reconciliation Act of 1987) and associated regulations (42 CFR 483.152) require that Medicare and Medicaid-certified nursing homes employ nurse aides who are trained and evaluated through training programs approved by their state. Federal regulations require that these training programs consist of at least 75 hours of training, including at least 16 hours of supervised practical or clinical training. Federal regulations also list the subject areas and skills to be taught, outline the qualifications for approved trainers, define the competency evaluation process, and require that each state establish and maintain a registry of nurse aides. Wisconsin statutes and administrative rules establish training, testing, and registry requirements. Supported by several Wisconsin organizations and associations, the minimum 75-hour nurse aide training course was increased in Wisconsin to 120 hours, including 32 hours of hands-on clinical training.

Referring to the emergency medical practitioner licenses, DHS stated that licensing and regulation helps to ensure the public can continue to trust that their emergency medical service practitioners are competent and trustworthy professionals.

This was the common theme from stakeholders and advocacy groups for the medical and health related occupations. A letter and report received by the Wisconsin Society for Respiratory Care states that their related occupational licenses benefit the health and safety of Wisconsin patients and that licensure ensures services, including life-sustaining procedures, provided to patients are performed by practitioners who meet high standards of accredited education and competency.

The Department of Natural Resources (DNR) feels the licensing and regulation of their occupations are necessary to assure these individuals and businesses have the training, resources, and experience required to properly provide services as defined by state regulations. For example, water testing by itself cannot serve as a substitute for proper well grouting and construction that are performed by well drillers and pump installers. The presence of contaminants in water can lead to health issues and cause contamination of the groundwater resource and without certification and licensing, there are risks to public health and the environment.

The Department of Revenue (DOR) feels the regulation of assessors is a minimal cost to the assessor and a great benefit to the public. The certification provides a mechanism for DOR to enforce Wisconsin's uniform taxation clause and require assessors to implement laws and standards.

The Department of Transportation (DOT) feels that current licenses issued by their department provide safeguards to industry partners and the public. The regulations and requirements associated with each license ensure a certain level of truthful and ethical business practices are present during all facets of a transaction. They feel the deregulation of those occupations would result in significant misrepresentation and fraud resulting in the victimization of public citizens.

The Wisconsin Ethics Commission, which regulates lobbyists, feel public disclosure of the identity, expenditures, and activities of persons who hire others or are hired to engage in efforts to influence the actions for the legislative and executive branches is integral to the continued functioning of an open government and the preservation of the integrity in the governmental decision-making process.

The Office of the Commissioner of Insurance (OCI), who regulates insurance producers, feel the licensure requirements and regulatory oversight for insurance producers working the state of Wisconsin are warranted. OCI states they actively monitor the insurance marketplace and investigate any complaints, protect the public, and ensures that the insurance needs of Wisconsin citizens are met responsibly and adequately. OCI feels this system of regulatory oversight ensures that insurance producers have adequate training, operate using sound business practices and comply with state insurance laws and regulations.

### C. Credential Holder and Stakeholder Survey

The second survey conducted as part of the Wisconsin Occupational Licensing Study was designed and intended to be taken by credential holders, non-credential holders, and stakeholders. The survey was emailed by DSPS to its credential holders and attached regulatory boards and posted on the department's website. The survey was also provided to the other state regulatory agencies for dissemination to their credential holders.

The survey was taken by a total of 65,319 respondents. The first question asked respondents if they currently have an active occupational or professional license or credential that is issued by the state of Wisconsin. For the purposes of the survey, a definition of "license" was provided to respondents and defined as follows:

*"License" means a state of Wisconsin-issued occupational license, credential, certification, or registration. "License" does not include permits, facility or establishment licenses, business licenses (such as a liquor license or vending license), or licenses required by a local or municipal ordinance.*

Of the total respondents, 92.71 percent self-identified as holding an active Wisconsin-issued occupational license; 0.35 percent said their license application is pending, 1.35 percent said their license was inactive or expired, and 3,647 individuals (5.58 percent), said they did not hold a Wisconsin-issued license.

The second question asked respondents to specify the type of active license that they held. If they held multiple licenses, they were asked to select the category type that best describes the license

they use for their primary occupation. For the purposes of this survey, “*main job or occupation*” was defined to mean their current and main occupation or job, job from which they are on layoff, or job at which they last worked if between jobs.

Because respondents could choose which category best described their license type, some respondents may have selected different categories for the same license type. Therefore, although minimal, some occupations may be spread over more than one of the categories.

The survey results for each question are provided below.

**Q. Specify the type of active license that you hold. If you hold multiple licenses, select the category type that best describes the license you use for your *primary/main* occupation.**

Category	No. of Respondents	%
Animal or Agriculture related	1,170	1.90
Banking and Financial related (includes investments, insurance, lenders, collectors, tax assessor, charitable fundraising)	7,087	11.49
Business related	8,220	13.33
Chemical, Environmental, or Utilities Dealer, Supplier, or Applicator (includes fuel, gas, oil, water, power, pesticides, asbestos, hazardous materials, or waste products)	676	1.10
Educator or School related (includes instructor, teacher, administrator, or service provider of elementary, secondary, postsecondary education)	1,560	2.53
Food or Restaurant related	179	0.29
Health or Medical related	29,327	47.55
Legal, Security, or Enforcement related (i.e. attorney, investigator, inspector, tester, certifier, private detective, notary, etc.)	969	1.57
Product or Vehicle Manufacturer, Broker, or Dealer	179	0.29
Sales related	1,716	2.78
Social Services (includes child and adult care services)	3,004	4.87
Sports related	44	0.07
Trades related	6,451	10.46
Other (please specify)	88	0.13
<b>Total Respondents</b>	<b>61,672</b>	<b>94.41</b>

**Q. How useful is your license for each of the following?**

**a. Getting a job?**

Category	No. of Respondents	%
Extremely useful	47,257	79.05%
Very useful	6,095	10.20%
Somewhat useful	3,776	6.32%
Not so useful	1,014	1.70%
Not at all useful	1,637	2.74%
<b>Total Respondents</b>	<b>59,779</b>	

**b. Keeping a job?**

Category	No. of Respondents	%
Extremely useful	47,638	79.69%
Very useful	6,060	10.14%
Somewhat useful	3,536	5.92%
Not so useful	1,081	1.81%
Not at all useful	1,464	2.45%
<b>Total Respondents</b>	<b>59,779</b>	

**c. Keeping you marketable to employers or clients?**

Category	No. of Respondents	%
Extremely useful	47,857	80.06%
Very useful	6,389	10.69%
Somewhat useful	3,410	5.70%
Not so useful	925	1.55%
Not at all useful	1,198	2.00%
Total Respondents	59,779	

**d. Improving your work skills?**

Category	No. of Respondents	%
Extremely useful	30,526	51.06%
Very useful	9,872	16.51%
Somewhat useful	9,794	16.38%
Not so useful	4,802	8.03%
Not at all useful	4,785	8.00%
Total Respondents	59,779	

**e. Increasing your wages/salary?**

Category	No. of Respondents	%
Extremely useful	33,350	55.79%
Very useful	8,361	13.99%
Somewhat useful	8,682	14.52%
Not so useful	4,575	7.65%
Not at all useful	4,811	8.05%
Total Respondents	59,779	

**Q. Which of the following was required to obtain your license associated with your primary occupation?** (Check all that apply)

Category	No. of Respondents	%
High school diploma or equivalent	26,409	44.55
Passing a test	4,4709	75.43
Demonstrating certain skills	23,518	39.68
Completing an internship or apprenticeship	16,242	27.40
Previous job-related experience	9,002	15.19
Technical certification (Less than 2 years)	6,709	11.32
Some college, no degree	2,634	4.44
Associate degree	14,348	24.21
Bachelor's degree*	7,669	12.94
Master's degree	7,641	12.89
Doctoral or professional degree	8,352	14.09
None of the above	977	1.65
Other (please specify)	3,111	5.25
Total Respondents	59,274	

\*This option was inadvertently omitted in the survey. The results represent responses from respondents who added this option under the "other" category.

**Q. About how many hours of instruction did you complete to obtain your license associated with your primary occupation?**

Category	No. of Respondents	%
Less than 40	5,498	9.34
40 to 159	6,948	11.80
160 to 479	2,574	4.37
480 hours (half a full-time school year) to 959 hours	2,973	5.05
960 hours (1 full-time school year) or more	40,876	69.44
Total Respondents	58,869	

**Q. Select the category that best describes the initial costs you incurred to *obtain* your license associated with your primary occupation.**

(Include costs for initial education/tuition, registration fees, initial licensing fees, exam fees, **required** association fees, or other **required** costs you incurred to obtain your license.)

Category	No. of Respondents	%
Zero to \$200	5,755	9.85
\$201 to \$500	6,882	11.78
\$501 to \$1,000	3,349	5.73
\$1,001 to \$5,000	5,880	10.06
\$5,001 to \$10,000	6,053	10.36
\$10,001 to \$50,000	17,094	29.25
\$50,001 to \$100,000	8,066	13.80
Greater than \$100,000	5,356	9.17
Total Respondents	58,435	

**Q. Select the category that best describes the ongoing costs you incur to *retain* your license associated with your primary occupation.**

(Include costs for continuing education, registration fees, renewal licensing fees, exam fees, **required** association fees, or other **required** costs you incur in order to keep your license.)

Category	No. of Respondents	%
Zero to \$200	20,423	35.08
\$201 to \$500	17,349	29.80
\$501 to \$1,000	9,164	15.74
\$1,001 to \$5,000	8,859	15.22
\$5,001 to \$10,000	1,511	2.60
\$10,001 to \$50,000	657	1.13
\$50,001 to \$100,000	149	0.26
Greater than \$100,000	103	0.18
Total Respondents	58,215	

**Q. Rate the level of hardship or barriers you faced to *obtain* your initial license.**

Category	No. of Respondents	%
None at all	15,268	26.26
A small amount	18,353	31.56
A moderate amount	17,699	30.44
A large amount	6,595	11.34
A great amount that resulted in my inability to get a license.	231	0.40
Total Respondents	58,146	

**Q. Rate the level of hardship or barriers you faced to *retain* your initial license.**

Category	No. of Respondents	%
None at all	22,921	39.46
A small amount	25,409	43.75
A moderate amount	8,226	14.16
A large amount	1,365	2.35
A great amount that resulted in my inability to get a license.	163	0.28
Total Respondents	58,146	

**Q. Rate the importance that your license serves in protecting public citizens from harm or danger.**

Category	No. of Respondents	%
Extremely important. It's a matter of life or death.	21,189	36.59
Very important. The public would be at risk for significant harm or danger if a license wasn't required for this occupation.	23,730	40.97
Somewhat important. It's possible the public could be exposed to some risk if a license wasn't required for this occupation.	8,707	15.03
Not so important. It's unlikely the public would be exposed to harm or danger if a license wasn't required for this occupation.	2,478	4.28
Not at all important. There is no risk of harm or danger to the public if a license wasn't required for this occupation.	1,810	3.13
Total Respondents	57,914	

**Q. Do you hold a similar occupational license in another state(s)?**

Category	No. of Respondents	%
Yes	14,113	24.38
No	43,766	75.62
Total Respondents	57,879	

**Q. Select the category that best describes the *initial* requirements to *obtain* your out of state license compared to Wisconsin's initial licensing requirements.**

(Compare educational and other requirements, fees, and other costs.)

Category	No. of Respondents	%
Way more than Wisconsin	953	6.76
Somewhat more than Wisconsin	2,112	14.97
About the same as Wisconsin	9,567	67.83
Somewhat less than Wisconsin	930	5.59
Way less than Wisconsin	541	3.84
Total Respondents	14,104	

**Q. Select the category that best describes the *ongoing* requirements to *retain* your out of state license compared to Wisconsin's initial licensing requirements.**

(Compare educational and other requirements, fees, and other costs.)

Category	No. of Respondents	%
Way more than Wisconsin	823	5.87
Somewhat more than Wisconsin	2,170	15.48
About the same as Wisconsin	9,866	70.37
Somewhat less than Wisconsin	737	5.26
Way less than Wisconsin	425	3.03
Total Respondents	14,021	

**Q. Rate the level of hardship or barriers you faced to *obtain* your initial out of state license.**

Category	No. of Respondents	%
The state has way more hardships and barriers than Wisconsin.	630	4.52
The state has somewhat more hardships and barriers than Wisconsin.	2,078	14.92
The state has about the same as Wisconsin.	9,880	70.92
The state has somewhat less hardships and barriers than Wisconsin.	934	5.99
The state has way less hardships and barriers than Wisconsin.	509	3.65
Total Respondents	13,931	

**Q. Rate the level of hardship or barriers you faced to *retain* your out of state license.**

Category	No. of Respondents	%
The state has way more hardships and barriers than Wisconsin.	351	2.53
The state has somewhat more hardships and barriers than Wisconsin.	1,854	13.37
The state has about the same as Wisconsin.	10,582	76.30
The state has somewhat less hardships and barriers than Wisconsin.	624	4.50
The state has way less hardships and barriers than Wisconsin.	458	3.30
Total Respondents	13,869	

**Q. Are you aware of any instances where occupational licensing regulations have impacted the cost or availability of consumer goods or services?**

(i.e. increased costs for goods or services, decreased availability of practitioners)

Category	No. of Respondents	%
Yes	656	19.30
No	2,743	80.70
Total Respondents	3,399	

**Q. How important is it to regulate Wisconsin's occupations in order to protect public citizens from harm or danger?**

Category	No. of Respondents	%
Extremely important. It's a matter of life or death.	1,917	62.36
Very important. The public would be at risk for significant harm or danger if a license wasn't required for this occupation.	853	27.75
Somewhat important. It's possible the public could be exposed to some risk if a license wasn't required for this occupation.	174	5.66
Not so important. It's unlikely the public would be exposed to harm or danger if a license wasn't required for this occupation.	85	2.77
Not at all important. There is no risk of harm or danger to the public if a license wasn't required for this occupation.	45	1.46
Total Respondents	3,074	

**Q. Indicate what types of licenses should be regulated in order to protect public citizens from harm or danger.** (Check all that apply.)

Category	No. of Respondents	%
Animal or Agriculture related	2,328	78.52
Banking and Financial related (includes investments, insurance, lenders, collectors, tax assessor, charitable fundraising)	2,328	88.63
Business related	1,803	60.81
Chemical, Environmental, or Utilities Dealer, Supplier, or Applicator (includes fuel, gas, oil, water, power, pesticides, asbestos, hazardous materials, or waste products)	2,778	93.69
Educator or School related (includes instructor, teacher, administrator, or service provider of elementary, secondary, postsecondary education)	2,670	90.05
Food or Restaurant related	2,425	81.79
Health or Medical related	2,865	96.63
Legal, Security, or Enforcement related (i.e. attorney, investigator, inspector, tester, certifier, private detective, notary, etc.)	2,694	90.86
Product or Vehicle Manufacturer, Broker, or Dealer	2,250	75.89
Sales related	1,344	45.33
Social Services (includes child and adult care services)	1,283	43.27
Sports related	2,657	89.61
Trades related	2,154	72.65
No occupations should be regulated	70	2.36
Other (please specify)	213	7.18
Total Respondents	2,965	

## D. The Cost and Burdens of Occupational Licensure

Many studies have found it difficult to obtain data on the total financial burden for every individual occupational license since the largest financial burden for a licensee is the cost of initial tuition or education, which varies vastly depending on the profession (i.e. cost of a doctorate degree vs. a certification course). However, many studies have collected this data for groups or types of occupations.

Information collected by the Institute for Justice (IJ) on 102 low- and medium-wage occupations provides a sense of the range of licensing burden across occupations and across states, in terms of education and experience prerequisites, licensure fees, examinations, and minimum age requirements. States range from Pennsylvania, where it takes an estimated average of 113 days (about four months) to fulfill the educational and experience requirements for the average licensed occupation examined, to Hawaii, where it takes 724 days (about two years).<sup>10</sup> The IJ report reveals that Wisconsin's licensing laws require, on average, \$259 in fees and 214 days of education and experience.<sup>2</sup>

While several studies have identified common themes when it comes to the many burdens that workers face while pursuing a state license, this report contains barriers that may be specific to Wisconsin occupations. In their survey responses, state regulatory agencies provided examples of barriers and hardships that individuals may face to achieve and maintain the licensure. It should be noted that the agencies included licensing requirements that either they thought were a barrier or that could be considered a barrier from a license holder's perspective.

Some barriers identified by state regulatory agencies include the following:

1. Cost of initial and continuing education to obtain and retain the license.
2. Cost of initial license and renewal fees, including payments for annual registrations, certifications, or applications.
  - Pesticide Commercial Applicators are required to apply and pay a fee annually.
3. Cost of national and state examinations.
4. Cost of ongoing competency testing based on the requirement.
  - Licensed Pesticide Applicators are required to pass a competency test every five years.
5. Lack of availability and/or access for educational programs, courses, and national and state exams, in terms of number of times offered and locations.
  - A national exam for veterinarians is only offered twice per year.
  - No Wisconsin training center currently offers the training as an initial course for (EMT) Intermediates because this level of emergency medical practitioner is no longer included in the National EMS Educational Standard.
  - For lead inspectors, only the initial training is available in Wisconsin (due to very limited demand). Applicants seeking to renew must take an eight-hour refresher training outside of Wisconsin or take the 16-hour initial training over again in lieu of the refresher. The required x-ray fluorescence device training is only offered intermittently by manufacturers of the devices.
  - Lack of instructors and trainers required for certain courses.

6. Time commitment and costs associated with traveling long distances to obtain required education and testing.
  - There is only one accredited veterinary medical education program in Wisconsin, and only 30 in the United States.
  - Many individuals from rural areas must travel several miles to take a course or exam.
7. Lack of nationwide universal computer application and renewal filing system (applies to some DFI occupations).
8. Requirement to obtain surety bond.
9. Requirement to submit to fingerprinting.
10. Hearing requirements related to “character and fitness” of the applicant (applies to some DOT and DWD occupations).
11. Requirements related to financial responsibility.
12. Requirements for clean driving or criminal history.
  - Applicants for mortgage brokers cannot have been convicted of or pled guilty or no contest to a felony in a seven-year period before date of application.
13. Delinquency checks for taxes, unemployment insurance contributions, and child/family support payments.
14. Lack of available clinical sites for health professions to obtain the required patient contacts while in training.
15. Excessive requirements for initial education for certain occupations.
16. Language barriers for individuals where English is not their primary language.
  - DHS relayed that a large number of people who hold lead or asbestos abatement type licenses, English is their second language, which causes barriers. They struggle to find a training course in their first language that allows them to understand the material in class. If they cannot understand the material taught to them in class, they then have difficulty understanding the exam language which makes it difficult for them to pass the exam in order to obtain a license. When they pass the exam, they sometimes have difficulty communicating with regulators in order to obtain their license. While classes, exams, and applications are offered in Spanish, DHS feels there is room for improvement in this area.
17. Lack of reading skills necessary to read and pass an exam.
18. Reciprocity barriers.
  - While nurse aides who successfully train and test in other states are able to transfer to Wisconsin if they have completed equivalent training, those with less training must provide verification of employment to satisfy requirements or complete a 45-hour bridge program.
19. Minimum age requirements
  - Heat exchange and water well drillers must be at least 20 years old, while water well drilling rig operators and heat exchange drilling rig operators can be at least 18.
  - Certified nursing aides must be at least 18 years old in order to operate certain types of patient mobility equipment



2017 Wisconsin Act 20 increased access to preventative care for underserved populations by increasing the settings in which dental hygienists are authorized to practice dental hygiene in certain settings, without the authorization and presence of a licensed dentist.

2017 Wisconsin Act 59 required the Department of Safety and Professional Services to study occupational licenses and to submit a report of its findings to the Governor and Legislature by no later than December 31, 2018. This law also sunsetted the Wisconsin Rental Weatherization Program, thereby eliminating the licensure of rental weatherization inspectors.

2017 Wisconsin Acts 81 and 82 eliminated costly barriers for barbers, cosmetologists, and related professions. The reforms removed key professional licensing requirements that prohibited entry into these professions by removing separate licensing manager requirements and now allow barbers and cosmetologists to provide instruction without obtaining an additional license. The reforms also eliminated continuing education requirements for barbers, cosmetologists, aestheticians, electrologist, and manicurists and allow these professionals to provide services outside of salons and accept professional experience from licensees from other states.

2017 Wisconsin Act 88 authorized Wisconsin to participate in national data-sharing programs that will help protect the public interest and contribute to the increased transparency and mobility of the state's licensed Certified Public Accountants.

2017 Wisconsin Act 110 made various changes to laws governing real estate practice that will allow for the cooperation between Wisconsin real estate firms and out-of-state brokers representing buyers and tenants in commercial transactions – helping expand economic opportunities for Wisconsin-based companies.

2017 Wisconsin Act 113 brought Wisconsin into compliance with federal law, which requires states to regulate appraisal management companies, and will help Wisconsin avoid a likely major disturbance in the financing of most residential real estate transactions.

2017 Wisconsin Act 121 required the Department of Agriculture, Trade, and Consumer Protection to establish and implement a program for veterans, and their immediate family members if the veteran died during service, is missing in action, or died as a result of a service-connected disability (qualifying family members), to integrate them into the field of agriculture and support those currently working in agriculture. The program requires assisting eligible participants in rural and urban communities; providing employment, mentorship, and outreach opportunities; facilitating education opportunities; and providing advice, technical assistance, and training.

2017 Wisconsin Act 123 eliminated the signature requirement of a national guard member claiming payments under the Department of Military Affairs (DMA) Tuition Grant Program and the representative of the school certifying that the guard member has satisfactorily completed the course and achieved the minimum grade point average. Instead, the Act requires the DMA to rely on the qualifying school's certification to determine a guard member's eligibility for the grant.

2017 Wisconsin Act 135 ratified and entered Wisconsin into the Enhanced Nurse Licensure Compact (eNLC), replacing the original Nurse Licensure Compact (NLC), which will allow Wisconsin to maintain continued participation in the nurse licensure compact and ensure unnecessary additional licensure barriers do not exist for our state's nursing workforce.

Under 2017 Wisconsin Act 148, no apprenticeship program can require a ratio of more than one journey worker for each apprentice in an apprenticeship. The Act also removed the specific length of apprenticeship programs in prior law for plumbers and carpenters.

2017 Wisconsin Act 153 requires the Department of Workforce Development (DWD) to permit minors at least 15 years of age to be employed as lifeguards. DWD rule previously prohibited minors 14 and 15 years of age from being employed as lifeguards.

2017 Wisconsin Act 168 allows a child of any age to be employed under the direct supervision of the child's parent or guardian in connection with the parent's or guardian's business, trade, or profession, without a work permit.

2017 Wisconsin Acts 180, 227, and 293 helped address growing patient care needs by allowing certain health professionals to delegate various types of services.

2017 Wisconsin Act 195 created the Hire Heroes program, under which employers can be reimbursed for the wages of a veteran for employers providing transitional jobs to veterans of the U.S. Armed Forces who have been unemployed for at least four weeks.

2017 Wisconsin Act 206 revised provisions relating to lifetime teaching licenses and created a pilot grant program to support college courses taught in high schools.

2017 Wisconsin Act 262 requires the Department of Safety and Professional Services to grant a certification as a substance abuse counselor, clinical supervisor, or prevention specialist to an individual who holds a similar unexpired certification granted by another state that has requirements for certification that are not lower than this state's certification requirements.

2017 Wisconsin Act 278 streamlined the licensing process for those with criminal records by allowing them to receive an individualized review of their criminal history before submitting a full licensure application, which will reduce reoffending rates in Wisconsin and help solve a growing worker shortage.

2017 Wisconsin Act 288 removed an arbitrary barrier for individuals seeking to become a licensed chiropractor in Wisconsin by bringing Wisconsin's passing exam scores required for chiropractic licensure in line with 47 other states.

2017 Wisconsin Act 319 helped remove a burdensome barrier for veterans and economically disadvantaged populations seeking to obtain the necessary license to enter Wisconsin's workplace by reducing the standard fee required for an initial license.

2017 Wisconsin Act 323 developed a coaching program for the hiring of individuals with disabilities that directly engages private and nonprofit businesses.

2017 Wisconsin Act 329 eliminated a provision that imposed a \$50 forfeiture on a credential holder or applicant who failed to report a change of name or address within 30 days of the change.

2017 Wisconsin 329 also generally prohibited local governments from regulating tattoo and body piercing, unless authority is delegated by the Department of Safety and Professional Services.

2017 Wisconsin Act 330 eliminates exam eligibility requirements for individuals applying for a credential from the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board. Prior law required individuals to satisfy certain prerequisite degree requirements to become eligible to take the applicable licensure exam.

2017 Wisconsin Act 331 allowed for greater uniformity and consistency across DSPS-regulated occupations and professions that will provide greater convenience for DSPS customers.

2017 Wisconsin Act 336 created an incentive grant program for school districts that provide training for certain public safety occupations and provides completion awards for students who complete those programs. Currently, these grants are available for programs that are designed to mitigate workforce shortages in an industry or occupation that the Department of Workforce Development identifies as facing workforce shortages or shortages of adequately trained entry-level workers. Under the Act, these grants to school districts will also be available for public safety occupations training programs. Eligible programs are industry-recognized certification programs that are designed to prepare individuals for occupations as fire fighters, emergency medical responders, or emergency medical services practitioners.

2017 Wisconsin Act 341 creates an exception to the prohibition for practice at certain sporting events or facilities, by an individual who is licensed in good standing to practice medicine and surgery in another state. The Act authorizes the Medical Examining Board (MEB) to enter into agreements with medical or osteopathic licensing boards of other states to implement the new licensure exception.

2017 Wisconsin Act 350 expanded the licensure or certificate renewal for certain emergency medical services personnel and ambulance service providers from every two years to every three years.

## B. Recommendations for Reform of Current Regulated Occupations

For occupational licenses outside the jurisdiction of DSPS, the recommendations for reform contained in this report are based on the statements, data, and information received by the state regulatory agency who administers the license. For licenses under the jurisdiction of DSPS, the Department took several factors into consideration for the occupational licenses being recommended for reform, including the criteria listed below:

- 1) Is the regulation of this occupation necessary to safeguard public health and safety and protect consumers?
- 2) Does the public substantially benefit from this occupation being regulated?
- 3) Is it reasonable to assume public citizens would be subjected to harm or danger if this occupation was unregulated or regulated by a less restrictive means?
- 4) Is the regulation of this occupation overly broad or onerous?
- 5) How many other states regulate this occupation?
- 6) Is this occupation among the nationally identified occupations that are needlessly regulated?
- 7) Are there too few individuals who possess this licensure type to financially justify the existence of the license and/or licensing board?

- 8) Is there is a history of minimal complaint or enforcement activity that may suggest there is no justification for strict regulation?
- 9) Could the Department accept credentials from other organizations that meet the equivalency standards?
- 10) Are there more effective, less restrictive, or alternative methods for regulating this occupation (as illustrated by the *Inverted Pyramid in Figure 2*)?

After thoughtful consideration of these factors and input from stakeholders and members of the public, DSPS recommends the elimination of 15 occupational licenses under its jurisdiction. In addition, six of the other regulatory agencies are recommending the elimination of 13 occupational licenses that fall under their respective jurisdictions. (A complete list may be found in Appendix C of this report.)

### C. Considerations for Future Occupational Licensing Reform

This report includes several recommendations for occupational licensing reform. The supplemental information and state comparison data contained in this report should provide policymakers with ample data to make informed decisions for possible additional future reforms. Legislators may also consider conducting more in-depth studies on certain occupations where reform may be warranted.

To continue the consortiums goal of reforming Wisconsin's occupational licensing regulations, it is recommended policymakers collaborate with other states, especially our border states, in order to improve portability across state lines and to refine regulatory practices that create barriers to work. Future research should include more in-depth analysis of fees, continuing education, work experience requirements to minimize complexity and procedural burdens; continued review of the impact of criminal history and substantial relation to the scope of practice; and perform ongoing assessments to ensure that licensing requirements closely align with the protection of public health and safety without being overly broad or burdensome.

Many states are also studying employment and occupational trends and taking these trends into consideration when making occupational licensing reform decisions. The Department of Workforce Development has many experts, useful tools, and resources that can be tapped for input and data relating to employment trend predictions at both the state and national levels. The data helps in predicting which Wisconsin-regulated occupations will most likely experience the largest growth in employment over the next 10 years (2016-2026) and which ones will experience the least amount of growth. Understanding these trends will be valuable for future policy decisions.

One of the additional reforms explored by DSPS include the acceptance of national credentials in lieu of requiring a separate license and separate exams, which impose a financial burden to credential holders. For example, DSPS administers several trade-related occupations where acceptance of credentials from the International Code Council (ICC) could be considered if deemed equivalent to a Wisconsin credential. (Through both statute and administrative rules, Wisconsin adopts several technical standards produced by the ICC). Earlier this year, DSPS discussed these options with ICC representatives.

In July 2018, DSPS representatives participated in a meeting, hosted by the Wisconsin Code Officials Alliance (WCOA), with the ICC President, ICC Board Chair, and other ICC representatives, to discuss how Wisconsin and the ICC can work together to streamline credentialing of these related occupations. Currently, some credential holders take courses and exams offered by both ICC and DSPS.

Following the meeting, DSPS compiled a list of possible ICC credentials that could provide equivalencies. A thorough analysis found some ICC credentials to be similar to Wisconsin's that would require only minimal modifications to include important elements specific to Wisconsin, typically referred to as "*Wisconsinisms*". For other license types, where ICC does not require any qualifications to take an exam, Wisconsin statutes require previous experience, coursework, an apprenticeship, or some level of experience before taking an exam. For these credentials, legislative changes would be needed in order to authorize DSPS to implement these reforms.

Other methods that could be considered for reform include the implementation of sunrise and sunset legislation. Several states have taken steps to adopt sunrise and sunset reviews, audits, active supervision, and other procedures to weigh the costs and benefits of existing and proposed occupational licensure. A sunrise process includes a cost-benefit analysis as part of any proposal to regulate a previously unlicensed profession. The sunset review process involves periodic reviews or legislative audits of licensing and licensing boards, and their potential elimination unless the legislature acts to continue them.<sup>9</sup>

In the state of Vermont, when the state Office of Professional Regulation receives requests from individuals or groups recommending that a profession be regulated, Vermont law provides that the profession should be regulated only when necessary to protect the public. When the office receives a request, it conducts a preliminary assessment and develops a recommendation for the Legislature as to whether or not the profession should be regulated. (A link to Vermont's *Application for Preliminary Sunrise Review Assessment* form may be found in the Resource section of this report.)

**Pursuant to 26 V.S.A. § 3101:**

*"It is the policy of the state of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The legislature believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the state shall be the least restrictive form of regulation necessary to protect the public interest."* - State of Vermont

Some evidence suggests that sunrise reviews can be more successful at limiting the growth of licensing than sunset reviews are at removing unnecessary licensing. A sunset review can nevertheless be useful because, even if licensing was justified when first introduced, technological and economic changes may have rendered it unnecessary or overly restrictive. Periodic examination of existing rules is thus helpful in maintaining the quality of occupational regulation. Sunset reviews also have the benefit of reviewing complaints lodged with the licensing board. These can provide important insight into the value of continuing the license.<sup>10</sup>

Research has found that other practitioners—not consumers—file a large majority of complaints which mostly related to workers practicing without a license rather than any substantive violation of rules concerning health and safety.<sup>10</sup> Therefore, experts caution that sunset reviews should carefully consider what the complaint record means. In principle, few complaints could mean that licensing a particular occupation eliminates all dangerous conduct, but it can also mean that

genuine consumer harms are very rare in the occupation.<sup>10</sup> For that reason, the licenses recommended for reform in this report are accompanied by complaint data (where available) to assist decision-makers with comprehensive information when reviewing the recommendations.

#### D. Strategies for Occupational Licensing Reform

State policymakers play a critical and longstanding role in occupational licensing policies, dating back to the late 19th century when the Supreme Court decision in *Dent v. West Virginia* established states' rights to regulate certain professions. Shortly thereafter, states began developing their own systems of occupational regulation and licensing.<sup>8</sup> State policymakers play a central role in developing and shaping these systems by:

1. Establishing licensing requirements for specific occupations.
2. Authorizing regulatory boards to license applicants and oversee compliance.
3. Reviewing the merits of existing and proposed licensure requirements.
4. Proposing strategies or guiding principles to improve the state's overall approach to regulating professions.

According to a 2015 brief published by the Council on Licensure, Enforcement and Regulation, "civic leaders, elected officials, and courts have struggled to balance legitimate interests in protecting public health and safety with the preservation of free practice." Striking the right balance represents an opportunity for policymakers to achieve important public policy goals, including consumer protection, job creation, workforce mobility and economic growth. Removing employment barriers for unique populations, such as immigrants with work authorization, military families, and people with criminal records, offers a powerful lever to achieve multiple policy goals. These include employment growth, reduced reoffending for employed ex-offenders, enhanced geographic mobility, and economic stability and opportunity for individuals and their families.<sup>8</sup>

Some of the most comprehensive occupational licensing reforms were passed in Arizona, Tennessee, and Mississippi. Arizona and Tennessee each passed a *Right to Earn a Living Act*. The Act limits entry regulations into an occupation to only those that are legitimately necessary to protect public health, safety, or welfare and then those objectives could *not* be met with less burdensome means, including certification, bonding, insurance, inspections, etc. It favors policy options that preserve occupational freedom.<sup>13</sup>

Over the past few years, several studies, research briefs, and guidance documents have been published that provide tools, resources, and strategies for policymakers for tackling occupational licensing reform. Several states have found these resources to be helpful in implementing less restrictive regulations, evaluating the roles of regulatory boards, conducting ongoing sunset review hearings, and recognizing and prevent the passing of unnecessary licensing laws. Several of these resources are included in the Resource section of this report.

## Policymaker Questions to Ask When Considering Occupational Licensing Proposals

<b>What is the problem?</b>	<ul style="list-style-type: none"> <li>• Has the public been harmed because the occupation has not been regulated?</li> <li>• Has the public's health, safety or economic well-being been endangered?</li> <li>• Can proponents' claims be documented?</li> </ul>
<b>Why should the occupation be regulated?</b>	<ul style="list-style-type: none"> <li>• Who uses the services offered by the occupation? Does the public lack knowledge or information to evaluate the providers' qualifications?</li> <li>• What is the extent of the autonomy of the providers? Do they work independently or under supervision? If supervised, is the supervisor covered under regulatory statute?</li> </ul>
<b>What efforts have been made to address the problems?</b>	<ul style="list-style-type: none"> <li>• Has the occupation established a code of conduct or complaint-handling procedures for resolving disputes between practitioners and consumers?</li> <li>• Has a non-governmental certification program been established to assist the public in identifying qualified practitioners?</li> <li>• Could use of applicable laws or existing standards (e.g., civil laws or unfair and deceptive trade practice laws) solve problems?</li> <li>• Would strengthening existing laws help to deal with the problem?</li> </ul>
<b>Have alternatives to licensure been considered?</b>	<ul style="list-style-type: none"> <li>• Could an existing agency be used to regulate the occupation?</li> <li>• Would regulation of the employer versus the individual practitioner (e.g., licensing a restaurant instead of its employees) provide the necessary public protection?</li> <li>• Could registration or certification be an acceptable alternative?</li> <li>• Why would use of less stringent alternatives adequately protect the public? Why would licensing be more effective?</li> </ul>
<b>Will the public benefit from regulating the occupation?</b>	<ul style="list-style-type: none"> <li>• How will regulation help the public identify qualified practitioners?</li> <li>• How will regulation assure that practitioners are competent?</li> <li>• Are all standards job-related?</li> <li>• How do the standards, training and experience requirements compare with other states? Can differences be justified?</li> <li>• Are alternative routes of entry recognized—for example, for individuals licensed in another state?</li> </ul>
<b>Will regulation harm the public?</b>	<ul style="list-style-type: none"> <li>• Will competition be restricted by the regulated group?</li> <li>• Will the regulated group control the supply of practitioners? Are standards more restrictive than necessary?</li> <li>• Will regulation increase the cost of goods and services to consumers?</li> <li>• Will regulation decrease the availability of practitioners?</li> </ul>
<b>How will the regulatory activity be administered?</b>	<ul style="list-style-type: none"> <li>• Who will administer the regulation?</li> <li>• What power will the entity have, and will its actions be subject to review?</li> <li>• How would the cost of administering the regulatory entity be financed?</li> </ul>
<b>Who is sponsoring the regulatory program?</b>	<ul style="list-style-type: none"> <li>• Are members of the public sponsoring the legislation?</li> <li>• What provider associations or organizations are sponsoring the regulatory approach?</li> </ul>
<b>Why is regulation being sought?</b>	<ul style="list-style-type: none"> <li>• Is the profession seeking to enhance its status by having its own regulatory law?</li> <li>• Is the occupation seeking licensure to facilitate reimbursement?</li> <li>• Is the public seeking greater accountability of the occupation?</li> </ul>

*Source: Council on Licensure, Enforcement and Regulation, Questions Legislators Should Ask, 1994*

## VI. Conclusion

Most consumers acknowledge that the regulation of certain occupations is vital for the protection of public health, safety, and welfare. Where opinions begin to differ is determining which occupations should be regulated and at what level. This report is intended to provide the data and information necessary to aid in these statewide discussions and considerations and to continue the goal of commonsense occupational licensing reforms that will maintain consumer protection while removing barriers in order to provide economic opportunities for Wisconsin's workers and entrepreneurs. Moving forward, the federal directive is for states to continue to learn from one another as they adopt and refine regulatory practices that seek to remove barriers to work and improve portability across state lines.

## VII. Appendices

### Appendix A - Wisconsin Regulated Occupations

Occupation	Regulating Agency	Type of Regulation	No. Active Licenses
Buttermaker	DATCP	License	43
Cheesemaker	DATCP	License	1,283
Humane Officer	DATCP	Certificate	208
Pesticide Applicator Certification; commercial	DATCP	Certification	18,600
Pesticide Applicator Certification; private	DATCP	Certification	12,300
Pesticide Commercial Applicator (Individual)	DATCP	License	8,900
Veterinarian	DATCP	License	3,427
Veterinarian - Faculty License	DATCP	License	33
Veterinarian - Temporary Consulting Permit	DATCP	Permit	1
Veterinary Technician	DATCP	Certificate	2,148
Weights and Measures Service Technician	DATCP	Certification	805
Agent (Broker-Dealer Agent/Securities Agent)	DFI	Registration	146,350
Broker-Dealer	DFI	Registration	1,613
Fundraising Counsel	DFI	Registration	0
Investment Advisor	DFI	Registration	361
Investment Advisor Representative	DFI	Registration	9,915
Mortgage Banker	DFI	License	397
Mortgage Broker	DFI	License	194
Mortgage Loan Originator	DFI	Registration and License	10,392
Notary Public	DFI	Commission	81,971
Solicitor/Collector	DFI	License	6,348
Advanced Emergency Medical Technician	DHS	License	2,325
Asbestos Abatement Supervisor	DHS	Certification	1,264
Asbestos Abatement Worker	DHS	Certification	516
Asbestos Inspector	DHS	Certification	625
Asbestos Management Planner	DHS	Certification	49
Asbestos Project Designer	DHS	Certification	48
Emergency Medical Responder	DHS	Certification	3,343
Emergency Medical Technician	DHS	License	8,733
Exterior Asbestos Supervisor	DHS	Certification	89
Intermediate (EMT)	DHS	License	123
Lead Abatement Supervisor	DHS	Certification	319
Lead Abatement Worker	DHS	Certification	100
Lead Hazard Investigator	DHS	Certification	77
Lead Inspector	DHS	Certification	7
Lead Project Designer	DHS	Certification	0
Lead Risk Assessor	DHS	Certification	231
Lead Sampling Technician	DHS	Certification	15
Lead-Safe Renovator	DHS	Certification	4,434
Nurse Aide	DHS	Certification	58,790
Paramedic	DHS	License	4,949
Exterior Asbestos Worker	DHS	Certification	1,189
Heat Exchange Driller	DNR	License	32
Heat Exchange Drilling Rig Operator	DNR	Registration	37
Municipal Waterworks Operator	DNR	Certification	2,619
Pump Installer	DNR	License	1,170
Septage Service Operator	DNR	Certification	1,193
Small Water System Operator	DNR	Certification	948
Solid Waste Disposal Facility Operator	DNR	Certification	322
Solid Waste Incinerator Operator	DNR	Certification	25
Wastewater Operator	DNR	Certification	2,529
Water Well Driller	DNR	License	251
Water Well Drilling Rig Operator	DNR	Registration	138

Occupation	Regulating Agency	Type of Regulation	No. Active Licenses
Assessor	DOR	Certificate	683
Cigarette Salesperson	DOR	Permit	685
Liquor Salesperson	DOR	Permit	3,017
Tobacco Products Salesperson	DOR	Permit	760
Buyer's License	DOT	License	6,879
Certify 3rd Party CDL Examiner	DOT	Certification	215
Certify Traffic Safety School Instructor	DOT	Certification	165
Driver Training School Instructor	DOT	License	764
Representative License	DOT	License	792
Salesperson License	DOT	License	14,589
Salvage Buyer License	DOT	License	3,606
Acupuncturist	DSPS	License	556
Administrative Medicine and Surgery (DO)	DSPS	License	0
Administrative Medicine and Surgery (MD)	DSPS	License	4
Aesthetician	DSPS	License	2,126
Aesthetics Instructor (Certified)	DSPS	Certification	44
Agent for Burial Agreements	DSPS	Registration	888
Anesthesiologist Assistant	DSPS	License	101
Appraiser, Certified General	DSPS	License and Certification	758
Appraiser, Certified Residential	DSPS	License and Certification	841
Appraiser, Licensed	DSPS	License	253
Architect	DSPS	Registration	4,846
Art Therapist	DSPS	Registration	64
Athlete Agent	DSPS	Registration	66
Athletic Trainer	DSPS	License	1,290
Auctioneer	DSPS	Registration	637
Audiology	DSPS	License	405
Automatic Fire Sprinkler Contractor	DSPS	License	106
Automatic Fire Sprinkler Contractor - Maintenance	DSPS	Registration	27
Automatic Fire Sprinkler Fitter - Maintenance	DSPS	Registration	191
Automatic Fire Sprinkler Fitter, Journeyman	DSPS	License	665
Automatic Fire Sprinkler System Apprentice	DSPS	Registration	138
Automatic Fire Sprinkler System Tester	DSPS	Registration	100
Automatic Fire Sprinkler Tester Learner	DSPS	Registration	12
Barber	DSPS	License	255
Barber Apprentice	DSPS	Permit	39
Barbering Instructor (Certified)	DSPS	Certification	3
Barbering Manager	DSPS	License	505
Behavior Analyst	DSPS	License	195
Blaster Class 1	DSPS	License	37
Blaster Class 2	DSPS	License	96
Blaster Class 3	DSPS	License	17
Blaster Class 4	DSPS	License	5
Blaster Class 5	DSPS	License	151
Blaster Class 6	DSPS	License	71
Blaster Class 7	DSPS	License	13
Body Piercer	DSPS	License	242
Boiler-Pressure Vessel In-Service Field Inspector	DSPS	Certification	0
Boiler-Pressure Vessel Inspector	DSPS	Certification	135
Boxing Contestant	DSPS	License	34
Boxing Judge	DSPS	License	5
Boxing Referee	DSPS	License	1
Cemetery Authority	DSPS	Registration	40
Cemetery Authority - Licensed	DSPS	License	116
Cemetery Authority-Religious	DSPS	Certification	406
Cemetery Preneed Seller	DSPS	License	156
Cemetery Salesperson	DSPS	License	141
Certified Public Accountant	DSPS	License	11,974
Chiropractic Radiological Technician	DSPS	Certification	312
Chiropractic Technician	DSPS	Certification	1,208
Chiropractor	DSPS	License	2,400

Occupation	Regulating Agency	Type of Regulation	No. Active Licenses
Clinical Substance Abuse Counselor	DSPS	Certification	1,628
Clinical Supervisor-in-Training	DSPS	Certification	186
Commercial Building Inspector	DSPS	Certification	632
Commercial Electrical Inspector	DSPS	Certification	765
Commercial Plumbing Inspector	DSPS	Certification	397
Cosmetologist	DSPS	License	29,472
Cosmetology Apprentice	DSPS	Permit	257
Cosmetology Instructor (Certified)	DSPS	Certification	751
Cosmetology Temporary Permit	DSPS	Permit	372
Cosmetology Training Permit	DSPS	Permit	0
Counselor, Professional	DSPS	License	4,038
Counselor, Training License Professional	DSPS	License	1,867
Cross Connection Control Tester	DSPS	Registration	1,939
Dance Therapist	DSPS	Registration	7
Dental Hygienist	DSPS	License	5,306
Dentist	DSPS	License	4,324
Designer of Engineering Systems	DSPS	Permit	749
Dietitian, Certified	DSPS	Certification	1,933
Dwelling Contractor	DSPS	Certification	10,447
Dwelling Contractor Qualifier	DSPS	Certification	10,967
Dwelling Contractor Restricted	DSPS	Certification	8
Electrical - Residential Apprentice	DSPS	Registration	7
Electrical Contractor	DSPS	License	3,046
Electrician, Apprentice	DSPS	Registration	1,715
Electrician, Industrial Apprentice	DSPS	Registration	19
Electrician, Industrial Journeyman	DSPS	License	726
Electrician, Journeyman	DSPS	License	5,974
Electrician, Master	DSPS	License	5,743
Electrician, Master Registered	DSPS	Registration	665
Electrician, Registered (Beginning)	DSPS	Registration	2,287
Electrician, Residential Journeyman	DSPS	License	130
Electrician, Residential Master	DSPS	License	215
Electrologist	DSPS	License	164
Electrology Instructor (Certified)	DSPS	Certification	4
Elevator Apprentice	DSPS	Registration	195
Elevator Apprentice - Restricted	DSPS	Registration	1
Elevator Contractor	DSPS	License	57
Elevator Helper	DSPS	Registration	146
Elevator Inspector	DSPS	License	61
Elevator Mechanic	DSPS	License	620
Elevator Mechanic - Restricted	DSPS	License	10
Elevator Mechanic Temporary	DSPS	License	8
Engineer in Training	DSPS	Certification	1,893
Engineer, Professional	DSPS	Registration	16,162
Fire Detection, Prevention, and Suppression Inspector	DSPS	Certification	325
Firearms Certifier	DSPS	Certification	90
Fireworks Manufacturer	DSPS	License	15
Funeral Director	DSPS	License	1,195
Funeral Director Apprentice	DSPS	Permit	127
Funeral Director Embalming Only	DSPS	License	0
Funeral Director in Good Standing	DSPS	Certification	0
Geologist, Professional	DSPS	License	758
Hearing Instrument Specialist	DSPS	License	281
Home Inspector	DSPS	Registration	896
Home Medical Oxygen Provider	DSPS	License	174
HVAC Contractor	DSPS	Registration	3,322
HVAC Qualifier	DSPS	Certification	507
Hydrologist, Professional	DSPS	License	104
Independent Clinical Supervisor	DSPS	Certification	273
Interior Designer	DSPS	Registration	248
Intermediate Clinical Supervisor	DSPS	Certification	212

Occupation	Regulating Agency	Type of Regulation	No. Active Licenses
Juvenile Martial Arts Instructor	DSPS	Permit	67
Kickboxing Amateur Contestant	DSPS	License	1
Kickboxing Judge	DSPS	License	4
Kickboxing Referee	DSPS	License	2
Land Surveyor, Professional	DSPS	License	1,005
Landscape Architect	DSPS	License	406
Licensed Radiographer	DSPS	License	6,361
Lift Apprentice	DSPS	Registration	0
Lift Helper	DSPS	Registration	29
Lift Mechanic	DSPS	License	17
Limited X-Ray Machine Operator	DSPS	Permit	52
Liquified Gas Supplier	DSPS	License	155
Liquified Gas Supplier - Restricted	DSPS	License	73
Manicuring Instructor (Certified)	DSPS	Certification	40
Manicurist	DSPS	License	3,310
Manufactured Home Installer	DSPS	License	169
Manufactured Homes Dealer	DSPS	License	174
Manufactured Homes Sales Person	DSPS	License	356
Marriage and Family Therapist	DSPS	License	717
Marriage and Family Therapist, Training License	DSPS	License	275
Massage Therapist or Bodywork Therapist	DSPS	License	5,136
Matchmaker (Unarmed Combat Sports)	DSPS	License	6
Medicine and Surgery (DO)	DSPS	License	2,154
Medicine and Surgery (MD)	DSPS	License	23,775
Mixed Martial Arts Amateur Contestant	DSPS	License	144
Mixed Martial Arts Judge	DSPS	License	8
Mixed Martial Arts Professional Contestant	DSPS	License	44
Mixed Martial Arts Referee	DSPS	License	3
Mobile Dentistry Program Registrant	DSPS	Registration	36
Muay Thai Amateur Contestant	DSPS	License	2
Muay Thai Judge	DSPS	License	2
Muay Thai Referee	DSPS	License	1
Music Therapist	DSPS	Registration	59
Nurse - Midwife	DSPS	License	393
Nurse, Advanced Practice Prescriber	DSPS	Certification	6,566
Nurse, Licensed Practical	DSPS	License	13,451
Nurse, Registered	DSPS	License	104,423
Nursing Home Administrator	DSPS	License	978
Occupational Therapist	DSPS	License	3,796
Occupational Therapy Assistant	DSPS	License	1,486
Optometrist	DSPS	License	1,085
Peddler	DSPS	License	45
Perfusionist	DSPS	License	149
Pharmacist	DSPS	License	8,924
Physical Therapist	DSPS	License	6,126
Physical Therapist Assistant	DSPS	License	2,232
Physician Assistant	DSPS	License	3,080
Pipe Layer	DSPS	Registration	865
Plumber - Journeyman Restricted Appliance	DSPS	License	300
Plumber - Journeyman Restricted Service	DSPS	License	241
Plumber - Master Restricted Appliance	DSPS	License	199
Plumber - Master Restricted Service	DSPS	License	525
Plumber, Journeyman	DSPS	License	2,694
Plumber, Master	DSPS	License	2,976
Plumbing Apprentice	DSPS	Registration	957
Plumbing Learner - Restricted Appliance	DSPS	Registration	140
Plumbing Learner - Restricted Service	DSPS	Registration	154
Podiatric Medicine and Surgery	DSPS	License	405
POWTS Inspector	DSPS	Certification	429
POWTS Maintainer	DSPS	Registration	591
Prevention Specialist	DSPS	Certification	36

Occupation	Regulating Agency	Type of Regulation	No. Active Licenses
Prevention Specialist-in-Training	DSPS	Certification	54
Private Detective	DSPS	License	1,044
Private Practice of School Psychologist	DSPS	License	31
Private Security Person	DSPS	Permit	10,846
Professional Boxing Promoter	DSPS	License	1
Professional Mixed Martial Arts Promoter	DSPS	License	1
Psychologist	DSPS	License	1,797
Real Estate Broker	DSPS	License	9,620
Real Estate Salesperson	DSPS	License	13,822
Registered Sanitarian	DSPS	Registration	273
Resident Educational License	DSPS	License	1,011
Respiratory Care Practitioner	DSPS	Certification	3,131
Ringside Physician	DSPS	License	6
Second (Unarmed Combat Sports)	DSPS	License	152
Sign Language Interpreter	DSPS	License	355
Sign Language Interpreter- Restricted	DSPS	License	45
Social Worker	DSPS	Certification	5,546
Social Worker Training Certificate	DSPS	Certification	310
Social Worker, Advanced Practice	DSPS	Certification	3,340
Social Worker, Independent	DSPS	Certification	261
Social Worker, Licensed Clinical	DSPS	License	3,625
Soil Erosion Inspector	DSPS	Certification	204
Soil Scientist, Professional	DSPS	License	96
Soil Tester	DSPS	Certification	769
Speech-Language Pathology	DSPS	License	2,217
Substance Abuse Counselor	DSPS	Certification	654
Substance Abuse Counselor-in-Training	DSPS	Certification	1,178
Tattooist	DSPS	License	1,236
Timekeeper (Unarmed Combat Sports)	DSPS	License	2
Timeshare Salesperson	DSPS	Registration	314
UDC - Construction Inspector	DSPS	Certification	901
UDC - Electrical Inspector	DSPS	Certification	658
UDC - HVAC Inspector	DSPS	Certification	802
UDC - Plumbing Inspector	DSPS	Certification	802
Unarmed Combat Sports Promoter	DSPS	License	9
Utility Contractor	DSPS	License	311
Weld Test Conductor	DSPS	Certification	143
Welder	DSPS	Registration	4,449
Certified Private Rehabilitation Specialist	DWD	Certificate	92
License to Appear at a Worker's Compensation Hearing Agent/Representative	DWD	License	18
Private Employment Agent License	DWD	License	12
Private Employment Agent Registration	DWD	Registration	237
Lobbyist	Ethics	License	632
Insurance producer, Intermediary (Agent)	OCI	License	153,277
<b>Total:</b>	<b>280</b>		<b>1,023,142</b>

## Appendix B - State Comparison List of Regulated Occupations

The following is a list of occupations that are regulated in Wisconsin and in less than or equal to 20 other states. It is possible that additional regulated occupations could fall under this category. However, either the data was unavailable for some occupations or may have been inconclusive (i.e. data not available for all states). Therefore, this list only includes occupations where data was available. Research revealed that some local municipalities or counties, rather than the state, administered and required certain occupational licenses. In other states, the state regulatory agency accepts a credential issued by a professional or trade organizations but does not issue or require a separate state license. Therefore, for comparison purposes, states were only counted if the similar license type is administered and *required* by the state regulatory agency.

Title of License	Agency	Number of Other States that Regulate Similar License Type
Buttermaker	DATCP	0
Certified Private Rehabilitation Specialist	DWD	0
Cheesemaker	DATCP	0
Designer of Engineering Systems	DSPS	0
Funeral Director in Good Standing	DSPS	0
Humane Officer	DATCP	0
Hydrologist, Professional	DSPS	0
License to Appear at a Worker's Compensation Hearing Agent/Representative	DWD	0
Marriage and Family Therapist, Training License	DSPS	0
Nurse, Advanced Practice Prescriber	DSPS	0
Plumber - Master Restricted Service	DSPS	0
Prevention Specialist-in-Training	DSPS	0
Private Practice School Psychologist	DSPS	0
Substance Abuse Counselor-in-Training	DSPS	0
Dance Therapist	DSPS	1
Juvenile Martial Arts Instructor	DSPS	1
Plumber - Master Restricted Appliance	DSPS	1
Private Employment Agent Registration	DWD	1
Sign Language Interpreter- Restricted	DSPS	1
Veterinarian - Temporary Consulting Permit	DATCP	1
Electrician, Master Registered	DSPS	2
Elevator Helper	DSPS	2
Lift Helper	DSPS	2
Plumber - Journeyman Restricted Service	DSPS	2
Weld Test Conductor	DSPS	2
Automatic Fire Sprinkler Tester Learner	DSPS	3
Electrician, Industrial Journeyman	DSPS	3
Electrician, Registered (Beginning)	DSPS	3
Plumber - Journeyman Restricted Appliance	DSPS	3
Plumbing Learner - Restricted Service	DSPS	3
Social Worker Training Certificate	DSPS	3
Interior Designer	DSPS	4
Plumbing Learner - Restricted Appliance	DSPS	4
Soil Erosion Inspector	DSPS	4
Veterinarian - Faculty License	DATCP	4
Electrical - Residential Apprentice	DSPS	5
Electrician, Industrial Apprentice	DSPS	5
Elevator Mechanic - Restricted	DSPS	5
Lift Apprentice	DSPS	5
Peddler	DSPS	5
Soil Tester	DSPS	5
Automatic Fire Sprinkler Contractor - Maintenance	DSPS	6
Elevator Apprentice - Restricted	DSPS	6
Intermediate (EMT)	DHS	6

Title of License	Agency	Number of Other States that Regulate Similar License Type
Liquified Gas Supplier - Restricted	DSPS	6
Chiropractic Radiological Technician	DSPS	7
Elevator Mechanic Temporary	DSPS	7
Music Therapist	DSPS	7
Automatic Fire Sprinkler Fitter - Maintenance	DSPS	8
Cemetery Preneed Seller	DSPS	8
Cemetery Salesperson	DSPS	8
Electrician, Residential Master	DSPS	8
Funeral Director Apprentice	DSPS	8
Lift Mechanic	DSPS	8
Soil Scientist, Professional	DSPS	8
Welder	DSPS	8
Art Therapist	DSPS	11
Athlete Agent	DSPS	11
Automatic Fire Sprinkler System Tester	DSPS	11
Cosmetology Training Permit	DSPS	11
Dwelling Contractor Restricted	DSPS	11
Firearms Certifier	DSPS	11
Automatic Fire Sprinkler System Apprentice	DSPS	12
Electrician, Residential Journeyman	DSPS	12
Anesthesiologist Assistant	DSPS	13
Blaster Class 7	DSPS	13
Commercial Plumbing Inspector	DSPS	13
Elevator Apprentice	DSPS	13
Mobile Dentistry Program Registrant	DSPS	13
Commercial Electrical Inspector	DSPS	14
Representative License	DOT	14
Salvage Buyer License	DOT	14
UDC - Electrical Inspector	DSPS	14
Blaster Class 5	DSPS	15
Blaster Class 6	DSPS	15
Cigarette salesperson	DOR	15
Pipe Layer (Non-contractor)	DSPS	15
Tattooist	DSPS	15
Tobacco products salesperson	DOR	15
Blaster Class 2	DSPS	16
Blaster Class 3	DSPS	16
Blaster Class 4	DSPS	16
Dwelling Contractor Qualifier	DSPS	16
Perfusionist	DSPS	16
POWTS Inspector	DSPS	16
UDC - Construction Inspector	DSPS	16
UDC - Plumbing Inspector	DSPS	16
Utility Contractor	DSPS	16
Cross Connection Control Tester	DSPS	17
Auctioneer	DSPS	18
Commercial Building Inspector	DSPS	18
Cosmetology Temporary Permit	DSPS	18
Muay Thai Amateur Contestant	DSPS	18
Muay Thai Professional Contestant	DSPS	18
POWTS Maintainer	DSPS	18
UDC - HVAC Inspector	DSPS	18
Automatic Fire Sprinkler Fitter - Journeyman	DSPS	19
HVAC Qualifier	DSPS	19
Manufactured Homes Sales Person	DSPS	19
Fundraising Counsel	DFI	20
Social Worker, Independent	DSPS	20

## Appendix C - List of Occupations Recommended for Reform

The following occupations are recommended for elimination by the regulatory agency:

Occupation and Type of Regulation	No. Issued	Agency	Recommendation and Reason
<b>Veterinarian Faculty</b>  License	33	DATCP	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• The university could be responsible for verifying credentials, qualifications, and performance of veterinary faculty under their employ.</li> <li>• There have been 0 complaints over the past 5 years.</li> <li>• Only 4 states issue this type of license and typically grant the license on a temporary basis, such as one year.</li> </ul>
<b>Veterinarian – Temporary Consulting</b>  Permit	0	DATCP	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• Very few licenses of this type are issued, making this credential unnecessary.</li> <li>• The requesting Wisconsin-licensed veterinarian who request the assistance could be responsible for verifying credentials, qualifications and performance of a consulting veterinarian licensed in another state.</li> <li>• There have been 0 complaints over the past 5 years.</li> <li>• Only 1 other state, California, issues a license for this occupation.</li> </ul>
<b>Community Currency Exchanger</b>  License	167	DFI	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• There are alternative avenues in place for cash transmission such as electronic transactions rather than check cashing.</li> <li>• There have been 9 complaints received over the past 5 years with 0 resulting in disciplinary action.</li> <li>• 30 other states have similar titles for this license type.</li> </ul>
<b>Insurance Premium Finance Companies</b>  License	32	DFI	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• The marketplace product and services has moved away from consumers and is instead a product/service used primarily in business/commercial setting. It would not harm consumers to eliminate this regulation.</li> <li>• Since 2004, there’s been 1 instance of consumers being overcharged (&lt;\$75). Money was refunded to harmed consumers.</li> <li>• Only 7 other states regulate this license type.</li> </ul>
<b>Solid Waste Incinerator Operator</b>  Certification	25	DNR	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• Wisconsin is currently providing a service to Wisconsin incinerator operators by proctoring an exam and providing certification, NR 499.09, Wis. Adm. Code, and s. 285.51, Stats., to meet state and federal requirements.</li> <li>• Regulated sources could travel out of state or create their own in-house program; however, consideration should be given to the additional financial cost.</li> <li>• There have been 0 complaints over the past 5 years.</li> <li>• It is unknown how many other states require certification for this occupation.</li> </ul>

Occupation and Type of Regulation	No. Issued	Agency	Recommendation and Reason
<p><b>Cigarette Salesperson</b></p> <p>Permit</p>	685	DOR	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• This regulation is a duplication of effort and could be eliminated because manufacturers and distributors are required to get their own permits and may already be doing background checks on their employees for public protection.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• 15 other states regulate this license type.</li> </ul>
<p><b>Liquor Salesperson</b></p> <p>Permit</p>	3,017	DOR	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• This regulation is a duplication of effort and could be eliminated because manufacturers and distributors are required to get their own permits and may already be doing background checks on their employees for public protection.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• 20 other states regulate this license type.</li> </ul> <p>Note: While not issued by the state, there are statutory requirements regarding responsible beverage servers (bartender licenses). These are issued by local governments with some criteria set out in state statutes.</p>
<p><b>Tobacco Products Salesperson</b></p> <p>Permit</p>	760	DOR	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• This regulation is a duplication of effort and could be eliminated because manufacturers and distributors are required to get their own permits and may already be doing background checks on their employees for public protection.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• 15 other states regulate this license type. (Data combined with cigarette salesperson.)</li> </ul>
<p><b>Buyer Identification Card</b></p> <p>License</p>	N/A	DOT	<p><b>Agency Recommendation: Consider Elimination</b></p> <ul style="list-style-type: none"> <li>• Elimination of this license may warrant discussion regarding its applicability in today's industry.</li> <li>• When this license was created the industry conducted almost all auctions in person. Since then the salvage pool industry has migrated to an online platform and almost all purchases are made online. Because of this enforcement is almost impossible as it would require a regulator to observe the buyer in the act of bidding which often takes place in businesses or residences. However, the rescission of this license would result in an annual revenue loss of \$21,636 to DOT (ea. Cost \$6-\$12/year).</li> <li>• The public does not directly benefit from the regulation of this licensee.</li> <li>• This regulation was found in 10 other states.</li> </ul>
<p><b>Certified Private Rehabilitation Specialist</b></p> <p>Certificate</p>	92	DWD	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• Injured employees with worker's compensation claims who are seeking vocational rehabilitation services may receive these services sooner through a private resource than through the State.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• This license type is not regulated by any other state.</li> </ul>

Occupation and Type of Regulation	No. Issued	Agency	Recommendation and Reason
License to Appear at Worker's Compensation Hearing Agent/ Representative	18	DWD	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• The public is protected because only attorneys licensed in Wisconsin and individuals approved by DWD through this licensing process can represent individuals in a Worker's Compensation Hearing.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• This license type is not regulated by any other state.</li> </ul>
Private Employment Agent License	12	DWD	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• The license requirement applies to agents who charge a fee to applicants seeking work. Most licensed agencies are modeling agencies.</li> <li>• There is no evidence of public harm.</li> <li>• A prohibition on certain practices would be a more economic and effective way of regulating as other industries are not regulated in this manner.</li> <li>• This regulation is archaic and no longer serves a purpose.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• 23 other states regulate this license and require either a license or permit or both. Some states have repealed this license over the past 5 years.</li> </ul>
Private Employment Agent Registration	237	DWD	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• Same reasons as licensed agent.</li> <li>• This regulation is archaic and no longer serves a purpose.</li> <li>• There have been 0 complaints received over the past 5 years.</li> <li>• Only 1 other state regulates this occupation.</li> </ul>
Cosmetology Temporary Permit	372	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• Only 19 other states require or offer a temporary permit for cosmetologists.</li> <li>• DL Roope (a cosmetology examination provider) administers these permits with the approval of DSPS. The applicants inform DL Roope on their examination application that they are interested in receiving a temporary permit. DL Roope sends DSPS the list of individuals who are interested in receiving a temporary permit, and DSPS staff cross checks these individuals with a list of individuals who have been given training certificates by the cosmetology schools.</li> <li>• By eliminating DSPS' administration over this permit, the public can be protected through allowing the organization who already manages this program to administer the permits.</li> <li>• Since DL Roope oversees the application process for this permit, the Department is currently not adding any kind of public protection over this credential besides serving in a "middle-man" role between the cosmetology schools and this examination provider.</li> <li>• There is no disciplinary data available on this license type as DSPS does not administer the permit.</li> </ul>
Cosmetology Training Permit	0	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• Only 12 other states require a training permit for cosmetologists. All states except Wisconsin require this permit within the boundaries of an internship, apprenticeship, or educational setting for students.</li> <li>• DSPS has not administered or offered these permits since at least 2015.</li> </ul>

Occupation and Type of Regulation	No. Issued	Agency	Recommendation and Reason
<p align="center"><b>Designer of Engineering Systems</b></p> <p align="center">Permit</p>	749	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• The job duties of these individuals could be picked up through other credentials such as professional engineers, architects, HVAC contractors, Plumbers, Electricians, POWTS Maintainer and Fire Detection, Prevention and Suppression Inspectors.</li> <li>• The license requirements for this permit are very steep.</li> <li>• According to Wis. Stats. 442.07(5) The permit shall restrict the holder to the specific field and subfields of designing in which the permittee acquired his or her experience in designing. If qualified in more than one type of designing, persons may receive permits for more than one field or subfield of designing as may be determined by the designer section.</li> <li>• There have been 0 complaints resulting in disciplinary action within the last 5 years.</li> <li>• There are no other states besides that license this occupation.</li> </ul>
<p align="center"><b>Music Therapist</b></p> <p align="center">Registration</p>	59	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• According to Wis. Admin Code SPS 141.01(4), an applicant can receive a license as a music therapist if the applicant submits proof that they are certified or registered as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association, or by another national organization that certifies, registers, or accredits music therapists. Because this is the only noted requirement for licensure outside of conviction review, it would be appropriate to say that the public would be aptly protected by the certification of these individuals exclusively through registration with these outside organizations.</li> <li>• There have been 0 complaints resulting in disciplinary action within the last 5 years.</li> </ul>
<p align="center"><b>Art Therapist</b></p> <p align="center">Registration</p>	64	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>• According to Wis. Admin Code SPS 141.01(4), an applicant can receive a license as an art therapist if the applicant submits proof that they are certified or registered as an art therapist by the by the Art Therapy Credentials Board or by another national organization that certifies, registers, or accredits art therapists. Because this is the only noted requirement for licensure outside of conviction review, it would be appropriate to say that the public would be aptly protected by the certification of these individuals exclusively through registration with these outside organizations.</li> <li>• There have been 0 complaints resulting in disciplinary action within the last 5 years.</li> <li>• 11 other states regulate art therapists.</li> </ul>

Occupation and Type of Regulation	No. Issued	Agency	Recommendation and Reason
Dance Therapist Registration	7	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>According to Wis. Admin Code SPS 141.01(4), an applicant can receive a license as a dance therapist if the applicant submits proof that they are certified or registered as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers, or accredits dance therapists. Because this is the only noted requirement for licensure outside of conviction review, it would be appropriate to say that the public would be aptly protected by the certification of these individuals exclusively through registration with these outside organizations.</li> <li>There have been 0 complaints resulting in disciplinary action within the last 5 years.</li> <li>Only 1 other state regulates dance therapists.</li> </ul>
Blaster Class 1 License	42	DSPS	<p><b>Agency Recommendation: Retain blaster license but eliminate separate classifications.</b></p> <ul style="list-style-type: none"> <li>Wisconsin State statute does not require seven different classes of licensure for blasters. Therefore, there is no statutory authority for seven distinct licenses (Wis. stats.101.19 (1g) (c).</li> <li>The multiple levels of classification of this license is inconsistent with other states as no other states license seven levels of this credential.</li> <li>DSPS does not distinguish between classes of blasters when processing complaints and disciplinary data.</li> </ul>
Blaster Class 2 License	100	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>See Baster Class 1</li> </ul>
Blaster Class 3 License	18	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>See Baster Class 1</li> </ul>
Blaster Class 4 License	6	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>See Baster Class 1</li> </ul>
Blaster Class 5 License	162	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>See Baster Class 1</li> </ul>
Blaster Class 6 License	81	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>See Baster Class 1</li> </ul>
Blaster Class 7 License	13	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>See Baster Class 1</li> </ul>
Intermediate Clinical Supervisor License	273	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>The requirements for intermediate clinical supervisor and independent clinical supervisor are the same (SPS 161.05), therefore, issuing two credentials with the same requirements is unnecessary.</li> <li>The Substance Abuse Counselor Certification Review Committee recommended eliminating the intermediate clinical supervisor at their meeting on March 22, 2017.</li> </ul>
Interior Designer Registration	248	DSPS	<p><b>Agency Recommendation: Eliminate</b></p> <ul style="list-style-type: none"> <li>Only 4 other states regulate this license type.</li> <li>The regulation of interior designers has been identified by several studies as the most burdensome licensing requirement of all occupations.</li> </ul>

## Appendix D – State Agency Occupational Licensure Survey

**Thank you for participating in the Wisconsin Occupational License Study survey. Your feedback is important.**

[2017 Wisconsin Act 59](#), section 9139, requires the Department of Safety and Professional Services (DSPS) to submit a report to the Governor and the Legislature that includes recommendations for reform relating to Wisconsin's occupational licenses. To meet this requirement, DSPS is conducting a study to determine which occupational licenses are truly needed to protect the public, and explore if less restrictive alternatives may be appropriate.

The purpose of this survey is to collect data and input from each state agency. Your response to the survey questions will ensure accurate identification of each license the state requires, as well as the burdens associated with each license. The data and input collected will be used to provide recommendations for reform and improvement of Wisconsin's occupational licensing requirements.

Your participation by thoroughly answering the survey questions is vital to the success of this study and necessary to fulfill the request of the Governor and Legislature.

The following section will assist you in answering the questions appropriately.

### **Instructions to Survey Respondents:**

1. **Survey Method:** To begin the survey, click on the following link: [Wisconsin Occupational License Study](#). The survey is designed to allow your agency to submit multiple entries if more than one Division or Bureau regulates an occupational license.

2. **Deadline to Submit:** The deadline to complete the survey is **Friday, March 30, 2018**. Agencies must complete the survey by this date.

3. **Assistance:** Questions for assistance with the survey may be sent to [DSPSLicensureFeedback@Wisconsin.gov](mailto:DSPSLicensureFeedback@Wisconsin.gov). Please consult with your agency's Chief Legal Counsel to determine if your agency regulates an occupation included in the licensing definition.

4. **Survey Questions:** This linked document contains all of the questions that are included in this survey. Since additional research and outreach to other states may be necessary to appropriately respond to certain questions, you may wish to use this document as a guide to gather the information and data prior to beginning the survey. The survey may automatically skip certain questions based on your response to the previous question. Therefore, some of the questions listed in the document may not be visible or applicable to your specific agency.

**\* 1. Please provide your name and title, agency name, and contact information for the person completing this survey.**

Name & Title of Person Completing Survey	<input type="text"/>
Agency Name	<input type="text"/>
Email Address	<input type="text"/>
Phone Number	<input type="text"/>

**\* 2. Does your agency issue or regulate any occupational licenses?** *(Note: If you are unsure whether your agency meets the definition listed below, please consult with your agency's Chief Legal Counsel.)*

"Occupational license" means any of the following:

- a. A license, permit, certification, registration, or other approval granted under §167.10 (6m) or chapters 101, 145, or 440 to 480 of the statutes.
- b. A license, permit, certification, registration, or other approval not included above if granted to an individual by this state in order that the individual may engage in a profession, occupation, or trade in this state or in order that the person may use one or more titles in association with his or her profession, occupation, or trade.

- Yes
- No

**\* 3. Please provide the best point of contact for each occupation your agency regulates.** *(Note: These individuals may be different than the person(s) completing the survey.)*

Please include a contact name, email, and phone number. For example:

1. [Occupation]: Contact name, email address, phone number
2. [Occupation]: Contact name, email address, phone number

**\* 4. List each occupation that your agency regulates, the type of license, and the number of active licensees for each type.**

Please number and list each occupation on a separate line. For example:

1. Physician: License; 8,500
2. Wastewater Operator: Certificate; 2,300
3. Interior Designer: Registration; 1,200
4. Funeral Establishment Operator: Permit; 450

**\* 5. List each licensed occupation and the related barriers or substantial hardships that individuals may face to achieve licensure.**

Please number and list each occupation on a separate line. For example:

- 1. Physician: [Explanation of barriers]
- 2. Wastewater Operator: [Explanation of barriers]
- 3. Interior Designer: [Explanation of barriers]
- 4. Funeral Establishment Operator: [Explanation of barriers]

\* 6. **Specify each licensed occupation and the related estimated costs imposed on individuals or entities as a result of regulation.** *(Note: Please itemize the estimated costs for each category, which includes, but is not limited to, the following: initial licensing fee, tuition, examination fees, registration/credential fees, cost of continuing education required for relicensure, other costs individuals or entities may incur in order to obtain the required license, permit, certification, registration, or other approval granted by this state in order to engage in a profession, trade, or occupation.)*

Please number and list each occupation and related costs on a separate line. For example:

1. [Occupation]: \$ [Total estimated cost]

- a. Licensing fee: \$
- b. Initial Tuition/Education/Training: \$
- c. Continuing Education: \$
- d. Examination fees: \$
- e. [Other costs - please itemize]: \$

2. [Occupation]: \$ [Total estimated cost]

- a. Licensing fee: \$
- b. Initial Tuition/Education/Training: \$
- c. Continuing Education: \$
- d. Examination fees: \$
- e. [Other costs - please itemize]: \$

3. [Entity]: \$ [Total estimated cost]

- a. Application fee: \$
- b. Permit Fee: \$
- c. [Other costs - please itemize]: \$

4. [Entity]: \$ [Total estimated cost]

- a. Application fee: \$
- b. Permit Fee: \$
- c. [Other costs - please itemize]: \$

**7. Is your agency aware of any instances where occupational licensing regulations have impacted the cost or availability of consumer goods or services? [i.e. increased costs for goods or services, decreased availability of practitioners]**

Yes

No

**8. Please provide specific examples where state licensing regulations have impacted the cost or availability of consumer goods or services.**

**\* 9. Can the public reasonably expect to benefit due to the regulation of any of these occupations?**

Yes

No

Other: [Please specify]

**\* 10. For each occupation, provide an explanation and supporting evidence to show how the public can reasonably expect to benefit due to the regulation of the occupation. Include research findings or other evidence to show how the benefit is measured.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]: [Measurable benefit, supporting evidence]
2. [Occupation]: [Measurable benefit, supporting evidence]
3. [Occupation]: [Measurable benefit, supporting evidence]
4. [Occupation]: [Measurable benefit, supporting evidence]

**\* 11. Specify the occupation and explain why the public may not reasonably expect to benefit due to the regulation of that occupation.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]: [Explanation]
2. [Occupation]: [Explanation]
3. [Occupation]: [Explanation]
4. [Occupation]: [Explanation]

\* 12. **Would the unregulated practice of any of the currently licensed occupations cause harm or endanger the public health, safety, or welfare?** *(Note: The potential for harm must be recognizable and not speculative and the consequences of incompetence are substantial and irreversible.)*

- Yes
- No
- Don't know

\* 13. **For each occupation, list the specific public harm or danger that could occur due to unregulated providers.** *(Note: The potential for harm must be recognizable and not speculative and the consequences of incompetence are substantial and irreversible.)*

Please number and list each occupation on a separate line. For example:

- 1. [Occupation]: [Explanation]
- 2. [Occupation]: [Explanation]
- 3. [Occupation]: [Explanation]
- 4. [Occupation]: [Explanation]

\* 14. **For any of the licensed occupations, could the general public be reasonably protected from potential harm or danger through less restrictive means (other than licensing)?**

- Yes
- No

**\* 15. For each occupational group, provide examples of alternative means (other than regulation or licensing) that could protect the general public from potential harm or danger.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]: [Alternatives]

2. [Occupation]: [Alternatives]

3. [Occupation]: [Alternatives]

**\* 16. List the occupations that would not subject the general public to harm or danger should that occupation become unregulated.**

Please number and list each occupation on a separate line.

**\* 17. Has your agency received any licensing complaints in the previous five years (2013-2017) for any of the occupations that you regulate?**

Yes

No

**\* 18. For each occupation, list the number of complaints that have been received in each of the previous five years (2013-2017). In addition, indicate how many of those complaints resulted in opening an investigation, and how many resulted in disciplinary action.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]:

2013: 15 received, 14 investigated, 10 disciplinary action;  
2014: 20 received, 18 investigated, 15 disciplinary action;  
2015: 25 received, 20 investigated, 12 disciplinary action;  
2016: 30 received, 25 investigated, 20 disciplinary action;  
2017: 35 received, 30 investigated, 25 disciplinary action.

2. [Occupation]:

2013: 15 received, 14 investigated, 10 disciplinary action;  
2014: 20 received, 18 investigated, 15 disciplinary action;  
2015: 25 received, 20 investigated, 12 disciplinary action;  
2016: 30 received, 25 investigated, 20 disciplinary action;  
2017: 35 received, 30 investigated, 25 disciplinary action.

**\* 19. For each occupation, list the top three types of complaints your agency received over the previous five years (2013-2017).**

For each occupation and year, please number and list the top complaints on a separate line. a=top complaint; b=2nd top complaint, c=3rd top complaint. For example:

1. [Occupation]:

- a. Practicing without a license
- b. Operating beyond the Scope of Practice
- c. Failure to disclose discipline from another state

2. [Occupation]:

- a. Breach of contract
- b. Failure to comply with educational requirements
- c. Practicing without required supervision

**\* 20. Has there been evidence of specific public harm that occurred prior to any of these occupations being regulated in Wisconsin?**

- Yes
- No
- Don't know

**\* 21. For each occupation, provide specific examples and documented evidence of the public harm that was caused due to this occupation being unregulated.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]: [type of Harm],  
[Specific evidence - documented court case, etc.]

2. [Occupation]: [type of Harm],  
[Specific evidence - documented court case, etc.]

3. [Occupation]: [type of Harm],  
[Specific evidence - documented court case, etc.]

4. [Occupation]: [type of Harm],  
[Specific evidence - documented court case, etc.]

**\* 22. Do other states license or regulate any of these occupations or professional scopes of practice?**

Yes

No

\* 23. **For each occupation, list the state(s) and how they regulate that occupation.** [i.e. credential, certification, license, permit, registration, etc.]

Please number and list each occupation on a separate line. For example:

1. [Occupation]:

Illinois: certification

California: license

Minnesota: permit

Michigan: registration

2. [Occupation]:

Arkansas: permit

Idaho: license

Maine: certification

New Mexico: registration

New York: credential

\* 24. **For each occupation, specify the requirement for each type of regulation and renewal.** [e.g. years of initial didactic or practical education, continuing education hours, exam, refreshers, apprenticeship, internship, field experience, etc.]

Please number and list each occupation on a separate line. For example:

1. [Occupation]:

Illinois: [Requirement]

California: [Requirement]

Minnesota: [Requirement]

Michigan: [Requirement]

2. [Occupation]:

Arkansas: [Requirement]

Idaho: [Requirement]

Maine: [Requirement]

New Mexico: [Requirement]

New York: [Requirement]

25. **For each state that provides a different type of regulation than Wisconsin, provide evidence of any specific public harm that occurred due to that state's type of regulation for that occupation.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]:

[State]: [Type of regulation]; [Harm caused and supporting evidence]

[State]: [Type of regulation]; [Harm caused and supporting evidence]

[State]: [Type of regulation]; [Harm caused and supporting evidence]

2. [Occupation]:

[State]: [Type of regulation]; [Harm caused and supporting evidence]

[State]: [Type of regulation]; [Harm caused and supporting evidence]

[State]: [Type of regulation]; [Harm caused and supporting evidence]

**26. For each occupation, provide evidence of any specific public harm that occurred prior to this occupation being regulated in that state.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]:

[State]: [information/evidence of harm];

[State]: [information/evidence of harm];

[State]: [information/evidence of harm].

2. [Occupation]:

[State]: [information/evidence of harm];

[State]: [information/evidence of harm];

[State]: [information/evidence of harm].

**\* 27. For each state that does not regulate these occupations, has any specific public harm occurred due to the occupation being unregulated?**

Yes

No

Don't know

**\* 28. For each unregulated occupation, provide evidence of the specific public harm that occurred in that state [e.g. news articles or releases, etc.]**

Please number and list each occupation on a separate line. For example:

1. [Occupation]:

[State]: [information/evidence of harm];

[State]: [information/evidence of harm];

[State]: [information/evidence of harm].

2. [Occupation]:

[State]: [information/evidence of harm];

[State]: [information/evidence of harm];

[State]: [information/evidence of harm].

**\* 29. Provide a summarizing statement from your agency or board why the license for each occupation that your agency regulates is warranted or should be eliminated.**

Please number and list each occupation on a separate line. For example:

1. [Occupation]: [Retain Regulation or Eliminate - Summarizing statement]

2. [Occupation]: [Retain Regulation or Eliminate - Summarizing statement]

3. [Occupation]: [Retain Regulation or Eliminate - Summarizing statement]

4. [Occupation]: [Retain Regulation or Eliminate - Summarizing statement]

30. Do you have any additional comments, questions, or concerns that you would like to share?

### Intro

Thank you for participating in the Wisconsin Occupational License Study survey. Your feedback is important. The deadline for participation is December 10, 2018.

Pursuant to 2017 Wisconsin Act 59, the Department of Safety and Professional Services (DPS) is required to submit a report to the Governor and the Legislature that includes recommendations for reform relating to Wisconsin's occupational licenses.

The data and input collected will be used to provide recommendations for reform and improvement of Wisconsin's occupational licensing requirements.

### Please Read:

The terms below are used in the survey and defined as follows:

**“License”** means a state of Wisconsin-issued occupational license, credential, certification, or registration. “License” does not include permits, facility or establishment licenses, business licenses (such as a liquor license or vending license), or licenses required by a local or municipal ordinance.

**“Main job or occupation”** means your current and main occupation or job, job from which you are on layoff, or job at which you last worked if you are between jobs.

\* **Do you have a currently active occupational or professional license or credential that is issued by the state of Wisconsin?**

- Yes, I have an active license that is issued by the State of Wisconsin.
- No, my license application is pending.
- No, my license is inactive or expired.
- No, I do not hold a Wisconsin state-issued license.

**\* Specify the type of active license that you hold. If you hold multiple licenses, select the category type that best describes the license you use for your primary/main occupation.**

- Animal or Agriculture related
- Banking and Financial related (includes investments, insurance, lenders, collectors, tax assessor, charitable fundraising)
- Business related
- Chemical, Environmental, or Utilities Dealer, Supplier, or Applicator (includes fuel, gas, oil, water, power, pesticides, asbestos, hazardous materials, or waste products)
- Educator or School related (includes instructor, teacher, administrator, or service provider of elementary, secondary, postsecondary education)
- Food or Restaurant related
- Health or Medical related
- Legal, Security, or Enforcement related (i.e. attorney, investigator, inspector, tester, certifier, private detective, notary, etc.)
- Product or Vehicle Manufacturer, Broker, or Dealer
- Sales related
- Sports related
- Social Services (includes child and adult care services)
- Trades related
- Other (please specify)

**\* How useful is your license for each of the following?**

**a. Getting a job?**

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

**\* b. Keeping a job?**

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

**\* c. Keeping you marketable to employers or clients?**

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

**\* d. Improving your work skills?**

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

**\* e. Increasing your wages/salary?**

- Extremely useful
- Very useful
- Somewhat useful
- Not so useful
- Not at all useful

\* Which of the following was required to obtain your license associated with your primary occupation? (Check all that apply.)

- High school diploma or equivalent
- Passing a test
- Demonstrating certain skills
- Completing an internship or apprenticeship
- Previous job-related experience
- Technical certification (Less than 2 years)
- Some college, no degree
- Associate degree
- Master's degree
- Doctoral or professional degree
- None of the above
- Other (please specify)

\* About how many hours of instruction did you complete to obtain your license associated with your primary occupation?

- Less than 40 hours
- 40-159 hours
- 160 to 479 hours
- 480 hours (half a full-time school year) to 959 hours
- 960 hours (1 full-time school year) or more

\* **Select the category that best describes the *initial* costs you incurred to *obtain* your license associated with your *primary* occupation.** (Include costs for initial education/tuition, registration fees, initial licensing fees, exam fees, required association fees, or other required costs you incurred to obtain your license.)

- Zero to \$200
- \$201 to \$500
- \$201 to \$500
- \$501 to \$1,000
- \$1,001 to \$5,000
- \$5,001 to \$10,000
- \$10,001 to \$50,000
- \$50,001 to \$100,000
- Greater than \$100,000

\* **Select the category that best describes the *ongoing* costs you incur to *retain* your license associated with your *primary* occupation.** (Include costs for continuing education, registration fees, renewal licensing fees, exam fees, required association fees, or other required costs you incur in order to keep your license.)

- Zero to \$200
- \$201 to \$500
- \$201 to \$500
- \$501 to \$1,000
- \$1,001 to \$5,000
- \$5,001 to \$10,000
- \$10,001 to \$50,000
- \$50,001 to \$100,000
- Greater than \$100,000

**\* Rate the level of hardship or barriers you faced to *obtain* your initial license.**

- None at all
- A small amount
- A moderate amount
- A large amount
- A great amount that resulted in my inability to get a license.

**\* Rate the level of hardship or barriers you face to *retain* your license.**

- None at all
- A small amount
- A moderate amount
- A large amount
- A great amount that resulted in my inability to maintain my license.

**\* Rate the importance that your license serves in protecting public citizens from harm or danger.**

- Extremely important. It's a matter of life or death.
- Very important. The public would be at risk for significant harm or danger if a license wasn't required for this occupation.
- Somewhat important. It's possible the public could be exposed to some risk if a license wasn't required for this occupation.
- Not so important. It's unlikely the public would be exposed to harm or danger if a license wasn't required for this occupation.
- Not at all important. There is no risk of harm or danger to the public if a license wasn't required for this occupation.

**\* Do you hold a similar occupational license in another state(s)?**

- Yes
- No

**\* Select the category that best describes the *initial* requirements to *obtain* your out of state license compared to Wisconsin's initial licensing requirements. (Compare educational and other requirements, fees and other costs.)**

- Way more than Wisconsin
- Somewhat more than Wisconsin
- About the same as Wisconsin
- Somewhat less than Wisconsin
- Way less than Wisconsin

**\* Select the category that best describes the *ongoing* requirements to *retain* your out of state license compared to Wisconsin's *ongoing* licensing requirements. (Compare educational and other requirements, fees and other costs.)**

- Way more than Wisconsin
- Somewhat more than Wisconsin
- About the same as Wisconsin
- Somewhat less than Wisconsin
- Way less than Wisconsin

**\* Rate the level of hardship or barriers you faced to *obtain* your *initial* out of state license.**

- The state has way more hardships and barriers than Wisconsin.
- The state has somewhat more hardships and barriers than Wisconsin.
- The state has about the same as Wisconsin.
- The state has somewhat less hardships and barriers than Wisconsin.
- The state has way less hardships and barriers than Wisconsin.

**\* Rate the level of hardship or barriers you face to *retain* your out of state license.**

- The state has way more hardships and barriers than Wisconsin.
- The state has somewhat more hardships and barriers than Wisconsin.
- The state has about the same as Wisconsin.
- The state has somewhat less hardships and barriers than Wisconsin.
- The state has way less hardships and barriers than Wisconsin.

**\* Are you aware of any instances where occupational licensing regulations have impacted the cost or availability of consumer goods or services? [i.e. increased costs for goods or services, decreased availability of practitioners]**

- Yes
- No

**\* Please provide specific examples where state licensing regulations have impacted the cost or availability of consumer goods or services.**

**\* How important is it to regulate Wisconsin's occupations in order to protect public citizens from harm or danger?**

- Extremely important. It's a matter of life or death.
- Very important. The public would be at risk for significant harm or danger if a license wasn't required for this occupation.
- Somewhat important. It's possible the public could be exposed to some risk if a license wasn't required for this occupation.
- Not so important. It's unlikely the public would be exposed to harm or danger if a license wasn't required for this occupation.
- Not at all important. There is no risk of harm or danger to the public if a license wasn't required for this occupation.

**\* Indicate what types of licenses should be regulated in order to protect public citizens from harm or danger. Check all that apply.**

- Animal or Agriculture related
- Banking and Financial related (includes investments, insurance, lenders, collectors, tax assessor, charitable fundraising)
- Business related
- Chemical, Environmental, or Utilities Dealer, Supplier, or Applicator (includes fuel, gas, oil, water, power, pesticides, asbestos, hazardous materials, or waste products)
- Educator or School related (includes instructor, teacher, administrator, or service provider of elementary, secondary, postsecondary education)
- Food or Restaurant related
- Health or Medical related
- Legal, Security, or Enforcement related (i.e. attorney, investigator, inspector, tester, certifier, private detective, notary, etc.)
- Product or Vehicle Manufacturer, Broker, or Dealer
- Sales related
- Sports related
- Social Services (includes child and adult care services)
- Trades related
- No occupations should be regulated
- Other (please specify)

**Please provide any information you would like to share.**

## VIII. Resources

1. State of Vermont - Application for Preliminary Sunrise Review Assessment  
[www.sec.state.vt.us/professional-regulation/sunrise-review.aspx](http://www.sec.state.vt.us/professional-regulation/sunrise-review.aspx)
2. Occupational Licensing Review Act Model Legislation  
[www.ncsl.org/Portals/1/Documents/Labor/Licensing/Knepper\\_OccupationalLicensingReviewAct\\_31961.pdf](http://www.ncsl.org/Portals/1/Documents/Labor/Licensing/Knepper_OccupationalLicensingReviewAct_31961.pdf)
3. The National Occupational Licensing Database  
[www.ncsl.org/research/labor-and-employment/occupational-licensing-statute-database.aspx#Additional%20Resources](http://www.ncsl.org/research/labor-and-employment/occupational-licensing-statute-database.aspx#Additional%20Resources)
4. Policymaker Questions to Ask When Considering Occupational Licensing Proposals  
[www.ncsl.org/Portals/1/HTML\\_LargeReports/occupationallicensing\\_final.htm](http://www.ncsl.org/Portals/1/HTML_LargeReports/occupationallicensing_final.htm)
5. Fact Sheet: New Steps to Reduce Unnecessary Occupation Licenses that are Limiting Worker Mobility and Reducing Wages  
[obamawhitehouse.archives.gov/the-press-office/2016/06/17/fact-sheet-new-steps-reduce-unnecessary-occupation-licenses-are-limiting](http://obamawhitehouse.archives.gov/the-press-office/2016/06/17/fact-sheet-new-steps-reduce-unnecessary-occupation-licenses-are-limiting)
6. Occupational Licensing: A Framework for Policymakers, July 2015  
[obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nombargo.pdf](http://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nombargo.pdf)
7. Framework for Developing Consistent Descriptions of Regulatory Models - CLEAR (Council on Licensure, Enforcement, and Regulation)  
[www.clearhq.org/resources/Regulatory\\_Model\\_United\\_States.pdf](http://www.clearhq.org/resources/Regulatory_Model_United_States.pdf)

## IX. References

1. *States Take on Occupational Licensing Reform*; Billy Culleton, Strategic Government Relations Coordinator
2. *License to Work – A National Study of Burdens from Occupational Licensing - 2<sup>nd</sup> Edition*; Institute for Justice
3. *Occupational Licensing in Wisconsin Has Grown and Has Costs* – Collen Roth, Research Fellow, Wisconsin Institute for Law and Liberty
4. *A Fresh Start – Wisconsin’s Atypical Expungement Law and Options for Reform* – Public Policy Forum
5. *Regulation of Professional Occupations by the Department of Safety and Professional Services* – Information Paper 97, January 2015
6. *Occupational Licensing: Ranking the States and Exploring Alternatives* – Adam B. Summers, Reason Foundation
7. *The De-licensing of Occupations in the United States* - Robert J. Thornton and Edward J. Timmons, "Monthly Labor Review, U.S. Bureau of Labor Statistics, May 2015
8. National Conference of State Legislatures - [www.ncsl.org](http://www.ncsl.org)
9. *The State of Occupational Licensing: Research, State Policies and Trends, Occupational Licensing: Assessing State Policy and Practice* - National Conference of State Legislatures
10. *Occupational Licensing: A Framework for Policymakers* - U.S. Department of Treasury Office of Economic Policy, Council of Economic Advisers and Department of Labor, (Washington, D.C., The White House) 2015
11. *The Costs and Benefits of Occupational Regulation* - Carolyn Cox and Susan Foster, Federal Trade Commission, (Washington, D.C.), 1990
12. *Hearing on License to Compete: Occupational Licensing and State Action Doctrine,*" United States Committee on the Judiciary - Testimony presented by Jason Furman, February 2016
13. *The Right to Earn a Living Act: A Well-Considered Answer to Licensing* – Jon Sanders, March 2018
14. *Buttermaker License* – Jeanne Carpenter, CheeseUnderground.com, March 2010

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This Wisconsin Occupational Licensing Study Report  
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**Wisconsin Department of Safety and Professional Services**

**Laura Gutiérrez, Secretary**

Office of the Secretary  
4822 Madison Yards Way  
PO Box 8363  
Madison WI 53708-8368

Phone: 608-266-1352  
Web: <http://dsps.wi.gov>  
Email: [dsps@wisconsin.gov](mailto:dsps@wisconsin.gov)