



OPTOMETRY EXAMINING BOARD
Room N208, 4822 Madison Yards Way, 2nd Floor, Madison
Contact: Valerie Payne (608) 266-2112
January 23, 2020

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

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-3)

B. Approval of Minutes

- 1) September 26, 2019 **(4-6)**
- 2) December 11, 2019 – Teleconference **(6)**

C. Conflicts of Interest

D. Administrative Matters – Discussion and Consideration

- 1) Department, Staff and Board Updates
- 2) Annual Policy Review **(7)**
- 3) Election of Officers, Appointment of Liaisons and Alternates, Delegation of Authorities **(8-15)**
- 4) 2020 Meeting Dates **(16)**
- 5) Board Members – Term Expiration Dates
 - a. Jeffrey Clark – 7/1/2023
 - b. Mark Jinkins – 7/1/2016
 - c. Robert Schulz – 7/1/2020
 - d. Lisa Slaby – 7/1/2023
 - e. Peter Sorce – 7/1/2023
 - f. John Sterling – 7/1/2021
 - g. Emmylou Wilson – 7/1/2023

E. Negotiations Between the Association of Regulatory Boards of Optometry (ARBO) and the National Board of Examiners in Optometry (NBEO) – Discussion and Consideration (17)

F. Administrative Rule Matters – Discussion and Consideration

- 1) Rules Update
 - a. Opt 4 – Relating to Licensure by Endorsement

- b. Opt 6 – Relating to Pharmaceutical Agents and Related Rule SPS 10 Relating to Diagnostic and Therapeutic Pharmaceutical Agents
 - c. Opt 8 – Relating to Updates Continuing Education
 - d. Opt 3, 4, 6 and 7 – Relating to the Examination on the Treatment and Management of Ocular Disease – Emergency Rule
 - e. Opt 3, 4, 6, and 7 – Relating to the Examination on the Treatment and Management of Ocular Disease – Permanent Rule
- 2) Open Scope – Opt 5 – Relating to Unprofessional Conduct **(18-24)**
 - 3) Pending and Possible Rulemaking Projects

G. Speaking Engagements, Travel, or Public Relation Requests, and Reports

- 1) Consideration of Attendance at the 2020 ARBO Annual Meeting – June 21-23, 2020 in Alexandria, VA

H. Discussion and Consideration of Items Added After Preparation of Agenda

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

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 Division of Legal Services and Compliance (DLSC) Matters

- 1) **Case Closings**
 - a. 18 OPT 009 – Unknown **(25-27)**

K. Deliberation of Items Added After Preparation of the Agenda

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

L. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- M. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate
- N. Open Session Items Noticed Above Not Completed in the Initial Open Session
- O. Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

NEXT MEETING: MARCH 26, 2020

 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.

**TELECONFERENCE/VIRTUAL
OPTOMETRY EXAMINING BOARD
MEETING MINUTES
SEPTEMBER 26, 2019**

PRESENT: Ann Meier Carli (*via Skype*), Jeffery Clark, Mark Jinkins (*via Skype*), Robert Schulz, Peter Sorce, Emmylou Wilson (*via Skype*)

EXCUSED: John Sterling

STAFF: Yolanda McGowan, Executive Director; Jameson Whitney, Legal Counsel; Sharon Henes, Administrative Rules Coordinator; Megan Glaeser, Bureau Assistant; and other DSPS Staff

CALL TO ORDER

Ann Meier Carli, Chairperson, called the meeting to order at 9:02 a.m. A quorum was confirmed six (6) board members present.

ADOPTION OF AGENDA

Amendments to the Agenda

MOTION: Peter Sorce moved, seconded by Ann Meier Carli, to adopt the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF JULY 18, 2019

Amendments to the Minutes

MOTION: Robert Schulz moved, seconded by Peter Sorce, to approve the Minutes of July 18, 2019 as published. Motion carried unanimously.

ADMINISTRATIVE MATTERS

Department, Staff and Board Updates

MOTION: Jeffrey Clark moved, seconded by Ann Meier Carli, to express appreciation for Helen Leong's service to the Board. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Report in Compliance with s. 440.035 (2m) (c) 1., Stats. (2017 WI Act 262)

MOTION: Robert Schulz moved, seconded by Jeffrey Clark, to authorize Chairperson (or, in the absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession) to approve the final 2019 report to comply with s. 440.035(2m)(c)1., Stats., relating to the issue of opioid abuse, for submission to the Legislature and Governor's Office. Motion carried unanimously.

CLOSED SESSION

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

The Board convened into Closed Session at 9:32 a.m.

CREDENTIALING MATTERS

Application Reviews

Patrick Sesso, O.D. – Optometry Applicant

MOTION: Mark Jinkins moved, seconded by Ann Meier Carli, to approve the Optometry application of Patrick Sesso, O.D., once all requirements are met. Motion carried unanimously.

RECONVENE TO OPEN SESSION

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

The Board reconvened into Open Session at 9:36 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Peter Sorce moved, seconded by Mark Jinkins, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

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

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

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

ADJOURNMENT

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

The meeting adjourned at 9:44 a.m.

**TELECONFERENCE/VIRTUAL
OPTOMETRY EXAMINING BOARD
MEETING MINUTES
DECEMBER 11, 2019**

PRESENT: Jeffery Clark, Mark Jinkins, Robert Schulz, Peter Sorce, John Sterling,

EXCUSED: Lisa Slaby, Emmylou Wilson

STAFF: Valerie Payne, Executive Director; Sharon Henes, Administrative Rules Coordinator; Kimberly Wood, Program Assistant Supervisor; and other DSPS Staff

CALL TO ORDER

Robert Schulz, Vice Chairperson, called the meeting to order at 3:05 p.m. A quorum of five (5) members was confirmed.

ADOPTION OF AGENDA

MOTION: Peter Sorce moved, seconded by John Sterling, to adopt the Agenda as published. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Adopt CR 19-033 Relating to the Examination on the Treatment and Management of Ocular Disease

MOTION: Mark Jinkins moved, seconded by Peter Sorce, to approve the Adoption Order for Clearinghouse Rule 19-033, relating to the examination on the treatment and management of ocular disease. Motion carried unanimously.

Adopt CR 19-026 Relating to Licensure by Endorsement

MOTION: John Sterling moved, seconded by Jeffery Clark, to approve the Adoption Order for Clearinghouse Rule 19-026, relating to licensure by endorsement. Motion carried unanimously.

Adopt CR 19-027 Relating to Diagnostic and Therapeutic Pharmaceutical Agents

MOTION: Mark Jinkins moved, seconded by Peter Sorce, to approve the Adoption Order for Clearinghouse Rule 19-027, relating to diagnostic and therapeutic pharmaceutical agents. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 3:21 p.m.

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Kimberly Wood, Program Assistant Supervisor-Adv.		2) Date When Request Submitted: 1/7/2020 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: All Boards			
4) Meeting Date:	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Annual Policy Review	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Please be advised of the following Annual Policy Review items: <ol style="list-style-type: none"> 1. Attendance/Quorum – Thank you for your service and for your commitment to meeting attendance. If you cannot attend a meeting, we ask that you let us know ASAP as quorum is required for our Boards, Sections and Councils to meet pursuant to Open Meetings Law. DSPS Boards-Open Meetings Resources 2. Walking Quorum – Please refrain from discussing Board/Section/Council business with other members outside of legally noticed meetings so to avoid walking quorum issues pursuant to Open Meetings Law. DSPS Boards-Open Meetings Resources 3. Agenda Deadlines – Please let your executive Director know if you have items to be considered on an upcoming agenda no less than 8 business days prior to a meeting when possible. DSPS Boards-Reference Materials-Meeting Timeline 4. Travel Voucher and Per Diem Submissions – Please submit all Per Diem and Reimbursement Claims to DSPS within 30 days of date an expense is incurred. DSPS Boards-Travel and Reimbursement-Travel and Reimbursement Overview 5. Lodging Accommodations/Hotel Cancellation Policy – Lodging accommodations are provided to members who must leave home before 6:00 a.m. to attend a meeting. If you cannot attend a meeting it is the board member’s responsibility to cancel their reservation within the stated cancellation timeframe. If a meeting is changed to a teleconference or cancelled or rescheduled, DSPS staff will make lodging cancellations or modifications as needed. DSPS Boards-Travel and Reimbursement-Travel and Reimbursement Overview 6. Inclement Weather Policy – In the event of inclement weather the agency may change a meeting from an in-person meeting to a teleconference. 			
11) Authorization			
<i>Kimberly Wood</i>		1/7/2020	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: <ol style="list-style-type: none"> 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. 			

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Megan Glaeser, Bureau Assistant		2) Date When Request Submitted: January 16, 2020 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: January 23, 2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Matters: 1) Election of Officers 2) Appointment of Liaisons and Alternates 3) Delegation of Authorities	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: 1) The Board should conduct Election of its Officers for 2020. 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.			
11) Authorization			
Megan Glaeser <hr/> Signature of person making this request		January 16, 2020 <hr/> Date	
<hr/> Supervisor (if required)		<hr/> Date	
<hr/> Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

OPTOMETRY EXAMINING BOARD

2019 Elections and Liaison Appointments

2019 ELECTION RESULTS	
Chairperson	Ann Meier Carli
Vice Chairperson	Robert Schulz
Secretary	Mark Jinkins
2019 LIAISON APPOINTMENTS	
Credentialing Liaison(s)	Ann Meier Carli <i>Alternate: John Sterling</i>
Education and Exams Liaison(s)	Richard Foss <i>Alternate:</i>
Monitoring Liaison	John Sterling <i>Alternate: Mark Jinkins</i>
Professional Assistance Procedure (PAP) Liaison(s)	Mark Jinkins <i>Alternate: Peter Sorce</i>
Legislative Liaison	Peter Sorce <i>Alternate: Ann Meier Carli</i>
Travel Liaison	Ann Meier Carli <i>Alternate: Mark Jinkins</i>
Occupational License Study Liaison	Ann Meier Carli <i>Alternate: John Sterling</i>
Prescription Drug Monitoring Program Liaison (PDMP)	Robert Schulz <i>Alternate: Peter Sorce</i>
2019 SCREENING PANEL APPOINTMENTS	
January-December 2019	Emmylou Wilson, Mark Jinkins, Robert Schulz

DELEGATION MOTIONS

Document Signature Delegations

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

MOTION: Ann Meier Carli moved, seconded by Mark Jenkins, in order to carry out duties of the Board, the Chairperson, chief presiding officer, or longest serving board member, has the ability to delegate signature authority for purposes of facilitating the completion of assignments during or between meetings. The members of the Board hereby delegate to the Executive Director or DPD Division Administrator, the authority to sign on behalf of a board member as necessary. Motion carried unanimously.

Delegated Authority for Urgent Matters

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

Monitoring Delegations

MOTION: Ann Meier Carli moved, seconded by Mark Jenkins, 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 Mark Jenkins, to delegate authority to the Credentialing Liaison(s) to serve as a liaison between DSPS and the Board and to act on behalf of the Board in regard to credentialing applications or questions presented to them. Motion carried unanimously.

Delegation of Authority to DSPS When Credentialing Criteria is Met

MOTION: Ann Meier Carli moved, seconded by Mark Jenkins, to delegate credentialing authority to DSPS to act upon applications that meet all credentialing statutory and regulatory requirements without Board or Board liaison review. Motion carried unanimously.

Delegated Authority for Application Denial Reviews

MOTION: Mark Jenkins moved, seconded by Peter Sorce, that the Department's Attorney Supervisors, DLSC Administrator, or their designee are authorized to serve as the Board's designee for purposes of reviewing and acting on requests for hearing as a result of a denial of a credential. Motion carried unanimously.

Voluntary Surrenders

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

Education, Continuing Education and/or Examination Delegation(s)

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

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

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

Optional Renewal Notice Insert Delegation

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

Legislative Liaison Delegation

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

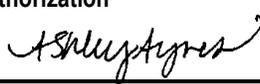
Travel Delegation

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.

PDMP Liaison Delegation

MOTION: Mark Jenkins moved, seconded by Ann Meier Carli, to delegate authority to the PDMP Liaison for all matters relating to PDMP. Motion carried unanimously.

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Ashley Ayres Monitoring and Intake Supervisor Division of Legal Services and Compliance		2) Date When Request Submitted: December 31, 2019 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: January 23, 2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Appointment of Monitoring Liaison and Delegated Authorities	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: <ol style="list-style-type: none"> 1. Appoint primary and alternate liaisons for Monitoring, and for the Professional Assistance Procedure (PAP). 2. Adopt or reject the Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document as presented in today's agenda packet. 3. Delegate authority to Board Counsel to sign Monitoring orders on behalf of the Board/Section, after the Board/Section has taken action on Monitoring agenda items. <p style="margin-left: 20px;"><i>Current practice is for Department Monitors to draft Monitoring orders after Board meetings, send them to Board Counsel for review, and then send them to the Executive Director for subsequent review and signature. With the new proposed process, Department Monitors would only send their orders to Board Counsel for review and signature, eliminating the need for a second review by the Executive Director.</i></p>			
11) Authorization <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  <hr/> Signature of person making this request </div> <div style="text-align: center;"> December 31, 2019 <hr/> Date </div> </div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 10px;"> <div style="width: 60%;"> <hr/> Supervisor (if required) </div> <div style="width: 30%;"> <hr/> Date </div> </div> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 10px;"> <div style="width: 80%;"> <hr/> Executive Director signature (indicates approval to add post agenda deadline item to agenda) </div> <div style="width: 15%;"> <hr/> Date </div> </div>			
Directions for including supporting documents: <ol style="list-style-type: none"> 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. 			

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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AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Kimberly Wood, Program Assistant Supervisor-Adv.		2) Date When Request Submitted: 1/9/2020 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 1/23/2020	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? 2020 Meeting Dates	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Please review the finalized 2020 meeting dates. Any conflicts should be identified so to ensure quorum. 1/23/2020 3/26/2020 6/4/2020 9/23/2020			
11) Authorization			
<i>Kimberly Wood</i>		<i>1/9/2020</i>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



To: ARBO Member Board Executive Directors and Administrators

From: ARBO Board of Directors

Date: January 6, 2020

RE: ARBO/NBEO Negotiations

ARBO Member Boards:

Happy New Year! As you know, the ARBO Board of Directors has been working for the past two years to negotiate a new agreement with the National Board of Examiners in Optometry (NBEO) which would allow greater input and transparency into the exams utilized by ARBO member boards. The current agreement has expired and we have not been able to come to terms with NBEO that recognize the importance of ARBO's exclusivity nor the requested input and transparency.

What this means for ARBO as an organization is that ARBO will no longer receive any financial payments from NBEO. The ARBO Board is continuing discussions with the NBEO, however, ARBO is no longer required to exclusively promote and endorse the NBEO exams thus allowing our organization to explore alternative options to the current entry-level examinations.

What does this change mean for the ARBO member boards? In the short term, not much will change. ARBO's member boards will still be able to utilize the NBEO exams as one component of licensure. In the long term, ARBO could potentially develop new assessment programs under the direct control of our member boards providing needed input and transparency and also enhancing the long-term financial security of ARBO.

ARBO will continue to operate within its mission of serving our member boards which regulate the profession of optometry in the interest of public protection. We will keep you updated throughout the year and we plan to have more information to discuss with you at our annual meeting in June 2020. If you have any questions please contact Lisa Fennell, ARBO Executive Director at LFennell@arbo.org.

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kevyn Radcliffe Administrative Rules Coordinator		2) Date when request submitted: January 9, 2020 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: January 23, 2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Rule Matters – Discussion and Consideration Pending and Possible Rulemaking Projects 1. Rules Update a. Opt 4 - Licensure by Endorsement b. Opt 6 – Pharmaceutical Agents and related rule SPS 10 relating to diagnostic and therapeutic pharmaceutical agents c. Opt 8 – Updates Continuing Education d. Opt 3,4,6, and 7 – The examination on the treatment and management of ocular disease – Emergency Rule e. Opt 3,4,6, and 7 - The examination on the treatment and management of ocular disease – Permanent Rule 2. Open Scope - Opt 5 Unprofessional Conduct	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: The Department is seeking drafting guidance for Opt 5 – Unprofessional Conduct.			

11)	Authorization	
Signature of person making this request		Date
<i>Keyvn Radcliffe</i>		January 9, 2020
Supervisor (if required)		Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date
<p>Directions for including supporting documents:</p> <ol style="list-style-type: none"> 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. 		

STATEMENT OF SCOPE

Optometry Examining Board

Rule No.: Opt 5

Relating to: Unprofessional conduct

Rule Type: Permanent

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

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

The Board has determined that a revision of Opt 5 is necessary to ensure the requirements are current with standards of care and practice standards. Specifically, the Board will consider Opt 5.14, relating to disclosure requirements on extended wear contact lenses, and Opt 5.11, which mandates that licensees verify that ophthalmic lenses meet technical standards. The Board will undertake a comprehensive review to potentially update the identified provisions and the chapter to ensure consistency and clarity for licensees.

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:

The Board would like to review the quality standards for ophthalmic lenses referenced in Opt 5.11 and the disclosure requirements in Opt 5.14 to ensure that the administrative rules are reflective of the current practice of optometry and adequately protects patients. The Board will take action to review and potentially update the identified provisions and further review the chapter to ensure it is current with standards of care and practice standards.

This review will ensure that licensees have clear guidance on the requirements for professional conduct.

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

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

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:

Licensed optometrists and their patients.

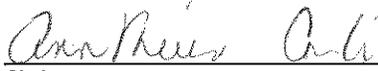
7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

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
(608) 266-0797 DSPSAdminRules@wisconsin.gov



Chairperson

05302019

Date Submitted

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.