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**TELECONFERENCE/VIRTUAL  
OPTOMETRY EXAMINING BOARD  
Room N208, 4822 Madison Yards Way, 2<sup>nd</sup> Floor, Madison  
Contact: Valerie Payne (608) 266-2112  
March 26, 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) January 23, 2020 **(4-9)**
- C. Conflicts of Interest**
- D. Administrative Matters – Discussion and Consideration**
  - 1) Department, Staff and Board Updates
  - 2) Board Members – Term Expiration Dates
- E. Administrative Rule Matters – Discussion and Consideration**
  - 1) Review of Preliminary Rule Draft – Opt 5 Relating to Unprofessional Conduct **(10-21)**
  - 2) Pending and Possible Rulemaking Projects
- F. COVID-19 – Discussion and Consideration**
- G. 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

#### H. 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.).**

#### I. Deliberation on Division of Legal Services and Compliance (DLSC) Matters

- 1) **Stipulations, Final Decisions and Orders**
  - a. 18 OPT 006 – Brian C. Adler, O.D. **(22-27)**
- 2) **Case Closings**
  - a. 18 OPT 012 – E.L.K. **(28-33)**
  - b. 19 OPT 004 – U.U. **(34-38)**

#### J. 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

K. Consulting with Legal Counsel

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

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

**ADJOURNMENT**

**NEXT MEETING: JUNE 4, 2020**

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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  
JANUARY 23, 2020**

**PRESENT:** Jeffery Clark (*via Skype*), Mark Jenkins, Robert Schulz, Lisa Slaby, Peter Sorce, John Sterling, Emmylou Wilson

**STAFF:** Valerie Payne, Executive Director; Jameson Whitney, Legal Counsel; Megan Glaeser, Bureau Assistant; and other DSPS Staff

**CALL TO ORDER**

Robert Schulz, Vice Chairperson, called the meeting to order at 9:01 a.m. A quorum of seven (7) members was confirmed.

**ADOPTION OF AGENDA**

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

**APPROVAL OF MINUTES**

**MOTION:** Peter Sorce moved, seconded by Emmylou Wilson, to adopt the Minutes of September 26, 2019 as published. Motion carried unanimously.

**MOTION:** Mark Jenkins moved, seconded by John Sterling, to adopt the Minutes of December 11, 2019 as published. Motion carried unanimously.

**ADMINISTRATIVE MATTERS**

**Election of Officers, Appointment of Liaisons and Alternates, Delegation of Authorities**

*Chairperson*

**NOMINATION:** John Sterling nominated Robert Schulz for the Office of Chairperson.

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

Robert Schulz was elected as Chairperson by unanimous voice vote.

*Vice Chairperson*

**NOMINATION:** Jeffrey Clark nominated John Sterling for the Office of Vice Chairperson.

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

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

*Secretary*

**NOMINATION:** Peter Sorce nominated Emmylou Wilson for the Office of Secretary.

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

Emmylou Wilson was elected as Secretary by unanimous voice vote.

<b>2020 ELECTION RESULTS</b>	
<b>Chairperson</b>	Robert Schulz
<b>Vice Chairperson</b>	John Sterling
<b>Secretary</b>	Emmylou Wilson
<b>2020 LIAISON APPOINTMENTS</b>	
<b>Credentialing Liaison(s)</b>	John Sterling <i>Alternate: Lisa Slaby</i>
<b>Education and Exams Liaison(s)</b>	John Sterling
<b>Monitoring Liaison</b>	Jeffrey Clark <i>Alternate: Mark Jinkins</i>
<b>Professional Assistance Procedure (PAP) Liaison(s)</b>	Jeffrey Clark <i>Alternate: Peter Sorce</i>
<b>Legislative Liaison</b>	Peter Sorce <i>Alternate: Robert Schulz</i>
<b>Travel Liaison</b>	Robert Schulz <i>Alternate: Lisa Slaby</i>
<b>Prescription Drug Monitoring Program Liaison (PDMP)</b>	Robert Schulz <i>Alternate: Emmylou Wilson</i>
<b>2020 SCREENING PANEL APPOINTMENTS</b>	
<b>January-December 2020</b>	Emmylou Wilson, Mark Jinkins, Jeffrey Clark

***Document Signature Delegations***

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

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

*Delegated Authority for Urgent Matters*

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

*Delegation to Chief Legal Counsel Due to of Loss of Quorum*

**MOTION:** John Sterling moved, seconded by Mark Jenkins, to delegate the review of disciplinary cases to the Department's Chief Legal Counsel due to lack of/loss of quorum. Motion carried unanimously.

*Monitoring Delegations*

**MOTION:** Robert Schulz moved, seconded by Lisa Slaby, to adopt the "Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor" as presented in the January 23, 2020 agenda materials. Motion carried unanimously.

*Credentialing Authority Delegations*

**Delegation of Authority to Credentialing Liaison (Denial Decisions)**

**MOTION:** Robert Schulz moved, seconded by Lisa Slaby, 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 except that potential denial decisions shall be referred to the full Board for final determination. Motion carried unanimously.

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

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

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

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

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

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

### *Optional Renewal Notice Insert Delegation*

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

### *Legislative Liaison Delegation*

**MOTION:** Lisa Slaby moved, seconded by John Sterling, to delegate authority to the Legislative Liaisons to speak on behalf of the Board regarding legislative matters. Motion carried unanimously.

### *Travel Delegation*

**MOTION:** Emmylou Wilson moved, seconded by Lisa Slaby, to delegate authority to the Travel Liaison to approve any board member travel. Motion carried unanimously.

### *PDMP Liaison Delegation*

**MOTION:** Lisa Slaby moved, seconded by Peter Sorce, to delegate authority to the PDMP Liaison for all matters relating to PDMP. Motion carried unanimously.

## **ADMINISTRATIVE RULE MATTERS**

### **Open Scope – Opt 5 – Relating to Unprofessional Conduct**

**MOTION:** Robert Schulz moved, seconded by John Sterling, to delegate Dr. Jeffrey Clark to work with Department staff to review the language revising Opt 5. Motion carried unanimously.

**SPEAKING ENGAGEMENTS, TRAVEL, OR PUBLIC RELATION REQUESTS, AND  
REPORTS**

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

**MOTION:** Mark Jenkins moved, seconded by Lisa Slaby, to designate Peter Sorce to attend the 2020 ARBO Annual Meeting on June 21-23, 2020 in Alexandria, VA and to authorize travel. Motion carried unanimously.

**INTRODUCTIONS, ANNOUNCEMENTS AND RECOGNITION**

**MOTION:** Robert Schulz moved, seconded by John Sterling, to recognize and thank Dr. Ann Meier Carli for her years of dedicated service to the Optometry Examining Board and the State of Wisconsin. Motion carried unanimously.

**CLOSED SESSION**

**MOTION:** Robert Schulz moved, seconded by Mark Jenkins, to 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.). Robert Schulz, Chairperson read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Jeffrey Clark-yes; Mark Jenkins-yes; Robert Schulz-yes; Lisa Slaby-yes; Peter Sorce-yes; John Sterling-yes; and Emmylou Wilson-yes; Motion carried unanimously.

The Board convened into Closed Session at 11:15 a.m.

**DELIBERATION ON DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC)  
MATTERS**

**Case Closings**

***18 OPT 009, UNKNOWN***

**MOTION:** Robert Schulz moved, seconded by John Sterling, to close DLSC Case Number 18 OPT 009, against Unknown, for L3 – No Jurisdiction. Motion carried unanimously.

**RECONVENE TO OPEN SESSION**

**MOTION:** Mark Jenkins moved, seconded by John Sterling, to reconvene in Open Session. Motion carried unanimously.

The Board reconvened to Open Session at 11:17 a.m.

**VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION**

**MOTION:** Mark Jenkins moved, seconded by Peter Sorce, 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.)*

**ADJOURNMENT**

**MOTION:** John Sterling moved, seconded by Mark Jenkins, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:18 a.m.

DRAFT

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

**AGENDA REQUEST FORM**

1) Name and title of person submitting the request: <b>Kevyn Radcliffe</b> <b>Administrative Rules Coordinator</b>		2) Date when request submitted: <b>March 9, 2020</b> <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: <b>Optometry Examining Board</b>			
4) Meeting Date: <b>March 26, 2020</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Administrative Rule Matters – Discussion and Consideration</b> <b>-Review of Preliminary Rule Draft – Opt 5 -Unprofessional Conduct</b> <b>Pending and Possible Rulemaking Projects</b>	
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 <a href="#">Appearance Request</a> 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: <b>Review of Preliminary Rule Draft Opt 5 – relating to Unprofessional Conduct</b>			
11) <b>Authorization</b>			
Signature of person making this request <i>Kevyn Radcliffe</i>			Date <b>January 9, 2020</b>
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.			

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

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

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

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

**Explanation of agency authority:**

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

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

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

**Related statute or rule:**

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

### **Plain language analysis:**

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

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

Section 3 updates cite references to amended and added provisions.

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

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

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

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

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

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

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

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

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

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

**Comparison with rules in adjacent states:**

**Illinois:**

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

**Iowa:**

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

**Michigan:**

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

**Minnesota:**

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

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

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

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

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

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis is attached.

**Effect on small business:**

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

**Agency contact person:**

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

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

Comments may be submitted to Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to [DSPSAdminRules@wisconsin.gov](mailto: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 1.02(2), (4), and (5) are repealed.

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

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

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

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

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

**Opt 5.03(17)(b)3** Where written verification of all examination findings has been received from a licensed optometrist or an ophthalmologist, stating that a minimum eye examination, ~~as defined in s. Opt 1.02 (5) under sub. (c)~~, has been performed for the patient within the 6 month period immediately preceding the date of the patient's visit.

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

**Opt 5.03(17)(c)** The minimum eye examination under par. (a) shall include the performance of all of the following procedures:

1. Recording a complete case history of the patient.
2. Measuring far and near visual acuity.
3. Conducting an ophthalmoscopic and external examination.
4. Measuring corneal curvature.
5. Performing retinoscopy.
6. Evaluating convergence and accommodation.
7. Obtaining far and near subjective findings.
8. Evaluating muscle balance.
9. Measuring intraocular pressure.
10. Recording prescription and far and near visual acuity obtained.

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

- (a) Performing the minimum eye examination under s. 5.03(17)(c).
- (b) Determining whether a patient may safely and comfortably wear contact lenses.
- (c) Using a spectacle prescription or a prescription determined through the use of a vertometer or its equivalent on a pair of spectacles, as a basis for designing, manufacturing or duplicating a contact lens.
- (d) Placing a trial contact lens upon the eye of a patient for diagnostic purposes.
- (e) Evaluating the physical fit of the trial contact lens.
- (f) Using a phoropter, hand-held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens.
- (g) Determining lens specifications.
- (h) Counseling the patient about the care and use of the prescribed contact lenses.
- (i) Counseling the patient on all of the following:
  1. How long to wear to the contact lenses.
  2. How often to remove the contact lenses.
  3. How often the contact lenses should be replaced.
- (j) Performing progress evaluations and recording in the patient record the recommended date of the patient's next visit.

SECTION 5: Opt 5.03(23) is repealed.

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

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

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

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

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

SECTION 9: Opt 5.11 is repealed.

SECTION 10: Opt 5.14 is repealed.

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

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(END OF TEXT OF RULE)  
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# Chapter Opt 1

## AUTHORITY AND DEFINITIONS

Opt 1.01 Authority.

Opt 1.02 Definitions.

Opt 1.03 Delegation and supervision.

**History:** Chapter Opt 1 as it existed on January 31, 1971 was repealed, and a new chapter Opt 1 was created, Register, January, 1971, No. 181, effective 2-1-71.

**Opt 1.01 Authority.** The rules in chs. Opt 1 to 8 are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 449.01 and 449.07, Stats., to define the scope of practice of optometry in Wisconsin.

**History:** Cr. Register, August, 1985, No. 356, eff. 9-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1989, No. 399; am. Register, September, 1997, No. 501, eff. 10-1-97; CR 06-116: am. Register May 2007 No. 617, eff. 6-1-07.

**Opt 1.02 Definitions.** As used in chs. Opt 1 to 8:

(1) "Board" means the optometry examining board.

(1m) "Department" means the department of safety and professional services.

~~(2) "Fitting contact lenses" means any of the following procedures:~~

~~(a) Determining whether a patient may safely and comfortably wear contact lenses.~~

~~(b) Measuring and evaluating the curvature of the cornea through any means including photographic, mechanical or reflected light methods.~~

~~(c) Using a spectacle prescription or a prescription determined through the use of a vertometer or its equivalent on a pair of spectacles, as a basis for designing, manufacturing or duplicating a contact lens.~~

~~(d) Prescribing a schedule of wearing contact lenses.~~

~~(e) Placing a contact lens upon the eye of a patient for diagnostic purposes.~~

~~(f) Evaluating the physical fit of the contact lens.~~

~~(g) Using a phoropter, hand held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens.~~

~~(h) Any procedure listed in s. Opt 1.02 (4).~~

~~(4) "Minimum examination for the fitting of contact lenses" means the performance of all of the following procedures:~~

~~(a) Performing a minimum eye examination.~~

~~(b) Determining lens specifications.~~

~~(c) Evaluating the physical fit of diagnostic and prescribed lenses by means of a slit lamp.~~

~~(d) Prescribing a time schedule for a patient's wearing the contact lenses.~~

~~(e) Performing progress evaluations and recording in the patient record the recommended date of the patient's next visit.~~

~~(5) "Minimum eye examination" means the performance of all of the following procedures:~~

~~(a) Recording a complete case history of the patient.~~

~~(b) Measuring far and near visual acuity.~~

~~(c) Conducting an ophthalmoscopic and external examination.~~

~~(d) Measuring corneal curvature.~~

~~(e) Performing retinoscopy.~~

~~(f) Evaluating convergence and accommodation.~~

~~(g) Obtaining far and near subjective findings.~~

~~(h) Evaluating muscle balance.~~

~~(i) Measuring intraocular pressure.~~

~~(j) Recording prescription and far and near visual acuity obtained.~~

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

**History:** Cr. [Register, January, 1971, No. 181](#), eff. 2-1-71; am. [Register, August, 1973, No. 212](#), eff. 9-1-73; r. and recr. [Register, August, 1985, No. 356](#), eff. 9-1-85; emerg. r. (3), eff. 10-18-85; r. (3), [Register, April, 1986, No. 364](#), eff. 5-1-86; correction in (1) (h) made under s. 13.93 (2m) (b) 7., Stats., [Register, March, 1989, No. 399](#); renum. (1), (2) and (4) to be (2), (3) and (6) and am. (2) (h) and (6) (c), (1), (4) and (5) renum. from Opt 5.02 (1), (3) and (4), [Register, June, 1990, No. 414](#), eff. 7-1-90; am. (intro.), (2) (a) to (g), (4) (intro.) to (d), (5) (intro.) to (i) and (6) (a) to (e), r. (1), cr. (1) and (1m), [Register, September, 1997, No. 501](#), eff. 10-1-97; [CR 06-116](#): am. (intro.), r. (3), r. and recr. (6), [Register May 2007 No. 617](#), eff. 6-1-07; correction in (1m) made under s. 13.92 (4) (b) 6., Stats., [Register February 2012 No. 674](#).

**Opt 1.03 Delegation and supervision.** Except as provided under s. [Opt 5.03 \(19\)](#) and [\(20\)](#), an optometrist may direct an unlicensed person working under the optometrist's supervision to perform any act that is within the optometrist's scope of practice. The optometrist continues to be responsible for interpretation of test findings, as well as the diagnosis and management of any condition related to the care of the patient.

**History:** Cr. [Register, March, 1975, No. 231](#), eff. 4-1-75; r. and recr. [Register, August, 1985, No. 356](#), eff. 9-1-85; [CR 06-116](#): r. and recr. [Register May 2007 No. 617](#), eff. 6-1-07; **correction made under s. [13.92 \(4\) \(b\) 7.](#), Stats., [Register December 2016 No. 732](#).**

## Chapter Opt 5

### UNPROFESSIONAL CONDUCT

Opt 5.01	Intent.	Opt 5.10	Patient records.
Opt 5.02	Definitions.	Opt 5.11	Verification.
Opt 5.03	Unprofessional Conduct.	Opt 5.14	Disclosure.
Opt 5.045	Informed Consent.		

**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:

- (a) The specifications needed to adequately duplicate a contact lens.
- (b) The name, signature and license number of the prescribing optometrist.
- (c) The date of the prescription.
- (d) The date of expiration.
- (e) 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.

**(5m)** "Minor" has the meaning given in s. 990.01(20), Stats.

**(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)~~ **Opt 5.03(17)(c).**

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

1. The patient's initial examination with the optometrist.
2. Any examination conducted more than one year after a minimum eye examination.
3. An examination for the fitting of contact lenses ~~as defined in s. Opt 1.02 (4) under s. Opt (17m).~~

(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) under sub. (c).~~ has been performed for the patient within the 6 month period immediately preceding the date of the patient's visit.

(c) Minimum eye examination" shall include the performance of all of the following procedures:

1. Recording a complete case history of the patient.
2. Measuring far and near visual acuity.
3. Conducting an ophthalmoscopic and external examination.
4. Measuring corneal curvature.
5. Performing retinoscopy.
6. Evaluating convergence and accommodation.
7. Obtaining far and near subjective findings.
8. Evaluating muscle balance.
9. Measuring intraocular pressure.
10. Recording prescription and far and near visual acuity obtained.

4. Where a limited eye screening is performed.

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

- (a) Performing the minimum eye examination under s. 5.03(17)(c).
- (b) Determining whether a patient may safely and comfortably wear contact lenses.
- (c) Using a spectacle prescription or a prescription determined through the use of a vertometer or its equivalent on a pair of spectacles, as a basis for designing, manufacturing or duplicating a contact lens.
- (d) Placing a trial contact lens upon the eye of a patient for diagnostic purposes.
- (e) Evaluating the physical fit of the trial contact lens.
- (f) Using a phoropter, hand-held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens.
- (g) Determining lens specifications.
- (h) Counseling the patient about the care and use of the prescribed contact lenses.
- (i) Counseling the patient on all of the following:
  1. How long to wear to the contact lenses.
  2. How often to remove the contact lenses.
  3. How often the contact lenses should be replaced.

(j) Performing progress evaluations and recording in the patient record the recommended date of the patient's next visit.

(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.

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

**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. If the patient is a minor or incompetent, documentation that prior consent for treatment was received from the patient's parent or legal guardian.

(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.**