

**STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
OPTOMETRY EXAMINING BOARD : CR 19-026
:
:**

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:

The Optometry Examining Board determined that a comprehensive review of Opt 4, relating to licensure by endorsement, was required in order to examine the practice of the Board's annual review of accredited optometry schools and colleges, update the chapter to ensure compliance with 2017 Act 278, and to make other updates as necessary for consistency and clarity.

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

- Inserts cross-references into s. Opt 4.02 for relevant statutes to implement 2017 Act 278, which made various changes to the circumstances under which a licensing agency may base its decisions on an individual's criminal history.
- Removes unnecessary notes.
- Simplifies the program approval process. The Board recognizes that programs that are accredited by the Accreditation Council on Optometric Education are approved for Wisconsin licensees. In order to prevent delays in the process of recognizing accredited programs, the Board is amending chapter Opt 4 to conform with chapter Opt 3 and remove the annual review of accredited programs.

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, Executive Vice President, Wisconsin Optometric Association

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

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 2. e.

Response: Because the changes to the chapter are not substantive revisions that will affect the content of any application, the Optometry Examining Board rejected adding an initial applicability provision.

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 19-026)

PROPOSED ORDER

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

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 449.055, Stats.

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2) (a), 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) (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”.

Related statute or rule:

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

Plain language analysis:

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

- Inserts cross-references into s. Opt 4.02 for relevant statutes to implement 2017 Act 278, which made various changes to the circumstances under which a licensing agency may base its decisions on an individual’s criminal history.

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

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

None.

Comparison with rules in adjacent states:

Illinois:

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

Iowa:

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

Michigan:

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

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

Minnesota:

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

Summary of factual data and analytical methodologies:

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

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

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

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

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

TEXT OF RULE

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

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

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

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

SECTION 2. Opt 4.01 (Note) is repealed.

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

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

Opt 4.02 (1) (d) A certified transcript of the coursework completed by the applicant submitted directly to the board from a program accredited by the Accreditation Council on Optometric Education.

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

SECTION 6. Opt 4.02 (1) (e) (Note) is repealed and recreated to read:

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

SECTION 7. Opt 4.02 (2) is amended to read:

Opt 4.02 (2) Applicants who have a pending criminal charge or have been convicted of any crime shall provide the board all related information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the circumstances of the licensed activity, subject to ss. 111.321, 111.322, and 111.335, Stats.

SECTION 8. Opt 4.02 (3) is created to read:

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

SECTION 9. Opt 4.03 (2) (a) and (b) are amended to read:

Opt 4.03 (2) (a) Parts I and II of the ~~national board examination~~ National Board of Examiners in Optometry, if the applicant has engaged in the practice of optometry for at least 5 years prior to January 1, 1996.

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

SECTION 10. Opt 4.03 (Note) 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)

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

Dated June 12, 2019

Agency Ami Meier Carley
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 January 28, 2019</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Opt 4</p>	
<p>4. Subject Licensure by Endorsement</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" 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 In order to clarify licensure by endorsement, this rule revision:</p> <ul style="list-style-type: none">• Inserts cross-references into s. Opt 4.02 for relevant statutes to implement 2017 Act 278.• Removes unnecessary notes.• Simplifies the program approval process. The Board recognizes that programs that are accredited by the Accreditation Council on Optometric Education are approved for Wisconsin licensees. In order to prevent delays in the process of recognizing accredited programs, the Board is amending chapter Opt 4 to conform with chapter Opt 3 and remove the annual review of accredited programs.	
<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. None.</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 governmental units, or the state's economy as a whole. The agency would have a fiscal impact of \$186.58, which could be absorbed within the agency's operating budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is providing clarity and consistency with 2017 Act 278 and Opt 3, for applicants for</p>	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

licensure by endorsement.

If the rule is not implemented, then applicants for licensure by endorsement may have unnecessary confusion regarding the application process.

16. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule will be that applicants for licensure by endorsement will have a more clear application process and will reduce unnecessary processes for the Board.

17. Compare With Approaches Being Used by Federal Government

None.

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

Illinois:

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

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19. Contact Name

Helen Leong, Administrative Rules Coordinator

20. Contact Phone Number

608 - 266 - 0797