



**VIRTUAL/TELECONFERENCE
OPTOMETRY EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Valerie Payne (608) 266-2112
September 24, 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 of June 4, 2020 (4-5)**
- 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 (6)**
 - 1) Preliminary Rule Draft: Opt 3, Relating to Reciprocal Credentials for Service Members, Former Service Members, and Their Spouses (7-11)
 - 2) Preliminary Rule Draft: Opt 5, Relating to Unprofessional Conduct (12-22)
 - 3) Administrative Rules Reporting Requirements under 2017 Wisconsin Act 108 (23-25)
 - 4) Pending and Possible Rulemaking Projects
- F. Optometry Examining Board Report on Opioid Abuse (26)**
 - 1) Review of 2019 Report (27-28)
 - 2) Proposals for 2020 Report
- G. Education and Examination Matters – Discussion and Consideration (29)**
 - 1) Council on Optometric Practitioner Education (COPE) Rules Modification for Interactive Online Continuing Education (30)
- H. Public Agenda Request: Light Adjustable Intraocular Lens Implant – Discussion and Consideration (31-32)**
- I. Best Practices for Prescribing Controlled Substances Guidelines – Discussion and Consideration**

J. COVID-19 – Discussion and Consideration

K. 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

L. 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.).

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

- 1) **Case Closings**
 - a. 20 OPT 002 – T.S. (33-35)

N. 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

O. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

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

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

ADJOURNMENT

NEXT MEETING: TBD

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. Requests for interpreters for the hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, 608-266-2112, or the Meeting Staff at 608-266-5439.

**TELECONFERENCE/VIRTUAL
OPTOMETRY EXAMINING BOARD
MEETING MINUTES
JUNE 4, 2020**

PRESENT: Jeffery Clark, Mark Jinkins (*connected at 9:26 a.m.*), Robert Schulz, Lisa Slaby, Peter Sorce, John Sterling, Emmylou Wilson

STAFF: Valerie Payne, Executive Director; Yolanda McGowan, Legal Counsel; Kimberly Wood, Program Assistant Supervisor-Adv.; and other DSPS Staff

CALL TO ORDER

Robert Schulz, Chairperson, called the meeting to order at 9:16 a.m. A quorum of six (6) members was confirmed.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES

MOTION: Jeffery Clark moved, seconded by Peter Sorce, to approve the Minutes of March 26, 2020 as published. Motion carried unanimously.

(Mark Jinkins established connection at 9:26 a.m.)

ADMINISTRATIVE RULE MATTERS

Review of Scope Statement – Opt 3, Relating to Reciprocal License for Service Members

MOTION: John Sterling moved, seconded by Robert Schulz, to approve the Scope Statement revising Opt 3, relating to reciprocal licensure for service members, for submission to the Department of Administration and Governor’s Office and for publication. Additionally, the Board authorizes the Chairperson to approve the Scope Statement for implementation no less than 10 days after publication. Motion carried unanimously.

MOTION: Mark Jinkins moved, seconded by John Sterling, that if the Board is directed under s. 227.136(1), Stats., to hold a preliminary public hearing and comment period on the Scope Statement relating to reciprocal license for service members, the Chairperson is authorized to approve the notice required under s. 227.136(2), Stats.. Motion carried unanimously.

CLOSED SESSION

MOTION: Peter Sorce moved, seconded by Lisa Slaby, 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.). Valerie Payne, Executive Director, read the language of the motion on behalf of Robert Schulz, Chairperson. 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; and Emmylou Wilson-yes. Motion carried unanimously.

The Board convened to Closed Session at 10:55 a.m.

(John Sterling was temporarily disconnected for this motion due to connection issues.)

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

Case Closings

19 OPT 008 – B.D.P.

MOTION: Mark Jenkins moved, seconded by Robert Schulz, to close DLSC Case Number 19 OPT 008, against B.D.P. for No Violation. Motion carried unanimously.

RECONVENE TO OPEN SESSION

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

The Board reconvened to Open Session at 11:19 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

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

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

ADJOURNMENT

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

The meeting adjourned at 11:31 a.m.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kevyn Radcliffe Administrative Rules Coordinator		2) Date when request submitted: September 11, 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: September 24, 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 1. Preliminary Rule Draft: Opt 3, Relating to Reciprocal Credentials for Service Members, Former Service Members, and Their Spouses 2. Preliminary Rule Draft: Opt 5, Relating to Unprofessional Conduct 3. Administrative Rules Reporting Requirements under 2017 Wisconsin Act 108 4. Pending and Possible Rulemaking Projects	
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 checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
Signature of person making this request <i>Kevyn Radcliffe</i>		Date 09/11/2020	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Optometry Examining Board to create Opt 3.025, relating to reciprocal credentials for service members, former service members, and their spouses.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 440.09(5), Stats.

Statutory authority: Sections 15.08(5)(b) and 440.09(5), 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 440.09(5), Stats., provides “[t]he department or credentialing board, as appropriate, may promulgate rules necessary to implement this section.”

Related statute or rule:

Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

Plain language analysis:

The proposed rule creates a provision to implement s. 440.09, Stats., as created by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

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

None.

Comparison with rules in adjacent states:

Illinois:

The Illinois Statutes provide for the expedited licensure of service members and their spouses (20 ILCS 5/5-715). “Service member” includes a person whose active duty service concluded within the 2 years preceding application for licensure. A license issued to a service member or the spouse of a service member may be renewed.

Iowa:

Rules of the Professional Licensure Division of the Iowa Department of Public Health provide for the expedited reciprocal licensure of a veteran or a spouse of an active duty service member (645 IAC 645.20.3). A reciprocal license issued to a veteran or a spouse of an active duty service member may be renewed.

Michigan:

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

Minnesota:

The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

Summary of factual data and analytical methodologies:

The proposed rule was developed by reviewing the provisions of s. 440.09, Stats., as created by 2019 Wisconsin Act 143, and obtaining input and feedback from the Optometry Examining Board.

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

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. **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, 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.

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. Comments must be received on or **before * to be** included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 3.025 is created to read:

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses.

(1) DEFINITIONS. In this section:

(a) “Former service member” has the meaning given in s. 440.09(1)(a), Stats.

(b) “Service member” has the meaning given in s. 440.09(1)(b), Stats.

(c) “Spouse” has the meaning given in s. 440.09(1)(c), Stats.

(2) REQUIREMENTS. An applicant who holds an active license in another state, territory, foreign country or province shall be granted a license to practice optometry upon a determination by the board that the applicant meets the requirements set forth in s. 440.09(2), Stats.

(3) AFFIDAVIT. If an applicant is unable to provide documentation that the applicant is a service member, former service member, or the spouse of a service member or former service member, the individual may submit an affidavit under s. 440.09(2m), Stats.

(4) RENEWAL. (a) A license granted under this section expires on the applicable renewal date specified in s. 440.08 (2) (a), Stats., except that if the first renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted is within 180 days of the date on which the license is granted, the license expires on the 2nd renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted.

(b) The department or board shall grant a renewed reciprocal credential to an applicant who satisfies the requirements under s. Opt 7.03.

(5) EXPEDITED ISSUANCE. The department or board shall expedite the issuance of a reciprocal credential granted under this section.

SECTION 2. EFFECTIVE DATE. The rule 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.

(END OF TEXT OF RULE)

Chapter Opt 3

LICENSURE

Opt 3.02 **Application.** An applicant for licensure as an optometrist shall submit all of the following:

- (1) An application and required fee under s. [440.05](#), Stats.
- (2) Official documentation of graduation from a program accredited by the Accreditation Council on Optometric Education (ACOE).
- (3) Verification of passing parts I, II, including passage of the Treatment and Management of Ocular Disease examination, and III of the National Board of Examiners in Optometry examination.
- (4) Verification of passing the examination assessing knowledge of state laws and administrative rules regarding the practice of optometry.
- (5) If the applicant has an arrest or conviction record, documentation necessary for the board to determine whether the circumstances substantially relate to the practice of optometry, subject to ss. [111.321](#), [111.322](#), and [111.335](#), Stats.

History: Cr. [Register, March, 1989, No. 399](#), eff. 4-1-89; am. (1) (a), [Register, July, 1994, No. 463](#), eff. 8-1-94; am. (1) (a), [Register, April, 1996, No. 484](#), eff. 5-1-96; am. (1) (intro.) and (a), r. and recr. (1) (b), r. (2), renum. (3) to (5) to be (1) (c), (2) and (3) and am. (1) (c), [Register, September, 1997, No. 501](#), eff. 10-1-97; am. (1) (b), [Register, December, 1998, No. 516](#), eff. 1-1-99; [CR 06-116](#): am. (1) (intro.) [Register May 2007 No. 617](#), eff. 6-1-07; [CR 15-078](#): r. and recr. [Register December 2016 No. 732](#), eff. 1-1-17; [EmR1906](#): emerg. am. (3), eff. 3-12-19; [CR 19-033](#): am. (3) [Register January 2020 No. 769](#), eff. 2-1-20.

Opt 3.025 Reciprocal credentials for service members, former service members, and their spouses.

(1) **DEFINITIONS.** In this section:

- (a) “Former service member” has the meaning given in s. 440.09(1)(a), Stats.
- (b) “Service member” has the meaning given in s. 440.09(1)(b), Stats.
- (c) “Spouse” has the meaning given in s. 440.09(1)(c), Stats.

(2) **REQUIREMENTS.** An applicant who holds an active license in another state, territory, foreign country or province shall be granted a license to practice optometry upon a determination by the board that the applicant meets the requirements set forth in s. 440.09(2), Stats.

(3) **AFFIDAVIT.** If an applicant is unable to provide documentation that the applicant is a service member, former service member, or the spouse of a service member or former service member, the individual may submit an affidavit under s. 440.09(2m), Stats.

(4) **RENEWAL.** (a) A license granted under this section expires on the applicable renewal date specified in s. 440.08 (2) (a), Stats., except that if the first renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted is within 180 days of the date on which the license is granted, the license expires on the 2nd renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted.

(b) The department or board shall grant a renewed reciprocal credential to an applicant who satisfies the requirements under s. Opt 7.03.

(5) **EXPEDITED ISSUANCE.** The department or board shall expedite the issuance of a reciprocal credential granted under this section.

Opt 3.07 Passing scores. The passing score on each examination is determined by the board to represent minimum competence. The board may adopt the recommended passing score of the examination provider.

History: Cr. [Register, March, 1989, No. 399](#), eff. 4-1-89; am. (2) (a), [Register, April, 1996, No. 484](#), eff. 5-1-96; am. (2), [Register, September, 1997, No. 501](#), eff. 10-1-97; r. (2) (a), renum. (2) (b) to be (2) and am., [Register, December, 1998, No. 516](#), eff. 1-1-99; [CR 15-078](#): r. and recr. [Register December 2016 No. 732](#), eff. 1-1-17.

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

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

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.

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, 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.

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. Comments must be received on or **before * to be** included in the record of rule-making proceedings.

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 sub. (a) shall include the performance of all the following procedures:

1. Recording a complete case history of the patient.
2. Measuring far and near visual acuity.
3. Conducting an internal and external examination of the eye and adnexa.
4. Measuring corneal curvature.
5. Obtaining objective measurement of refractive error.
6. Evaluating convergence and accommodation.
7. Obtaining far and near refraction.
8. Evaluating muscle balance.
9. Measuring intraocular pressure.
10. Recording spectacle prescription including far and near visual acuity.

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 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 as a basis for selecting, 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 contact lens specifications.
- (h) Counseling the patient on all the following:
 1. The proper care and use of the prescribed contact lenses.
 2. The appropriate contact lens wearing schedule.
 3. Contact lens replacement schedule.
- (i) When contact lenses are prescribed for extended wear, informing the patient of the potential risks or complications.
- (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.

(END OF TEXT OF RULE)

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.
4. Where a limited eye screening is performed.

(c) The minimum eye examination under sub. (a) shall include the performance of all the following procedures:

1. Recording a complete case history of the patient.
2. Measuring far and near visual acuity.
3. Conducting an internal and external examination of the eye and adnexa.
4. Measuring corneal curvature.
5. Obtaining objective measurement of refractive error.
6. Evaluating convergence and accommodation.
7. Obtaining far and near refraction.
8. Evaluating muscle balance.
9. Measuring intraocular pressure.
10. Recording spectacle prescription including far and near visual acuity.

(17m) When fitting contact lenses, failure to perform the minimum contact lenses examination. A minimum contact lenses examination shall include the performance of all 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 as a basis for selecting, 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 contact lens specifications.
- (h) Counseling the patient on all the following:
 1. The proper care and use of the prescribed contact lenses.
 2. The appropriate contact lens wearing schedule.
 3. Contact lens replacement schedule.
- (i) When contact lenses are prescribed for extended wear, informing the patient of the potential risks or complications.

(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.**

2017 Wisconsin Act 108 created the following reporting requirement:

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

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

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

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

(d) Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling.

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

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

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

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

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

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

Ann Meier Carli
Chairperson

Mark Jinkins
Secretary

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March 27, 2019

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

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

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

Dear Senator Nass and Representative Ballweg:

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

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

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

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

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

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

After careful review of the agency's administrative rules, the agency has determined that no promulgated rules are obsolete or have been rendered unnecessary.

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

Rule	Citation or the text of the statute, regulation, or ruling.	Action taken to address or reason for not taking an action
ss. Opt 3.02 (3), Opt 4.03 (2) (b), Opt 7.05	The rules for licensure need to be clarified to ensure applicants pass the embedded questions on the treatment and management of ocular disease, in	Emergency rule effective March 12, 2019, hearing for emergency and permanent rule expected for May 30, 2019.

(2) (b) 2. a.	accordance with the statutory requirements in s. 449.04 (2), Stats.	
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V. Rules that are economically burdensome:

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

Thank you.

Sincerely,



Ann Meier Carli

Chairperson

Optometry Examining Board

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kevyn Radcliffe Administrative Rules Coordinator		2) Date when request submitted: September 11, 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: September 24, 2020	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Optometry Examining Board Report on Opioid Abuse 1. Review of 2019 Report 2. Proposals for 2020 Report	
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 checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
Signature of person making this request <i>Kevyn Radcliffe</i>		Date 09/11/2020	
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.			

Ann Meier Carli
Chairperson

Robert Schulz
Vice Chairperson

Mark Jenkins
Secretary

**WISCONSIN OPTOMETRY EXAMINING
BOARD**



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Wisconsin Optometry Examining Board Report on Opioid Abuse – October 2019

Scope and purpose of the report: Section 440.035 (2m) (c) 1., Stats., requires the Optometry Examining Board to annually submit a report related to the issue of opioid abuse to the Legislature and Governor's Office. This report must include proactive efforts taken by the Board to address the issue of opioid abuse and goals for addressing the issue of opioid abuse as it relates to the practice of optometry in Wisconsin. The report for 2019 also includes actions taken by the Board to achieve the goals identified in the 2018 report, and whether those goals have been achieved.

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

Controlled Substances Prescribing Guidelines

The Optometry Examining Board maintains the Best Practices for Prescribing Controlled Substances Guidelines to keep it up to date with current trends and changes. The Best Practices for Prescribing Controlled Substances Guidelines are available on the Board's page at dsps.wi.gov.

Education on National Trends

The Board annually sends at least one member to the Association of Regulatory Boards of Optometry, Inc. Annual Meeting to interact with regulatory colleagues and discuss the hot topics and shared concerns in the regulatory community. The Board reviews and discusses the report regarding these national issues and trends being faced by Optometry examining boards across the jurisdictions.

Continuing Education Related to Prescribing Controlled Substances

For the 2019/2021 biennium, the Board requires licensees to complete 2 hours of continuing education relating to prescribing controlled substances.

2019 Goals for addressing the issue of opioid abuse as it relates to the practice of optometry in Wisconsin:

Tracking Trends

The Optometry Examining Board has scheduled a standing item for the annual May board agenda to receive updates from the Prescription Drug Monitoring Program (PDMP), which will aid the board in tracking and reviewing trends in prescribing by licensed optometrists.

Communications to Licensees Registered with the PDMP

The Board is working with PDMP staff to develop recommendations for licensees who have a DEA Registration Number, which is a small subset of licensees, to encourage them to use the PDMP effectively as part of their prescribing practice.

Updates on 2018 Goals for addressing the issue of opioid abuse as it relates to the practice of optometry in Wisconsin:

Enforcement Actions

The Controlled Substances Board has made no referrals to the Optometry Examining Board based upon reports generated from the PDMP.

Communications to Licensees

The Board disseminated updates to licensees relating to the new continuing education requirements on prescribing controlled substances and a reminder to review the Best Practices for Prescribing Controlled Substances Guidelines.

Education on the issue of opioid abuse

The Board met with PDMP staff and received information regarding prescribing trends recorded in the PDMP data, and also how the PDMP can be used as a proactive tool to evaluate practices, at the May 30, 2019 and July 18, 2019 meetings. At the May 30, 2019 meeting, the Board also recommended that the Department of Safety and Professional Services move forward with the revision of SPS 10, relating to the use of pharmaceutical agents by licensed optometrists.

Betekhtin, Daniel G - DSPS

From: John Sterling
Sent: Tuesday, July 14, 2020 8:08 AM
To: Payne, Valerie - DSPS
Subject: Re: Continuing Education Requirements

Hi Valerie

We as fas I know we have not formally addressed as a board. Could you please put this on our agenda because virtual optometric education is being accepted by COPE. Under current Covid-19 we should accept the CE if the program is approved by COPE.

Stay well

John

Sent from my iPhone

> On Jul 13, 2020, at 8:48 PM, Payne, Valerie - DSPS <valerie.payne1@wisconsin.gov> wrote:

>



COPE Extends Rules Modification for Interactive Online CE Through December 31, 2020

Due to continued state restrictions and CDC guidelines related to COVID-19, COPE has made the decision to extend the temporary rules modification to allow COPE Administrators and Providers to present CE activities through an INTERACTIVE ONLINE format and give LIVE COPE CE credit through December 31, 2020. COPE previously announced a temporary modification to the rules through June 30, 2020.

COPE is modifying our rules to allow COPE Administrators and Accredited Providers to give LIVE credit for CE courses if they are presented in an INTERACTIVE DISTANCE LEARNING format. In order to be considered interactive, attendees must be able to have immediate interaction with the instructor (i.e. live webinar, videoconference). The activity can only be presented at one specified time, and once it has taken place the learners may no longer participate in that activity. COPE Administrators and Accredited Providers must have a way to confirm the learners' attendance for every course before issuing certificates of attendance. Post-course tests will not be required for this modified type of activity.

COPE Administrators and Accredited Providers who are planning to present LIVE CE in an INTERACTIVE DISTANCE LEARNING format should submit all courses and activities to COPE as LIVE. The usual required pre- and post-activity data must be submitted to COPE for activities to be considered COPE Accredited. CEE (transcript quality or certified CE) courses are not included in the waiver. All CEE courses must be presented in person, face-to-face, per State Board requirements regarding CEE. Please note that although COPE's rules are being modified to allow INTERACTIVE DISTANCE LEARNING to count as LIVE CE, individual State and Provincial Optometry Boards may have different rules. We advise you to contact the State or Provincial Boards where your attendees are licensed for verification.

If you are planning an ENDURING DISTANCE LEARNING activity where there is not immediate interaction with the instructor and the participants can choose when to participate over a period of time, you should continue to follow COPE's rules regarding ENDURING DISTANCE LEARNING (a post-course test must be administered which has been reviewed by a school of optometry, medicine, pharmacy or osteopathy.)

If you have already submitted courses as INTERACTIVE DISTANCE LEARNING that will take place between July 1, 2020 and December 31, 2020, please contact Donna DeLay, COPE Administrator at ddelay@arbo.org to have the format of your courses changed to LIVE. If the courses have previously been presented as DISTANCE LEARNING we will not be able to change the format to LIVE. We thank all our COPE Administrators and Instructors for all their hard work and dedication during this difficult time. COPE is working on guidelines for presenting COPE-Accredited LIVE INTERACTIVE DISTANCE LEARNING courses and we will be releasing those soon. If you have questions about the rules modification please contact Sierra Powell, Manager of Accreditation Services, at spowell@arbo.org.



PUBLIC AGENDA REQUEST FORM

Instructions:

1. Fill out this form, and then save to your device.
2. Return to the "[Suggest an Agenda Item](#)" page and select the appropriate Board or Council from the Board/Council list.
3. Attach your completed "Public Agenda Request" form and send.

First Name: Nicholas

Last Name: Bruns

Association/Organization: Summit Eye Care of Wisconsin

Address Line 1: 10425 W. North Ave #140

Address Line 2: _____

City: Wauwatosa

State: WI

Zip: 53226

Phone Number: (989) 430-4931

Email: nbruns@summiteyecareclinic.com

Subject: Light Adjustable Intraocular Lens Implant

Issue to Address:

I am looking for confirmation that post-operative care of a newly approved intraocular lens (IOL) is within the optometric scope of practice in the state of Wisconsin.

The Light Adjustable Lens (LAL) is made of a special photosensitive material that reacts to light making it possible to change the IOL shape to match the prescription the patient selects. The lens is implanted using standard surgical techniques for conventional cataract surgery. After the eye has healed, the patient comes in for a routine vision exam. The lens power may then be customized by directing a low intensity beam of light onto the lens from outside the eye. The light is delivered via a device referred to as the light delivery device (LDD), which also is manufactured by RxSight and has been approved by the FDA as part of the regulatory review of the LAL. Multiple adjustments may be made to the LAL to optimize the patient's refractive result prior to making the changes permanent, referred to as the "lock-in."

Reshaping the LAL involves the following steps:

- The patient is positioned in front of the LDD following dilation of the eye (using standard drops) and entry of patient data into the LDD.
- A standard topical anesthetic drop is applied to the eye and the patient's chin is placed in the chinrest with the forehead against the support bar.

- A treatment contact lens (like a gonio lens) is positioned on the cornea and the patient is asked to concentrate on the green fixation light presented in front of them.
- Using the slit lamp, the doctor aligns the reticle onto the light adjustable lens and initiates the light exposure.
- The doctor monitors the position of the reticle and use the joystick to keep the LAL centered in the alignment reticle for the full treatment of 30-90 seconds.
- Following treatment, the contact lens is removed.
- No post treatment medications are required.

The light adjustment of the LAL is not a standalone procedure, rather it is simply additional post-operative work that is targeted at optimizing the refractive result a patient achieves with the LAL. Patients opting for the LAL likely will require several more post-operative office visits than a patient receiving a standard monofocal intraocular lens in order to evaluate the patient's satisfaction with the refractive correction he/she is experiencing. To the extent, a patient seeks refinement of the lens refraction, the light is used to fine tune the shape of the implanted lens.

I have reviewed the scope of practice for optometrists in our state and believe that it permits me to perform the LDD treatment as described above. Section 449.01 of the state Optometry Practice Act authorizes optometrists to diagnosis and treat refractive errors. Given that optometrists already routinely perform all the tasks outlined above that are involved in the lens adjustment (i.e., dilating patients' eyes, positioning patients in alignment with various landmarks, instilling topical anesthetic drops, applying a contact lens and using a slit lamp), and that use of the LDD is not surgery nor a utilization of a laser, it appears to be within an optometrist's scope of practice.

To be certain, however, I seek confirmation that optometrists in the state may direct light into a patient's eye, not for the purpose of impacting any structure of the eye, but to change the shape of the lens implant.