

**STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
OPTOMETRY EXAMINING BOARD : CR 19-033
:
:**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

n/a

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Optometrists licensed after 2006 have the authority under chapter 449 to prescribe controlled substances and remove foreign bodies from an eye or from an appendage to the eye. Under section 449.04 (2), Stats., applicants are required to be tested on, “knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye.” The TMOD embedded questions in Part II of the NBEO are an essential component of evaluating applicants’ preparation for practicing optometry competently in the State of Wisconsin. Optometrists licensed before 2006 are required to pass the TMOD exam or its equivalent prior to being granted a therapeutic pharmaceutical agent (TPA) certificate, which provides the authority to prescribe controlled substances and remove foreign bodies from an eye or from an appendage to the eye.

Thus, this rule project will ensure that the administrative rules are compliant with statute. For new applicants, applicants for licensure by endorsement who were licensed after 1996, and for those who are submitting a late renewal, the rules identifying qualifying exams need to be updated to clarify that passage of the TMOD is required, in accordance with the statutorily-defined minimum standards.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Optometry Examining Board held a public hearing on May 30, 2019. The following people either testified at the hearing, or submitted written comments:

- In favor: Peter Theo, Wisconsin Optometric Association

The Optometry Examining Board made no modifications to its rule-making proposal prompted by public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 5.b.

Response: Reject.

Due to the various requirements included in ch. Opt 6 for prescribing pharmaceutical agents, providing a broader reference gives notice to the applicant that additional requirements might be necessary and where to look to find them. Providing a more specific reference could potentially mislead the applicant depending on their circumstances. Additionally, since ch. Opt 6 is under a full revision, any more specific cross-reference would be inaccurate once the revised Opt 6 becomes effective.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

n/a

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 19-033)

PROPOSED ORDER

An order of the Optometry Examining Board to amend Opt 3.02 (3), 4.03 (2) (b), and 7.05 (2) (b) 2. a.; and to repeal and recreate Opt 4.01 (9), relating to the examination on the treatment and management of ocular disease.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 440.08 (3) (b), 449.04 (1) (c) and (2), and 449.055 (1), Stats.

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) (b), 440.08 (3) (b), and 449.04 (1) (c), Stats.

Explanation of agency authority:

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

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

Section 440.08 (3) (b), Stats., states that, “the interested examining board . . . may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential . . .”

Section 449.04 (1) (c), Stats., requires that a, “person passes an examination approved or conducted by the examining board” in order to be granted a license. Subsection (2) states that, “[t]he examination shall test knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic

pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye,” and that “the examining board may do any of the following:

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

Related statute or rule:

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

Plain language analysis:

The rules for licensure by examination, licensure by endorsement, and late renewal are being amended to clarify that applicants need to pass all parts of the National Board of Examiners in Optometry (NBEO) including the embedded portion in Part II, the Treatment and Management of Ocular Disease (TMOD) exam.

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

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

Summary of public comments and feedback on the statement of scope:

The Optometry Examining Board, upon direction under s. 227.136 (1), Stats., held a preliminary public hearing and comment period on February 7, 2019 for SS 010-19. The Board received one public testifier in support of the statement of scope. After consideration of the public comments, the Board approved the statement of scope for implementation.

Comparison with rules in adjacent states:

Illinois:

The Optometric Licensing and Disciplinary Board, under the Illinois Department of Financial and Professional Regulation, requires that, “[t]he examination for licensure as an optometrist in Illinois shall be Part I, Part II, including passage of the Treatment and Management of Ocular Disease (TMOD) section after January 1, 1996, and Part III of the

examination administered by the National Board of Examiners in Optometry (NBEO).” Title 68, section 1320.40 (a), Illinois Administrative Code.

Iowa:

The Board of Optometry, under the Iowa Department of Public Health, requires that applicants “pass all parts of the NBEO examination in effect at the time of application.” 645-180.02 (1), Iowa Administrative Code. According to the NBEO website, that includes passing the TMOD independently of passing Part II, NBEO.

Michigan:

The Michigan Board of Optometry, under the Department of Licensing and Regulatory Affairs, requires that applicants submit passing scores on Parts 1, 2, and 3 of the National Board (NBEO) Examinations as well as the Treatment and Management of Ocular Disease (TMOD) Examination embedded in Part 2, in accordance with R 338.307 (3), Michigan Administrative Rules.

Minnesota:

The Minnesota Board of Optometry requires passage of the NBEO Parts I, II, III, and the TMOD. See *General Information* for applicants at mn.gov/boards/optometry.

Summary of factual data and analytical methodologies:

Optometrists licensed after 2006 have the authority under chapter 449 to prescribe controlled substances and remove foreign bodies from an eye or from an appendage to the eye. Under section 449.04 (2), Stats., applicants are required to be tested on, “knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye.” The TMOD embedded questions in Part II of the NBEO are an essential component of evaluating applicants’ preparation for practicing Optometry competently in the State of Wisconsin. Optometrists licensed before 2006 are required to pass the TMOD exam or its equivalent prior to being granted a therapeutic pharmaceutical agent (TPA) certificate, which provides the authority to prescribe controlled substances and remove foreign bodies from an eye or from an appendage to the eye.

Thus, this rule project will ensure that the administrative rules are compliant with statute. For new applicants, applicants for licensure by endorsement who were licensed after 1996, and for those who are submitting a late renewal, the rules identifying qualifying exams need to be updated to clarify that passage of the TMOD is required, in accordance with the statutorily-defined minimum standards.

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:

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

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

Comments may be submitted to Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before 9:00 AM on May 30, 2019 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 3.02 (3) is amended to read:

Opt 3.02 (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.

SECTION 2. Opt 4.01 (9) is repealed and recreated to read:

Opt 4.01 (9) Has completed the education and examination requirements to the satisfaction of the board in compliance with ch. Opt 6.

SECTION 3. Opt 4.03 (2) (b) is amended to read:

Opt 4.03 (2) (b) Parts I, II, including passage of the Treatment and Management of Ocular Disease examination, and III of the national board examination, if the applicant has engaged in the practice of optometry for less than 5 years prior to January 1, 1996, or if applicant graduated from an approved college of optometry after December 1, 1995.

SECTION 4. Opt 7.05 (2) (b) 2. a. is amended to read:

Opt 7.05 (2) (b) 2. a. 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.

SECTION 5. 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)

This Proposed Order of the Optometry Examining Board is approved for submission to the Governor and Legislature.

Dated June 4th 2019

Agency

Dr. Ann Meres Carlye
Chairperson
Optometry Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date March 14, 2019</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Opt 3, 4, and 7</p>	
<p>4. Subject Examination on the Treatment and Management of Ocular Disease</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The rules for licensure by examination, licensure by endorsement, and late renewal are being amended to clarify that applicants need to pass all parts of the National Board of Examiners in Optometry (NBEO) including the embedded portion in Part II, the Treatment and Management of Ocular Disease (TMOD) exam.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of the EIA.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmentnal units, or the state's economy as a whole.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The Optometry Examining Board requires that new license applicants pass Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) examination. Part II of the NBEO has an embedded portion on the Treatment and Management of Ocular Disease (TMOD). The TMOD questions, "test knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye," in accordance with s. 449.04 (2), Stats. Therapeutic pharmaceutical agents include opioids, under s. 961.39, Stats. However, the passing score of Part II is determined as an overall score, so that applicants can fail the TMOD embedded</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

questions yet pass Part II of the examination. The Board needs to amend the administrative rules for the health, safety, and welfare of the people of Wisconsin to clarify that applicants need to pass the TMOD portion as part of Part II.

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

16. Long Range Implications of Implementing the Rule

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

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

17. Compare With Approaches Being Used by Federal Government

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

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

Illinois:

The Optometric Licensing and Disciplinary Board, under the Illinois Department of Financial and Professional Regulation, requires that, “[t]he examination for licensure as an optometrist in Illinois shall be Part I, Part II, including passage of the Treatment and Management of Ocular Disease (TMOD) section after January 1, 1996, and Part III of the examination administered by the National Board of Examiners in Optometry (NBEO).” Title 68, section 1320.40 (a), Illinois Administrative Code.

Iowa:

The Board of Optometry, under the Iowa Department of Public Health, requires that applicants “pass all parts of the NBEO examination in effect at the time of application.” 645-180.02 (1), Iowa Administrative Code. According to the NBEO website, that includes passing the TMOD independently of passing Part II, NBEO.

Michigan:

The Michigan Board of Optometry, under the Department of Licensing and Regulatory Affairs, requires that applicants submit passing scores on Parts 1, 2, and 3 of the National Board (NBEO) Examinations as well as the Treatment and Management of Ocular Disease (TMOD) Examination embedded in Part 2, in accordance with R 338.307 (3), Michigan Administrative Rules.

Minnesota:

The Minnesota Board of Optometry requires passage of the NBEO Parts I, II, III, and the TMOD. See General Information for applicants at mn.gov/boards/optometry.

19. Contact Name

Helen Leong, Administrative Rules Coordinator

20. Contact Phone Number

(608) 266 - 0797

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