



**TELECONFERENCE/VIRTUAL
OPTOMETRY EXAMINING BOARD**
Virtual, 4822 Madison Yards Way, Madison
Contact: Tom Ryan (608) 266-2112
April 4, 2024

The following agenda describes the issues that the Council 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 record of the actions and deliberations of the Council.

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-4)**
- B. Approval of Minutes of January 25, 2024 (5-8)**
- C. Introductions, Announcements and Recognition
- D. Reminders: Conflicts of Interest, Scheduling Concerns
- E. Administrative Matters – Discussion and Consideration**
 - 1) Department, Staff and Board Updates
 - 2) Board Members – Term Expiration Dates
 - a. Jinkins, Mark A. – 7/1/2016
 - b. Kenitz, Scott F. – 7/1/2025
 - c. Schulz, Robert C. – 7/1/2020
 - d. Slaby, Lisa L. – 7/1/2027
 - e. Sorce, Peter I. – 7/1/2023
 - f. Wilson, Emmylou – 7/1/2027
 - g. Wonderling, Ann M. – 7/1/2027
- F. 9:00 AM PUBLIC HEARING: Clearinghouse Rule Opt 1, 5, and 6m, Relating to Telehealth (9-15)**
- G. Legislative and Policy Matters – Discussions and Consideration
- H. Administrative Rule Matters – Discussion and Consideration (16-38)**
 - 1) Discussion of public hearing comments and Clearinghouse Report on Opt 1, 5, and 6, related to telehealth. **(17-24)**
 - 2) Discussion of preliminary rule draft of Opt 8, related to new course format definitions by ARBO and COPE. **(25-35)**

- 3) Consideration of Board Approval of a Scope Statement on Opt 1 and 5 related to definitions. **(36-37)**
- 4) Pending or Possible Rulemaking Projects **(38)**

I. Association of Regulatory Boards (ARBO) of Optometry Matters – Discussion and Consideration (39-64)

- 1) Board Review: Model Practice Act Draft 3/1/2024 – Slaby **(39-62)**
- 2) Annual Meeting Survey Questions **(63)**
- 3) ARBO invitation for Peter Sorce to serve on the 2024 ARBO Resolutions Committee **(64)**

J. 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) Public Health Emergencies
- 16) Division of Legal Services and Compliance (DLSC) Matters
- 17) Presentations of Petitions for Summary Suspension
- 18) Petitions for Designation of Hearing Examiner
- 19) Presentation of Stipulations, Final Decisions and Orders
- 20) Presentation of Proposed Final Decisions and Orders
- 21) Presentation of Interim Orders
- 22) Petitions for Re-Hearing
- 23) Petitions for Assessments
- 24) Petitions to Vacate Orders
- 25) Requests for Disciplinary Proceeding Presentations
- 26) Motions
- 27) Petitions
- 28) Appearances from Requests Received or Renewed
- 29) Speaking Engagements, Travel, or Public Relation Requests, and Reports

K. 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.).

L. DLSC Matters

- 1) **Proposed Stipulations, Final Decisions and Orders**
 - a. 23 OPT 003 – Joseph P. Carlino (65-71)
- 2) **Administrative Warnings**
 - a. 22 OPT 001 – T.R.B. (72-73)

M. 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

N. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

ADJOURNMENT

NEXT MEETING: JULY 11, 2024

 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 virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way, Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the

board's agenda, please visit the Department website at <https://dsps.wi.gov>. 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, or the Meeting Staff at 608-267-7213.

**VIRTUAL/TELECONFERENCE
OPTOMETRY EXAMINING BOARD
MEETING MINUTES
JANUARY 25, 2024**

PRESENT: Mark Jenkins, Scott Kenitz, Lisa Slaby, Peter Sorce, Emmylou Wilson, Ann Wonderling

EXCUSED: Robert Schulz

STAFF: Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Jacob Pelegrin, Administrative Rules Coordinator; Tracy Drinkwater, Board Administration Specialist; and other DSPS Staff

CALL TO ORDER

Emmylou Wilson, Vice Chairperson, called the meeting to order at 9:00 a.m. A quorum was confirmed with six (6) members present.

ADOPTION OF AGENDA

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

APPROVAL OF MINUTES OF SEPTEMBER 28, 2023

MOTION: Mark Jenkins moved, seconded by Lisa Slaby, to adopt the Minutes of September 28, 2023, as published. Motion carried unanimously.

ADMINISTRATIVE MATTERS

Chairperson

NOMINATION: Emmylou Wilson nominated Lisa Slaby for the Office of Chairperson. Lisa Slaby accepted the nomination.

Tom Ryan, Executive Director, called for nominations three (3) times.

All in favor; Lisa Slaby abstains.

Lisa Slaby was elected as Chairperson by majority voice vote.

Vice Chairperson

NOMINATION: Mark Jenkins nominated Emmylou Wilson for the Office of Vice Chairperson. Emmylou Wilson accepted the nomination.

Tom Ryan, Executive Director, called for nominations three (3) times.

All in favor

Emmylou Wilson was elected as Vice Chairperson by unanimous voice vote.

Secretary

NOMINATION: Mark Jenkins nominated Scott Kenitz for the Office of Secretary. Scott Kenitz accepted the nomination.

Tom Ryan, Executive Director, called for nominations three (3) times.

All in favor; Scott Kenitz abstains.

Scott Kenitz was elected as Secretary by majority voice vote.

ELECTION RESULTS	
Chairperson	Lisa Slaby
Vice Chairperson	Emmylou Wilson
Secretary	Scott Kenitz

Appointment of Liaisons and Alternates

LIAISON APPOINTMENTS	
Credentialing Liaison(s)	Lisa Slaby, Ann Wonderling <i>Alternate: Robert Schulz</i>
Education and Exams Liaison(s)	Lisa Slaby Emmylou Wilson <i>Alternate Ann Wonderling</i>
Monitoring Liaison(s)	Scott Kenitz <i>Alternate: Mark Jenkins</i>
Professional Assistance Procedure (PAP) Liaison(s)	Scott Kenitz <i>Alternate: Peter Sorce</i>
Legislative Liaison(s)	Peter Sorce <i>Alternate: Lisa Slaby</i>
Travel Authorization Liaison(s)	Robert Schulz <i>Alternate: Emmylou Wilson</i>
Prescription Drug Monitoring Program Liaison(s) (PDMP)	Robert Schulz <i>Alternate: Emmylou Wilson</i>
SCREENING PANEL APPOINTMENTS	

January-December 2024	Emmylou Wilson, Mark Jenkins, Scott Kenitz <i>Alternate: Ann Wonderling</i>
------------------------------	---

Delegation of Authorities

Review and Approval of 2023 Delegations

MOTION: Emmylou Wilson moved, seconded by Lisa Slaby, to reaffirm all delegation motions from 2023 as reflected in the agenda materials. Motion carried unanimously.

Document Signature Delegations

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

Monitoring Delegations

Delegation of Authorities for Monitoring

MOTION: Emmylou Wilson moved, seconded by Scott Kenitz, to adopt the “Roles and Authorities Delegated for Monitoring” document as presented in the January 25, 2024, agenda materials on pages. Motion carried unanimously.

Credentialing Authority Delegations

Delegation to Department Attorneys to Approve Duplicate Legal Issue

MOTION: Lisa Slaby moved, seconded by Emmylou Wilson, to delegate authority to Department Attorneys to approve a legal matter in connection with a renewal application when that same/similar matter was already addressed by the Board and there are no new legal issues. Motion carried unanimously.

ADMINISTRATIVE RULE MATTERS

Opt 8 relating to Continuing Education Final Rule Draft and Report to the Legislature

MOTION: Emmylou Wilson moved, seconded by Peter Sorce, to approve Final Rule Draft and Report to the Legislature for CR 23-040 to be submitted to the Governor's Office and the Legislature Motion carried unanimously.

Opt 1, 5, 6 relating to Telehealth Preliminary Rule Draft discussion

MOTION: Emmylou Wilson moved, seconded by Scott Kenitz, to authorize the Chair or in absence of the Chairperson, the highest-ranking officer or longest serving board member in that succession to approve the preliminary rule draft of Opt 1, 5, and 6 for posting for Economic Impact Analysis comments and submittal to the Clearinghouse. Motion carried unanimously.

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

Consideration of Attendance: Association of Regulatory Boards of Optometry (ARBO) Annual Meeting, June 16-18, 2024, in Nashville, TN

MOTION: Lisa Slaby moved, seconded by Ann Wonderling moved, to designate Peter Sorce to attend the Association of Regulatory Boards of Optometry (ARBO) Annual Meeting, June 16-18, 2024, in Nashville, TN. Motion carried unanimously.

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

MOTION: Lisa Slaby moved, seconded by Peter Sorce, to delegate ratification of examination results to DSPS staff and to delegate and ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 10:53 a.m.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Jake Pelegrin Administrative Rules Coordinator		2) Date when request submitted: 3/22/24 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting																
3) Name of Board, Committee, Council, Sections: Optometry Examining Board																		
4) Meeting Date: 4/4/24	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Public Hearing on rule Opt 1, 5, and 6 related to Telehealth																
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: N/A																
10) Describe the issue and action that should be addressed: Attachments: -Notice of public hearing and rule draft for Opt 1, 5, and 6																		
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">11)</td> <td style="width: 50%; text-align: center;">Authorization</td> <td style="width: 40%;"></td> </tr> <tr> <td></td> <td style="text-align: center;"><i>Jake Pelegrin</i></td> <td style="text-align: right;">3/22/24</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black;">Signature of person making this request</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black;">Supervisor (if required)</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</td> <td style="border-top: 1px solid black; text-align: right;">Date</td> </tr> </table>				11)	Authorization			<i>Jake Pelegrin</i>	3/22/24	Signature of person making this request		Date	Supervisor (if required)		Date	Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date
11)	Authorization																	
	<i>Jake Pelegrin</i>	3/22/24																
Signature of person making this request		Date																
Supervisor (if required)		Date																
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date																
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.																		

Notice of Public Hearing

The Optometry Examining Board announces that it will hold a public hearing on the rule revising Opt 1, 5, and 6, related to Telehealth, at the time and place shown below.

Hearing Information

Date: April 4, 2024

Time: 9:00 A.M.

Location: Information concerning the location of the hearing will be available at:

<https://dsps.wi.gov/Pages/BoardsCouncils/Optometry/Meetings.aspx>

Appearances at the Hearing and Submittal of Written Comments

The rule may be reviewed and comments submitted at:

<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Comments may also be submitted to Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov.

Comments must be received at or before the public hearing to be included in the record of rulemaking proceedings.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

The Department's Regulatory Review Coordinator may be contacted by calling (608) 266-2112.

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 **amend** OPT 1.03 and OPT 5.03 (8); and to **create** OPT 1.02 (7m), OPT 5.045 (4), and OPT 5.20 relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 440.01 (1) (hm), 449.02 (1), and 449.25 (1), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 449.25, Stats., and section 5 of 2021 Wisconsin Act 121.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides that each 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. provides that “Each 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.”

Section 5 of 2021 Wisconsin Act 121: “If the department, an examining board, or an affiliated credentialing board promulgates rules related to telehealth, the department, the examining board, or the affiliated credentialing board shall define “telehealth” to have the meaning given in s. 440.01 (1) (hm).”

Related statute or rule:

None.

Plain language analysis:

This rule will include a uniform definition of telehealth for optometrists based on that given by 2021 Wisconsin Act 121. It will specify optometrists are to hold a Wisconsin license or apply for a temporary credential in order to diagnose and treat patients located in Wisconsin. It will specify that optometrists are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth.

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

None.

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:

N/A

Comparison with rules in adjacent states:

Illinois:

Illinois statute provides that telehealth includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system. Illinois law further provides that “[a] health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.” Practice of telehealth in Illinois is limited to the extent of the practitioner’s scope of practice as established in his or her respective licensing and consistent with the standards of care for in-person services. Optometrists are included in the definition of “health care professionals.”

Iowa:

Iowa law defines “Telehealth” as “the delivery of health care services through the use of real-time interactive audio and video, or other real-time interactive electronic media, regardless of where the health care professional and the covered person are each located. “Telehealth” does not include the delivery of health care services delivered solely through an audio-only telephone, electronic mail message, or facsimile transmission.” Services must comply with all rules adopted by the appropriate professional licensing board that has oversight of the health care professional providing the health care services. Optometry is included in the delivery of health care services.

Michigan:

Michigan law defines “telemedicine” in their insurance code as "the use of an electronic media to link patients with health care professionals in different locations.” To be considered telemedicine under this section, the health care professional must be able to examine the patient via a secure interactive audio or video, or both, telecommunications system, or through the use of store and forward online messaging. Optometrists are included in the definition of “health care professionals.”

Minnesota:

Minnesota law defines "Telehealth" as “the delivery of health care services or consultations through the use of real time two-way interactive audio and visual communications to provide or support health care delivery and facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient's health care.” Telehealth includes the application of secure video conferencing, store-and-forward technology, and synchronous interactions between a patient located at an originating site and a health care provider located at a distant site. Until July 1, 2025, telehealth also includes audio-only communication between a health care provider and a patient. Telehealth does not include communication between a health care provider and a patient that consists solely of an email or facsimile transmission. Telehealth does not include telemonitoring services. Optometrists are included in the definition of health care providers.

Summary of factual data and analytical methodologies:

The rules were developed in consultation with the Optometry Examining Board by reviewing Section 5 of 2021 Wisconsin Act 121, reviewing the current Optometry rules and statutes, and discussing current practice in the profession.

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 are attached.

Effect on small business:

These 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 at Jennifer.Garrett@wisconsin.gov or at (608) 266-2112.

Agency contact person:

Jake Pelegrin, 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 608-267-0989; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jake Pelegrin, 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 the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OPT 1.02 (7m) is created to read:

OPT 1.02 (7m) “Telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 2. OPT 1.03 is amended to read:

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. This includes performing telehealth with patients. 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.

SECTION 3. OPT 5.03 (8) is amended to read:

OPT 5.03 (8) Practicing while knowingly having an infectious or contagious disease, except when practicing telehealth.

SECTION 4. OPT 5.045 (4) is created to read:

OPT 5.045 (4) An optometrist shall be responsible for informing a patient upon initiation of scheduling a visit, or within a reasonable amount of time in the event of a change of circumstances, if the visit is going to be performed by telehealth. The patient shall be provided with the name and contact information of the telehealth provider.

SECTION 5. OPT 5.20 is created to read:

OPT 5.20 Telehealth.

(1) The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.

(2) An optometrist who uses a telehealth visit to provide optometry services to a patient located in this state shall either be licensed as an optometrist by the board, shall apply for a temporary credential under the requirements of s. 440.094, Stats., or shall have endorsement and licensure by the board under s. 449.055, Stats. and ch. OPT 4.

SECTION 6. 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)

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Jake Pelegrin Administrative Rules Coordinator		2) Date when request submitted: 3/22/24 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 4/4/24	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. Discussion of public hearing comments and Clearinghouse Report on Opt 1, 5, and 6, related to telehealth 2. Discussion of preliminary rule draft of Opt 8, related to new course format definitions by ARBO and COPE 3. Consideration of Board Approval of a Scope Statement on Opt 1 and 5 related to definitions 4. Pending or 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: N/A	
10) Describe the issue and action that should be addressed: Attachments: -Clearinghouse Report and rule draft for Opt 1, 5, and 6 -Prelim rule draft for Opt 8 and reference material from COPE -Proposed Scope Statement on Opt 1 and 5 related to definitions -Rules progress chart			
11) <i>Jake Pelegrin</i>		Authorization 3/22/24	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **24-029**

AN ORDER to amend Opt 1.03 and 5.03 (8); and to create Opt 1.02 (7m), 5.045 (4), and 5.20, relating to telehealth.

Submitted by **OPTOMETRY EXAMINING BOARD**

03-06-2024 RECEIVED BY LEGISLATIVE COUNCIL.

03-20-2024 REPORT SENT TO AGENCY.

SG:SM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

CLEARINGHOUSE RULE 24-029

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

References to “section 5 of 2021 Wisconsin Act 121” in the statutory authority, explanation of agency authority, and summary of factual data and analytical methodologies sections of the rule analysis should be changed to “s. 440.17, Stats.”.

2. Form, Style and Placement in Administrative Code

a. Use of the phrase, “as defined in s. Opt 1.02 (7m)” throughout the proposed rule is superfluous, as s. Opt 1.02 (intro.) states, “As used in chs. Opt 1 to 8:”, and SECTION 1 of the proposed rule creates the definition of “telehealth” within that section.

b. A period should be placed at the end of proposed s. Opt 5.20 (title).

5. Clarity, Grammar, Punctuation and Use of Plain Language

The material created under proposed s. Opt 5.045 (4) is confusing. It appears to require that an optometrist provide notice to a patient that an appointment will be performed by telehealth, and then also requires that: “The patient shall be provided with the name and contact information of the telehealth provider.”. It is not clear whether the term “telehealth provider” refers to the means of accessing audio, video, or data communications, the optometrist themselves, or a different optometrist.

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 **amend** OPT 1.03 and OPT 5.03 (8); and to **create** OPT 1.02 (7m), OPT 5.045 (4), and OPT 5.20 relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 440.01 (1) (hm), 449.02 (1), and 449.25 (1), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 449.25, Stats., and section 5 of 2021 Wisconsin Act 121.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides that each 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. provides that “Each 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.”

Section 5 of 2021 Wisconsin Act 121: “If the department, an examining board, or an affiliated credentialing board promulgates rules related to telehealth, the department, the examining board, or the affiliated credentialing board shall define “telehealth” to have the meaning given in s. 440.01 (1) (hm).”

Related statute or rule:

None.

Plain language analysis:

This rule will include a uniform definition of telehealth for optometrists based on that given by 2021 Wisconsin Act 121. It will specify optometrists are to hold a Wisconsin license or apply for a temporary credential in order to diagnose and treat patients located in Wisconsin. It will specify that optometrists are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth.

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

None.

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:

N/A

Comparison with rules in adjacent states:

Illinois:

Illinois statute provides that telehealth includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system. Illinois law further provides that “[a] health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.” Practice of telehealth in Illinois is limited to the extent of the practitioner’s scope of practice as established in his or her respective licensing and consistent with the standards of care for in-person services. Optometrists are included in the definition of “health care professionals.”

Iowa:

Iowa law defines “Telehealth” as “the delivery of health care services through the use of real-time interactive audio and video, or other real-time interactive electronic media, regardless of where the health care professional and the covered person are each located. “Telehealth” does not include the delivery of health care services delivered solely through an audio-only telephone, electronic mail message, or facsimile transmission.” Services must comply with all rules adopted by the appropriate professional licensing board that has oversight of the health care professional providing the health care services. Optometry is included in the delivery of health care services.

Michigan:

Michigan law defines “telemedicine” in their insurance code as "the use of an electronic media to link patients with health care professionals in different locations.” To be considered telemedicine under this section, the health care professional must be able to examine the patient via a secure interactive audio or video, or both, telecommunications system, or through the use of store and forward online messaging. Optometrists are included in the definition of “health care professionals.”

Minnesota:

Minnesota law defines "Telehealth" as “the delivery of health care services or consultations through the use of real time two-way interactive audio and visual communications to provide or support health care delivery and facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient's health care.” Telehealth includes the application of secure video conferencing, store-and-forward technology, and synchronous interactions between a patient located at an originating site and a health care provider located at a distant site. Until July 1, 2025, telehealth also includes audio-only communication between a health care provider and a patient. Telehealth does not include communication between a health care provider and a patient that consists solely of an email or facsimile transmission. Telehealth does not include telemonitoring services. Optometrists are included in the definition of health care providers.

Summary of factual data and analytical methodologies:

The rules were developed in consultation with the Optometry Examining Board by reviewing Section 5 of 2021 Wisconsin Act 121, reviewing the current Optometry rules and statutes, and discussing current practice in the profession.

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 are attached.

Effect on small business:

These 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 at Jennifer.Garrett@wisconsin.gov or (608) 266-2112.

Agency contact person:

Jake Pelegrin, 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 608-267-0989; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jake Pelegrin, 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 the public hearing to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OPT 1.02 (7m) is created to read:

OPT 1.02 (7m) “Telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 2. OPT 1.03 is amended to read:

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. This includes performing telehealth with patients. 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.

SECTION 3. OPT 5.03 (8) is amended to read:

OPT 5.03 (8) Practicing while knowingly having an infectious or contagious disease, except when practicing telehealth.

SECTION 4. OPT 5.045 (4) is created to read:

OPT 5.045 (4) An optometrist shall be responsible for informing a patient upon initiation of scheduling a visit, or within a reasonable amount of time in the event of a change of circumstances, if the visit is going to be performed by telehealth. The patient shall be provided with the name and contact information of the telehealth provider.

SECTION 5. OPT 5.20 is created to read:

OPT 5.20 Telehealth.

(1) The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.

(2) An optometrist who uses a telehealth visit to provide optometry services to a patient located in this state shall either be licensed as an optometrist by the board, shall apply for a temporary credential under the requirements of s. 440.094, Stats., or shall have endorsement and licensure by the board under s. 449.055, Stats. and ch. OPT 4.

SECTION 6. 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)



COPE Announces New Synchronous and Asynchronous Course Formats

October 2022

Over the past few years, the COPE Governing Committee has completed a thorough review of COPE's course format options and the effectiveness of these formats within optometry and the healthcare continuing education system. The committee also completed an extensive literature review and research into CE/CME formats in numerous healthcare professions.

COPE has determined that the overall quality of continuing education is more important than the location of the course. Continuing education delivery methods changed during the pandemic and technology now allows for immediate interaction with a course instructor regardless of learners being present in the same room. In February 2022, COPE proposed updating its course formats to Synchronous and Asynchronous to align with modern educational terminology. Feedback from stakeholders was overwhelmingly positive. Stakeholders requested clarification on monitoring attendance and measuring outcomes for the new formats and in response, COPE developed clear, streamlined guidance to ensure that COPE's requirements and standards will remain intact with the format changes.

COPE will be implementing the new Synchronous and Asynchronous course formats with all new course and activity submissions on January 1, 2023. To prepare for this change, the following information/guidelines have been created to ensure a smooth transition among stakeholders:

- NEW COPE Synchronous/Asynchronous Format Chart (including definitions and examples)
- Attendance Monitoring and Outcomes Measurement Guide (includes definitions and examples)
- New COPE Format FAQ

It is also important to note that individual State and Provincial Licensing Boards may limit the number of Synchronous Virtual and Asynchronous hours optometrists can take for license renewal. COPE advises optometrists to contact the State or Provincial Board where they are licensed for verification of what is acceptable.

Please review the attached information and feel free to contact Sierra Powell, Manager of Accreditation Services, at spowell@arbo.org, with any questions.

2023 COPE Course Formats

NEW COURSE FORMAT	DESCRIPTION	EXAMPLES
<p>SYNCHRONOUS</p> <ul style="list-style-type: none"> <u>SYNCHRONOUS IN-PERSON</u> FORMERLY “LIVE” <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <u>SYNCHRONOUS VIRTUAL</u> FORMERLY “INTERACTIVE DISTANCE LEARNING” 	<p>INTERACTIVE CONTINUING EDUCATION <i>For Synchronous In-Person and Virtual:</i></p> <ul style="list-style-type: none"> Lecturer and learner are together at the same time Real time communication between the instructor and the learner Learners can receive immediate feedback Fixed schedule; learning takes place only once at a specific date and time <p><i>*NOTE: Post-course tests will NOT be required for courses presented in a synchronous format <u>unless the course is for CEE credit</u>. See CEE definition below.</i></p>	<ul style="list-style-type: none"> <u>SYNCHRONOUS IN-PERSON:</u> -Face-to-face -Hands on workshop -Interactive posters with authors presenting in real time <u>SYNCHRONOUS VIRTUAL:</u> -Interactive webinars in real time -Videoconferences -Interactive posters with authors presenting in real time
<p>ASYNCHRONOUS</p> <p>FORMERLY “ENDURING DISTANCE LEARNING”</p>	<p>NON-INTERACTIVE CONTINUING EDUCATION</p> <ul style="list-style-type: none"> Lecturer and learner are not together at the same time No real time communication between the instructor and the learner Learners do not receive immediate feedback Content is created and made available for attendance at a later date No fixed schedule, learner-paced <p><i>*NOTE: Post-course tests will be required for ALL courses presented in an asynchronous format.</i></p>	<ul style="list-style-type: none"> Recorded webinar without instructor interaction Journal article Webcast/podcast

Continuing Education with Examination (CEE) is also known as Transcript Quality (TQ) or Certified CE. This type of continuing education is required to be in-person, be a minimum of 2 hours in length and include a post-course test to verify learning. Learners must score a minimum of 70% on the post-course test to receive CEE credit.

IMPORTANT: Individual State and Provincial Licensing Boards may limit the number of Synchronous Virtual and Asynchronous hours optometrists can take for license renewal. **COPE advises optometrists to contact the State or Provincial Board where they are licensed for verification of what is acceptable.**

COPE Attendance Policy Requirements

Attendance monitoring is required for COPE-Accredited CE and must be an active process that is conducted with integrity and impartiality. **COPE Administrators/Providers MUST monitor attendance at all activities and ensure that CE credit is provided only to those individuals present during the instructional time.** No partial credit is permitted in any circumstances. Attendees should only receive credit if they have been present for the entire scheduled time.

COPE credit hours/units are defined in the following increments:

- 0.25 credit hours/units = 15 minutes of instructional time
- 0.50 hours/units = 25 minutes of instructional time
- 1.00 hours/units = 50 minutes of instructional time

To assist COPE Administrators/Providers in ensuring accurate attendance, COPE has provided a list of examples of acceptable attendance monitoring options. **Please note that this list may not include all attendance monitoring options available. COPE Administrators/Providers are welcome to contact ARBO to discuss other potential options.

Attendance Monitoring Options for COPE Accredited CE

Virtual Roll Call

Message Boards/Chats or Discussion Forum- Ask learners to post comments/something they learned at various times

Interactive Polls- Ask questions throughout the course to ensure learner participation

Quizzes- Pre-and post-course quiz or post-course quiz only

(Reminder: Post-course tests are required for Asynchronous and CEE courses.)

Post-Course Surveys or Evaluations

Lecture Questions asked throughout Course for learners to respond in chat

Meeting Platform/Software Attendance Tracking of attendees' sign-in and sign-out time

COPE Outcomes Measurement Requirements

COPE Administrators/Providers are required to conduct a post-activity educational evaluation which includes gathering data or information on the changes in the learners based on the stated goals of competence, performance or patient outcomes as identified in planning the activity. This is extremely important for Synchronous Courses that no longer require post-course testing. (Note: Courses submitted for CEE credit require a post-course test.) COPE has provided a list of outcomes measurement options for COPE Administrators/Providers to use. **Please note that this list may not include all outcomes measurement options available. COPE Administrators/Providers are welcome to contact ARBO to discuss other potential options.

Outcomes Measurement Options for COPE Accredited CE

Short Pre-Test and Post-Test- Ask the same question or different questions to measure change

Simple Question at End of Course asking what learners plan to change in practice

Interactive Poll at the end of the course asking outcomes measurement questions

Open-Book Test Questions based on speaker's handout at end of the course

Self-Assessment Question(s) given at the beginning and end of the course to measure change

Pre-Course Checklist of Skills- Ask "Are you doing this activity in your practice now?" Areas not checked off can be addressed in the speaker's presentation and reported at the conclusion.

Required/Strongly Recommended Pre-Reading - Ask questions related to pre-reading and course content at the end of the course

Post-Course Surveys or Evaluations

COPE Synchronous/Asynchronous Format FAQ's



What is the difference between “Synchronous In-Person” and the previous “live” format?

There is no difference. The Synchronous In-Person format (previously “live”) is when the instructor is in the same room with the participants, even if other formats are used as audiovisual aids for teaching the course. The instructor is face-to-face with the audience and can touch the participants.

What is the difference between “Synchronous Virtual” and the previous “Interactive Distance Learning” format?

Synchronous Virtual is the same as the previous Interactive Distance Learning format as far as the course presentation. There must be immediate interaction between the instructor and the learner. The only difference is that post-course tests will no longer be required for courses presented in the Synchronous Virtual Format. Required attendance monitoring and other methods of outcomes measurement are now available for COPE Administrators/Providers to ensure accurate attendance and evaluate their stated goals of competence, performance or patient outcomes.

What is the different between “Asynchronous Distance” format and the previous “Enduring Distance Learning” format?

There is no difference. Because there is no real time communication between the instructor and the learner during these courses, a post-course test for learners will continue to be required for this format.

Have the post-course test requirements changed for Asynchronous Distance courses?

No. Courses presented for COPE review under the Asynchronous Distance format must comply with the following requirements:

- A. Courses must include a post-course test to verify learning.
- B. Post-course tests and answer keys must be reviewed by an accredited school of optometry, medicine, pharmacy or osteopathy.
- C. Tests must be in multiple-choice question (MCQ) and should conform to the National Board of Examiners in Optometry’s (NBEO) Item Writer’s Manual.
- D. Post Course tests must receive a score of at least 70% or better for a certificate of completion to be issued.
- E. Post-course tests must include a minimum number of questions based on the length of the course.
 - 0.25 hours/units require a minimum of 3 questions
 - 0.50 hours/units require a minimum of 5 questions
 - 1.00 hours/units require a minimum of 10 questions
- F. The post-course test and answer key must be uploaded with the application materials to COPE.
- G. Tests may accompany a course as part of the delivery mechanism (i.e., an internet-based course may allow test candidates to take the test online; or a correspondence course may include the test in the same publication as the article, etc.)
- H. Post-course test grading may be done by the sponsoring school or other impartial method. The sponsoring school is responsible for ensuring that the test and answer key are valid and that the grading process is objective. The school must ensure the administration and grading of the test is unbiased if they are not grading the test themselves.



Will my licensing board award “Live” credit for a Synchronous Virtual course?

Individual State and Provincial Licensing Boards may allow Synchronous Virtual courses to count as “live” credit for license renewal, while others may not. COPE advises optometrists to contact the State or Provincial Board where they are licensed for verification of what is acceptable for license renewal.

Why did COPE remove the post-course test requirement for Synchronous Virtual Courses?

COPE has determined that there are other effective tools to both monitor attendance and measure the success of a CE activity outside of a multiple-choice test. A full list of acceptable attendance and outcomes measurement options is now available for all COPE Administrators/Providers to utilize based on the nature of each individual CE activity.

If I have a course that was approved under one of COPE’s previous formats will I have to resubmit it as synchronous or asynchronous in order to present it in 2023?

You will not have to resubmit a course as long as it hasn’t expired and the delivery method of the course hasn’t changed. As of January 1, 2023, all new course submissions will be in the synchronous and asynchronous formats.

Are there any changes in the Course Qualification Periods?

The course qualification period for each course qualified by COPE depends on the format of the course. These time periods will not change with the new formats. They will remain as follows:

- Synchronous In-Person Courses: 1 Year Qualification Period
- Synchronous Virtual Courses: 1 Year Qualification Period
- Asynchronous Distance Courses: 3 Year Qualification Period

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 **amend** OPT 8.02 (3e), OPT 8.02 (3s), OPT 8.03 (1) (a), and OPT 8.03 (2) (h) and to **create** OPT 8.01 (1m) and OPT 8.01 (5), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 449.06 (2m), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 449.06 (2m), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides that each 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. provides that “Each 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 449.06 (2m), Stats. provides that “The examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2-year period immediately preceding the renewal date specified in s. 440.08 (2) (a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.”

Related statute or rule:

None.

Plain language analysis:

The objective of the proposed rule is to clarify the number of continuing education hours and instructional format required to renew an optometry license according to the updated standards adopted by the Association of Regulatory Boards of Optometry (ARBO) and the Council on Optometric Practitioner Education (COPE).

Updating the continuing education requirements will clarify the number of synchronous in-person, synchronous virtual, and asynchronous continuing education hours required to renew an optometry license. COPE has updated definitions of synchronous and asynchronous course formats and hours to align with modern education terminology and provided new definitions to guide state regulatory boards.

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

N/A

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:

N/A

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation establish continuing education requirements for optometrists licensed in Illinois [68 Ill. Adm. Code 1320.80]. Illinois has not yet updated its requirements in line with the new COPE course format definitions, and still requires all certified CE courses to be in-person.

Iowa:

Rules of the Iowa Board of Optometry establish continuing education requirements for optometrists licensed in Iowa [645 IAC 181.1 – 181.3]. Iowa has not yet included the new COPE course format definitions within these rules. However, it does not specify if courses are required to be in-person or virtual, or if both are allowed.

Michigan:

Rules of the Michigan Board of Optometry establish continuing education requirements for optometrists licensed in Michigan [Mich Admin Code, R 338.331 to R 338.333]. Michigan has not yet included the new COPE course format definitions within these rules. However, it does approve the use of any COPE-accredited continuing education

program. It does not specify if courses are required to be in-person or virtual, or if both are allowed.

Minnesota:

Rules of the Minnesota Board of Optometry establish continuing education requirements for optometrists licensed in Minnesota [Minnesota Rules, Chapter 6500.3000]. Minnesota has not specifically included the new COPE course format definitions within these rules. However, they do allow the use of continuing education materials in the format of in-person, virtual synchronous, or virtual asynchronous in line with the COPE definitions.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the new course format definitions, by reviewing chapter OPT 8, and by obtaining input and feedback from the Optometry 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.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

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 at Jennifer.Garrett@wisconsin.gov or (608) 266-2112.

Agency contact person:

Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. OPT 8.01 (1m) is created to read:

OPT 8.01 (1m) “Asynchronous course” means an educational course in which content is created and made available for learners at a later date, and there is no real-time communication between the instructor and the learner. Examples include a recorded webinar without instructor interaction, reading an assigned journal article, or a webcast/podcast.

SECTION 2. OPT 8.01 (5m) is created to read:

OPT 8.01 (5m) “Synchronous virtual course” means an educational course with real time communication between the instructor and the learner, and learners can receive immediate feedback. Examples include interactive webinars in real time, videoconferences, or interactive posters with authors presenting in real time.

SECTION 3. OPT 8.02 (3e) is amended to read:

OPT 8.02 (3e) At least 20 of the 30 hours of approved continuing education required under sub. (1) shall be completed by attending programs in person. Any programs not completed in person shall be COPE or Joint Accreditation for Interprofessional Continuing Education approved programs, in accordance with s. OPT 8.03 (1) (a), or programs approved under s. OPT 8.03 (2). Programs not completed in person may include synchronous virtual courses or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation (virtual roll call, interactive polls, self-assessment questions, post-course tests, etc.). Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 4. OPT 8.02 (3s), as affected by CR 23-040, is amended to read:

OPT 8.02 (3s) An optometrist who by the renewal date has been licensed for one year or less from the date issued shall not be required to report continuing education for the first renewal of the license. An optometrist who by the renewal date holds a license for more than one year and less than 2 years shall be required to report 15 hours of approved continuing education for the first renewal of the license. A minimum of 10 of the 15 hours shall be attended in person. Any programs not completed in person shall be COPE or Joint Accreditation for Interprofessional Continuing Education approved programs, in accordance with s. OPT 8.03 (1) (a), or programs approved under s. OPT 8.03 (2). Programs not completed in person may include synchronous virtual courses or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation (virtual roll call, interactive polls, self-assessment questions, post-course tests, etc.). Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 5. OPT 8.03 (1) (a) is amended to read:

OPT 8.03 (1) (a) Any continuing education program approved by COPE or Joint Accreditation for Interprofessional Continuing Education. This may include course

formats of in person courses, synchronous virtual courses, or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation (virtual roll call, interactive polls, self-assessment questions, post-course tests, etc.). Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 6. OPT 8.03 (2) (h) is amended to read:

OPT 8.03 (2) (h) Delivery method of the program, whether in person, synchronous virtual, or asynchronous.

SECTION 7. 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 _____

Agency _____

Chairperson
Optometry Examining Board

STATEMENT OF SCOPE

Optometry Examining Board

Rule No.: Chapters OPT 1 and 5

Relating to: Definitions

Rule Type: Permanent

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

N/A

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

The objective of the proposed rule is to review the definitions for optometry in chapters OPT 1 and 5, to consider removing definitions that are no longer needed or no longer have any references in code or statute, and to consider updating or clarifying the definition of a minimum eye examination.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

In chapter OPT 5, the quality standards for ophthalmic lenses in OPT 5.11 and the disclosure requirements on extended-wear contact lenses in OPT 5.14 were removed by a previous rule. However, the definition of extended-wear contact lenses was left in OPT 5. The board will consider rulemaking to remove this obsolete definition. In chapter OPT 1, the definition of a minimum eye examination for the fitting of contact lenses includes a requirement to inform the patient of the risks if contact lenses are prescribed for extended wear. The board will consider rulemaking to update or clarify this definition.

If the rules are not updated, the requirements around extended-wear contact lenses could remain unclear to regulators and those in the profession.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 15.08 (5) (b), Stats. states that “[each 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. states that 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.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

70 hours

6. List with description of all entities that may be affected by the proposed rule:

Licensed optometrists and their patients.

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

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state's economy as a whole.

Contact Person: Jake Pelegrin, Administrative Rules Coordinator, DSPSAdminRules@wisconsin.gov, (608) 267-0989

Approved for publication:

Approved for implementation:

Authorized Signature

Authorized Signature

Date Submitted

Date Submitted

Optometry Examining Board Rule Projects

Clearinghouse Rule Number	Scope #	Scope Expiration	Code Chapter Affected	Relating clause	Current Stage	Next Step
CR 23-040	080-21	03/20/2024	OPT 8	Continuing Education	The Final Rule Draft is currently with the Legislature for review.	Approval by the Legislature, then rule adoption.
CR 24-029	018-23	08/20/2025	OPT 1, 5 and 6	Telehealth	Public hearing on rule and Board discussion of Clearinghouse comments.	Board approval of Final Rule Draft with Report to the Legislature.
	057-23	2/26/2026	OPT 8	Continuing Education-ARBO	Rule Drafting.	Board Approval of Preliminary Rule Draft.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Lisa Slaby, Board Chair		2) Date when request submitted: 3/4/2024 <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: 4/4/2024	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Association of Regulatory Boards of Optometry Model Practice Act Draft 3/1/2024 – Board Review	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <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 applicable: N/A	
10) Describe the issue and action that should be addressed: The Board will review the 3/3/2024 ARBO Model Practice Act Draft.			
11) Authorization			
<i>Lisa Slaby</i> Signature of person making this request		3/4/2024 Date	
Supervisor (Only required for post agenda deadline items)		Date	
Executive Director signature (Indicates approval for post agenda deadline items)		Date	
Directions for including supporting documents: 1. This form should be saved with any other documents submitted to the Agenda Items folders. 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.			



**Model Practice Act
for Optometry**
3/1/24 Draft

ARBO Model Practice Act for Optometry

Introduction

The Association of Regulatory Boards of Optometry (ARBO) is a not-for-profit, 501(c)(3) association whose membership is comprised of 64 optometric licensing boards from the United States, Canada, Australia and New Zealand. ARBO is committed to serving these regulatory agencies (its Member Boards) by providing quality, relevant programs and services they can rely on to carry out their statutory responsibilities in the interest of public protection.

In 2022, the ARBO Board of Directors convened a task force to create a Model Practice Act for Optometry as a resource document available for use by its Member Boards. ARBO acknowledges and thanks the members of the Model Practice Act Task Force for their valuable input and participation in developing the Model Act. ARBO believes that the Model Act provides a uniform perspective that promotes public protection through regulation.

The purpose of the ARBO Model Practice Act for Optometry is to provide a resource to Optometry Boards to integrate as a model for regulating the practice of optometry. The Model Practice Act for Optometry reflects current issues in professional regulation and facilitates greater standardization of terminology and regulation from jurisdiction to jurisdiction. Greater standardization promotes increased mobility for licensed optometrists, and consistency in legal decisions related to licensure, renewal, discipline, and other board activities. Optometry Boards are free to use some, or all of the ARBO Model Act for their own Practice Act.

The core text of the Model Practice Act for Optometry is in the main section of the document. Comments and options for consideration are shown on the right side. Definitions of words that are capitalized in the Model Act can be found in Section 106. Suggestions and discussion are encouraged to ensure a document that is current and responsive to the needs of ARBO's membership. The language used throughout the ARBO Model Practice Act represents an attempt to promote uniformity to regulation and terminology. Member Boards are encouraged to review and use the Model Practice Act within the context of regulatory and language issues that may be unique to each respective jurisdiction. ARBO understands that modifications may be necessary to address existing regulatory, legal, cultural, and political climates.

ARBO Model Optometry Practice Act

An ACT concerning the regulation of the practice of optometry and related matters.

Be it enacted

ARTICLE I Title, Purpose, and Definitions

Section 101. Title of Act.

This Act shall be known as the "(Name of state or other jurisdiction) Optometry Practice Act."

Section 102. Legislative Declaration.

(a) The Practice of Optometry in the _____ of _____ is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of optometry, as defined in this Act, merit and receive the confidence of the public and that only qualified, individuals be permitted to engage in the Practice of Optometry in the _____ of _____. This Act shall be liberally construed to carry out these objectives and purposes.

(b) It is further declared that the intent of this legislation is to regulate the Practice of Optometry and will result in displacing competition by restricting licensure to practice Optometry, as such practice is defined and interpreted by the Board, to individuals determined by the Board to be qualified under this Act.

(c) It is further declared that any such restriction on competition is outweighed by the broader interest in protection of public health, safety, and welfare. It is understood that the regulatory structure calls for Optometrists and public members to serve on the Board and this legislation recognizes the need for professional expertise provided by Optometrists serving the public interest.

(d) This Act is intended to provide active jurisdiction oversight and supervision through its legislative enactment, the promulgation of enabling regulations, the appointment of Board members by the Governor or legislature, legal representation of the Board by the office of the State Attorney General, legislative appropriation of monies to support the Board, and Board engagement in a periodic review process.

Section 103. Statement of Purpose.

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective regulation of the practice of Optometry; the licensure of Optometrists; the licensure, control, and regulation of individuals, in or out of this state, that practice optometry within this state.

Commented [LF1]: This legislative declaration and the antitrust protection language of Section 102(c) and (d) are important components to include in a Practice Act.

Commented [LF2]: The term state can be changed to province, district, territory, etc. throughout the Practice Act as appropriate.

Section 104. Practice of Optometry.

The Practice of Optometry means practice in which an individual employs primary eye care procedures including the prescription of Diagnostic and Therapeutic Pharmaceutical Agents, medical devices and Ophthalmic Surgery, measures the powers and range of vision of the human eye using subjective and objective means, including the use of lenses and prisms before the eye and auto-refractors and other automated testing devices to determine its accommodative, refractive and binocular state and general scope of function; and the adaptation, sale, and dispensing of frames and lenses in all their forms, including plano or zero power contact lenses, to overcome errors of refraction and restore as near as possible normal human vision, or for orthotic, prosthetic, therapeutic, or cosmetic purposes with respect to contact lenses. Optometry also includes the examination, diagnosis, and treatment of abnormal conditions and diseases of the human eye, its adnexa, and visual system, including the use or prescription of vision therapy, ocular exercises, rehabilitation therapy, subnormal vision therapy, ordering of appropriate diagnostic lab or imaging test, and the dispensing of samples to initiate treatment.

The Board shall have the authority to interpret the practice act consistent with the intent of the legislature. Nothing in this chapter shall be construed as allowing any agency, Board, or other entity of this state other than the _____ Board of Optometry to determine what constitutes the Practice of Optometry.

Section 105. Optometry Telehealth Practice.

- (a) The Practice of Optometry in this jurisdiction through Telehealth or other means, regardless of the location of the practitioner, shall constitute the practice of optometry and shall be subject to regulation under this Act.
- (b) The Practice of Optometry by a practitioner in this jurisdiction through Telehealth or other means, regardless of the location of the Patient(s), shall constitute the Practice of Optometry and shall be subject to regulation under this Act.
- (c) Optometrists providing Telehealth Optometry Services shall take all necessary measures to ensure compliance with relevant practice standards.

Section 106. Definitions.

Act means the Optometry Practice Act duly enacted and as amended from time to time.

Applicant means an individual who has submitted to the Board an application for licensure whether or not such application has been completed.

Approved Optometry Education Program means a degree program of an accredited school or college of optometry that has been approved by the Board.

Commented [LF3]: There are varying approaches to defining the practice of optometry. Language for this can include inclusive language (what optometrists can do), or exclusive language (what optometrists cannot do). The recommended language is very specific, Boards may also utilize language here that is less specific, if preferred.

Commented [LF4]: If exclusionary language is preferred the following could be utilized: The following ophthalmic surgery procedures are excluded from the practice of optometry, except for the preoperative and postoperative care of these procedures:

The following procedures:

- Retina laser procedures
- Penetrating keratoplasty or corneal transplant
- The administration of general anesthesia
- Surgery done with general anesthesia
- Laser or non-laser procedure into the vitreous chamber of the eye to treat any retinal or macular disease.

The following non-laser surgical procedures:

- Surgery related to removal of the eye from a living human being.
- Surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye.
- Surgery requiring incision of the iris and ciliary body, including diathermy or cryotherapy.
- Surgery requiring incision of the vitreous.
- Surgery requiring incision of the retina.
- Surgical extraction of the crystalline lens.
- Surgical intraocular implants.
- Incisional or excision surgery of the extraocular muscles.
- Surgery of the eyelid for suspect malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis and tarsorrhaphy.
- Surgery of the bony orbit, including orbital implants.
- Incisional or excision surgery of the lacrimal system other than probing or related procedures.
- Surgery requiring full thickness conjunctivoplasty with graft or flap.
- Pterygium surgery.

Approved Provider of Continuing Education means an entity that provides Approved Programs of Continuing Education accredited by the Association of Regulatory Boards of Optometry (ARBO) Council on Optometric Practitioner Education (COPE) or approved by the Board.

Approved Programs of Continuing Education means a post licensure education program accredited by the Association of Regulatory Boards of Optometry (ARBO) Council on Optometric Practitioner Education (COPE) or approved by the Board.

Association of Regulatory Boards of Optometry also referred to as ARBO means the not-for-profit organization whose members include the regulatory Boards of optometry from the United States, Canada, Australia, and New Zealand, which provides programs and services to its Member Boards that lessen burdens on state government.

Board or Board of Optometry means the Board of Optometry created and amended thereto under this Act.

Continuing Education means education and training which are oriented to maintain, improve, or enhance competent optometry practice.

Continuing Education Hour means the Optometrist must be present for at least fifty (50) minutes of instruction to receive one hour of credit.

Conviction means conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered on admission of guilt, a no contest plea, a plea of nolo contendere, or a guilty plea.

Diagnostic and Therapeutic Pharmaceutical Agent means any prescription or nonprescription drug delivered by any route of administration, used or prescribed for the diagnosis, treatment, prevention, or mitigation of abnormal conditions and diseases of the human eye and its adnexa, and visual system of those which may be used for such purposes, and approved narcotics when used in the treatment of disorders or diseases of the eye and its adnexa.

Examination means a mechanism(s) designed to assess the knowledge, skills and abilities of applicants seeking licensure as Optometrists and is approved by the Board.

Felony means a criminal act as defined by this state or any other state or by definition under federal law.

Final Adverse Action means any action taken or order entered by the Board, whether through a consent agreement, as the result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against a Licensee, applicant or individual which is public information under applicable law and which impacts the licensure status or record, practice status or record, or other related practice privileges. Final Adverse Actions include, in addition to the above and without limitations, denial of

licensure applications, denial of licensure renewal applications, and surrender of licensure. Board actions or orders are Final Adverse Actions irrespective of any pending appeals. To the extent applicable, Final Adverse Actions under this statute are intended to encompass, at a minimum, all actions that require reporting to state or federal authorities, including but not limited to the Healthcare Integrity Protection Databank (HIPDB)/National Practitioners Data Bank (NPDB).

Licensee means an individual duly licensed or registered under this Act.

Ophthalmic surgery means a procedure upon the human eye and adnexa in which in vivo tissue is injected, cut, burned, frozen, sutured, vaporized, coagulated, or photodisrupted by the use of surgical instrumentation such as, but not limited to, a scalpel, cryoprobe, laser, electric cautery, or ionizing radiation.

Optometrist means an individual duly licensed to practice Optometry under this Act.

Patient means the individual that seeks or receives optometry services from an individual Optometrist.

Practice of Optometry means the defined scope of optometry as set forth in this Act and as specifically set forth in Article I, Section 104 and Section 105 above.

Telehealth means the use of computers (including the Internet, social media, online chat, text, and email) and other electronic means (such as smartphones, landline telephones, and video technology) to (a) provide information to the public, (b) deliver optometry services to patients, (c) communicate with patients, (d) manage confidential information and case records, (e) store and access information about patients, and (f) arrange payment for professional services.

ARTICLE II Board of Optometry

Section 201. Designation.

The responsibility for enforcement of the provisions of this Act is hereby vested in the Board of Optometry (Board). The Board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law.

Section 202. Membership.

The Board shall consist of _____ members, _____ of whom shall be a representative of the public, and the remainder] [each] of whom shall be optometrists who possess the qualifications specified in Section 203.

Section 203. Qualifications.

(a) Each Optometrist member of the Board shall at all times as a Board member:

- (1) Be a resident of this state;
 - (2) Be currently licensed and in good standing to engage in the Practice of Optometry in this state;
 - (3) At the time of appointment, have been actively engaged in the Practice of Optometry, for at least one (1) out of the last five (5) years; and
 - (4) Have at least three (3) years of experience in the Practice of Optometry.
- (b) Public member(s) of the Board shall be residents of this state who have attained the age of majority and shall not be, nor shall ever have been an Optometrist, or the spouse thereof, or an individual who has ever had any material financial interest in the provision of optometric services or who has engaged in any activity directly or indirectly related to the Practice of Optometry.

Section 204. Appointment.

The Governor shall appoint the members of the Board in accordance with other provisions of this Article and the state constitution.

Section 205. Terms of Office.

- (a) Except as provided in subsection (b), members of the Board shall be appointed for a term of ___ years, except that members of the Board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.
- (b) The terms of the members of the Board shall be staggered. Each member shall serve until a successor is appointed and qualified.
 - (1) The present members of the Board shall serve the balance of their terms.
 - (2) Any present Board member appointed initially for a term of less than ___ years shall be eligible to serve for two (2) consecutive full terms.
- (c) No member of the Board shall serve more than two (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

Section 206. Vacancies.

- (a) Any vacancy which occurs in the membership of the Board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled by the Governor in the manner prescribed by Section 204.
- (b) In the event that the Governor does not fill any vacancy within a ___ month period, such appointment authority shall vest in the Board to be filled by a majority vote. Any such Board appointed individual shall meet the qualifications of this Act.

Section 207. Removal.

(a) A Board member may be removed pursuant to the procedures set forth in subsection (b) herein, upon one or more of the following grounds

- (1) The refusal or inability for any reason of a Board member to perform the duties as a member of the Board in an efficient, responsible, and professional manner;
- (2) The misuse of office by a member of the Board to obtain pecuniary or material gain or advantage personally or for another through such office;
- (3) The violation of the laws governing the Practice of Optometry by any member; or
- (4) For other just and reasonable causes as determined solely by the Board pursuant to applicable law.

(b) Removal of a member of the Board shall be in accordance with the Administrative Procedures Act of this state, or other applicable laws.

Section 208. Organization.

(a) The Board shall elect from its members a Chairperson and such other officers as it deems appropriate and necessary to the conduct of its business. The Chairperson shall preside at all meetings of the Board and shall be responsible for the performance of all of the duties and functions of the Board required or permitted by this Act. Each additional officer elected by the Board shall perform those duties customarily associated with the position and such other duties assigned from time to time by the Board.

(b) Officers elected by the Board shall serve terms of one (1) year commencing with the day of their election and ending upon election of their successors and shall serve no more than three (3) consecutive full terms in each office to which they are elected.

(c) The Board shall employ an Executive Director to serve as a full-time employee of the Board. The Executive Director shall be responsible for the performance of the administrative functions of the Board and such other duties as the Board may direct.

Section 209. Meetings.

(a) The Board shall meet at least once every three (3) month(s) to transact its business. The Board shall meet at such additional times as it may determine. Such additional meetings may be called by the Chairperson of the Board or by two-thirds (2/3) of the members of the Board.

(b) The Board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.

- (c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by the Administrative Procedures Act.
- (d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and, except where a greater number is required by this Act or by any rule of the Board, all actions of the Board shall be by a majority of a quorum.
- (e) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to law, conduct any portion of its meeting in Executive Session, closed to the public.

Section 210. Employees.

The Board may, in its discretion, employ individuals in addition to the Executive Director in such other positions or capacities as it deems necessary to the proper conduct of Board business and to the fulfillment of the Board's responsibilities as defined by the Act.

Section 211. Rules.

The Board shall make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act.

Section 212. Board Authority and Responsibilities.

- (a) The Board shall be responsible for the control and regulation of the Practice of Optometry in this state including, but not limited to, the following:
 - (1) The licensing by Examination or by licensure transfer of applicants who are qualified to engage in the Practice of Optometry under the provisions of this Act;
 - (2) The renewal of licenses to engage in the Practice of Optometry;
 - (3) The establishment and enforcement of compliance with professional standards of practice and rules of conduct of Optometrists engaged in the Practice of Optometry;
 - (4) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of optometry whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training;
 - (5) The enforcement of those provisions of the Act relating to the conduct or competence of Optometrists practicing in this state, investigation of any such activities related to the practice or unauthorized Practice of Optometry, and the suspension, revocation, or restriction of licenses to engage in the Practice of Optometry;

(6) With probable cause that an applicant or Licensee has engaged in conduct prohibited by this Act or a statute or rule enforced by the Board, the Board may issue an order directing the applicant or Licensee to submit to a mental or physical examination or chemical dependency evaluation at the expense of the Licensee. For the purpose of this section, every applicant or Licensee is considered to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the Board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication;

(7) The collection of professional demographic data;

(8) The issuance and renewal of licenses of all individuals engaged in the Practice of Optometry; and

(9) Inspection of any licensed individual at all reasonable hours for the purpose of determining if any provisions of the laws governing the Practice of Optometry are being violated. The Board, its officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to the Practice of Optometry.

(b) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The Board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the Practice of Optometry for the protection of the health and welfare of the public and/or whose activities assist and facilitate the work of the Board.

(2) The Board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the state, provided:

(i) Such funds are awarded for the pursuit of a specific objective which the Board is authorized to accomplish by this Act, or which the Board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(ii) Such funds are expended for the pursuit of the objective for which they are awarded;

(iii) Activities connected with or occasioned by the expenditures of such funds do not interfere with the performance of the Board's duties and responsibilities and do not conflict with the exercise of the Board's powers as specified by this Act.

(iv) Such funds are kept in a separate, account; and

Commented [LF5]: Examples of these funds are grants, private donations, gifts, bequeaths, or other funds. this can be further defined in rules where funds may come from.

(v) Periodic reports are made concerning the Board's receipt and expenditure of such funds.

(3) The Board may establish a Bill of Rights for Patients concerning the services a Patient may expect in regard to optometry services.

(4) Any investigation, inquiry, or hearing which the Board is empowered to hold or undertake may be held or undertaken by or before any member or members of the Board and the finding or order of such member or members shall be deemed to be the order of said Board when approved and confirmed as noted in Section 209(d).

(5) It is the duty of the Attorney General [State's Attorney] to whom the Board reports any violation of this Act which also is deemed as violative of applicable criminal statutes to cause appropriate proceedings to be instituted in the proper court in a timely manner and to be prosecuted in the manner required by law. Nothing in this paragraph shall be construed to require the Board to report violations whenever the Board believes that public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(6) The Board shall have the power to subpoena and to bring before it any individual and to take testimony either orally or by deposition, or both, in the same manner as prescribed in civil cases in the courts of this State. Any member of the Board, hearing officer, or administrative law judge shall have power to administer oaths to witnesses at any hearing which the Board is authorized to conduct, and any other oaths authorized in any Act administered by the Board.

(7) In addition to the fees specifically provided for herein, the Board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or Rules adopted hereunder. Such services rendered shall include but not be limited to the following:

- (i) Issuance of duplicate certificates or identification cards;
- (ii) Mailing lists, or reports of data maintained by the Board;
- (iii) Copies of any documents;
- (iv) Certification of documents;
- (v) Notices of meetings;
- (vi) Licensure transfer;
- (vii) Examination administration to licensure applicants;
- (viii) Examination materials.
- (ix) Approval of providers or programs for Continuing Education.

(8) Cost Recovery.

(i) If any order issues in resolution of a disciplinary proceeding before the Board, the Board may request the (Administrative Law Judge (ALJ)/Hearing Officer (HO)) to direct any Licensee found guilty of a charge involving a violation of any laws or rules, to pay to the Board a sum not to exceed the reasonable costs of the investigation and prosecution of the case.

Commented [LF6]: Boards will choose the appropriate term for their state.

(ii) In the case of an Agency, the order permissible under (i) above may be made as to the corporate owner, if any, and as to any Optometrist, officer, owner, or partner of the Agency who is found to have had knowledge of or have knowingly participated in one or more of the violations set forth in this section.

(iii) The costs to be assessed shall be fixed by the (ALJ/HO) and shall not be increased by the Board; where the Board does not adopt a proposed decision and remands the case to a(n) (ALJ/HO), the (ALJ/HO) shall not increase any assessed costs.

(iv) Where an order for recovery of costs is made and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in the _____ Court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the Board may have as to any individual directed to pay costs.

(v) In any action for recovery of costs, proof of the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(9) Except as otherwise provided to the contrary, the Board shall exercise its duties, powers, and authority in accordance with the Administrative Procedures Act.

(c) Notwithstanding any other law to the contrary, the Board shall, on a timely basis, publicize Final Adverse Actions ultimately determined against any individual. Publication of such Final Adverse Actions shall include, but not be limited to, reporting to any applicable federal or state repository of final disciplinary actions. The Board shall also timely report to any databank Final Adverse Actions maintained by an association of which the Board is a member.

ARTICLE III Licensing

Section 301. Unlawful Practice.

(a) Except as otherwise provided in this Act, it shall be unlawful for any individual to engage in the Practice of Optometry unless duly licensed as an Optometrist under the applicable provisions of this Act.

(b) No individual shall offer optometry services or use the designation Optometrist or any other designation indicating licensure status or hold themselves out as practicing optometry unless duly licensed as such.

(c) Any individual who, after a hearing, shall be found by the Board to have unlawfully engaged in the Practice of Optometry shall be subject to a fine to be imposed by the Board not to exceed \$ _____ for each offense. Each such violation of this Act or the rules promulgated hereunder pertaining to unlawfully engaging in the Practice of Optometry shall also constitute a _____ (misdemeanor) punishable upon conviction as provided in the criminal code of this state.

(d) Nothing in this Act shall be construed to prevent members of other professions from performing functions for which they are duly licensed. However, such other professionals must not hold themselves out or refer to themselves by any title or description stating or implying that they are engaged in the Practice of Optometry or that they are licensed to engage in the Practice of Optometry.

(e) Students currently participating in an Approved Optometry Education Program are exempt from licensure under this Act when completing internship, externship, or other optometry experience requirements for such programs.

(f) In response to a disaster or emergency declared by the appropriate authority or governor of the state, an individual currently licensed and in good standing to practice optometry in another jurisdiction who is providing optometry services within the scope of practice designated by such license and whose professional licenses in all other disciplines are current and in good standing may, upon prior written notice to the Board and without otherwise applying for a license, provide such services in this jurisdiction for the time said emergency or disaster declaration is in effect. Individuals exercising rights under this Section _____ shall be deemed to have submitted themselves to the jurisdiction of the applicable Board or state agency and to be bound by the laws of this state in addition to other applicable laws by virtue of licensure status in other states.

(g) Individuals who have at any time surrendered any professional license under threat of administrative disciplinary sanction or in response to administrative investigation, or have any professional license currently under suspension, revocation, or agency order restricting or limiting practice privilege, with the exception of expired or lapsed licenses due to voluntary non-renewal of such license, are ineligible to practice under this Section _____.

Section 302. Qualifications for Licensure by Examination as an Optometrist.

(a) To obtain a license to engage in the Practice of Optometry, an applicant for licensure by Examination must provide evidence satisfactory to the Board, subject to Section 307, that the applicant:

- (1) Has submitted a written application in the form prescribed by the Board;

(2) Has attained the age of majority;

(3) Is of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to [insert reference to authorizing state statute] and applicable federal law. The [state agency responsible for managing fingerprint data e.g. the department of public safety] may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All good moral character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

(4) Has graduated and received a Doctor of Optometry degree from an Approved Optometry Education Program;

(5) Has successfully passed an Examination or Examinations prescribed by the Board; and

(6) Has paid all applicable fees specified by the Board relative to the licensure process.

Section 303. Examinations.

(a) Any Examination for licensure required under this Act shall be administered to applicants often enough to meet the reasonable needs of candidates for licensure. If applicable, the Board may confer with and rely upon the expertise of an Examination entity in making such determinations.

(b) The Examination shall document that the applicant meets the standard for minimum competence to engage in the Practice of Optometry. The Board may employ, cooperate with, and contract with any organization or consultant in the preparation, administration, and grading of an Examination but shall retain the sole discretion and responsibility for determining which applicants have successfully passed such an Examination.

(c) The Board shall have the authority by rule to limit the number of attempts on the Examination in order to protect the integrity and security of the Examination and to ensure minimum competence.

Section 304. Qualifications for Licensure by Endorsement.

(a) To obtain a license by endorsement at the equivalent designation and subject to Article IV of this Act, an applicant currently licensed as an Optometrist in another jurisdiction must provide evidence satisfactory to the Board, subject to Article III, Section 307, that the applicant:

Commented [LF7]: It is recommended that the practice act state that the Board approves which optometry education programs they will accept. Rules could state that optometry education programs must be accredited by the Accreditation Council on Optometric Education.

Commented [LF8]: It is recommended that the practice act state that the Board approved the exams they will accept. Rules should state that applicants must pass Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) Exams.

Commented [LF9]: ARBO supports and promotes the use of the National Board of Examiners in Optometry (NBEO) Exams.

(1) Has submitted a written application and paid the fee as specified by the Board; and

(2) Has presented to the Board proof of an active optometry license in good standing.

Section 305. Renewal of Licenses.

(a) Licensees shall be required to renew their license at the time and in the manner established by the Board, including the form of application and payment of the applicable renewal fee. Under no circumstances, however, shall the renewal period exceed three years.

(b) As a requirement for licensure renewal, each Licensee shall provide evidence satisfactory to the Board that such Licensee has annually completed at least ____ Continuing Education hours from a Program of Continuing Education.

(c) The Board shall also provide procedures to ensure licensure renewal candidates maintain the qualifications to practice optometry as set forth in this Act.

(d) If an Optometrist fails to make application to the Board for renewal of a license within a period of two years from the expiration of the license, such individual must reapply as an initial applicant for licensure and pass the current licensure Examination; except that an individual who has been licensed under the laws of this state and after the expiration of the license, has continually practiced optometry in another state under a license issued by the authority of such state, may renew the license upon completion of the Continuing Education requirements set forth by the Board and payment of the designated fee.

Section 306. Continuing Optometry Competence.

The Board shall, by rule, establish requirements for Continuing Education in optometry, including the determination of acceptable program content. The Board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section and the continued competence of practitioners.

Section 307. Source of Data.

In making determinations under this Article III and to promote uniformity and administrative efficiencies, the Board shall be authorized to rely upon the expertise of and documentation and verified data gathered and stored by not-for-profit organizations which share in the public protection mission of this Board.

ARTICLE IV Enforcement

Section 401. Grounds, Penalties, and Reinstatement.

(a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the license of, or fine any individual pursuant to the Administrative Procedures Act or the procedures set forth in Section 402 herein below, upon one or more of the following grounds as determined by the Board:

- (1) Unprofessional conduct as determined by the Board;
- (2) Practicing outside the scope of practice applicable to that Licensee;
- (3) Conduct which violates any of the provisions of this Act or rules adopted pursuant to this Act, including the Standards of Practice;
- (4) Incapacity or impairment that prevents a Licensee from engaging in the Practice of Optometry with reasonable skill, competence, and safety to the public;
- (5) Conviction of a Felony (as defined under state, provincial, or federal law);
- (6) Any act involving moral turpitude or gross immorality;
- (7) Violations of the laws of this jurisdiction, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government;
- (8) Misrepresentation of a material fact by an applicant or Licensee;
 - (i) In securing or attempting to secure the issuance or renewal of a license;
 - (ii) In statements regarding the optometrist's skills or efficiency or value of any treatment provided or to be provided or using any false, fraudulent, or deceptive statement connected with the Practice of Optometry including, but not limited to, false or misleading advertising;
- (9) Fraud by a Licensee in connection with the Practice of Optometry including engaging in improper or fraudulent acts or billing practices or violating related laws;
- (10) Engaging or aiding and abetting an individual to engage in the Practice of Optometry without a license, or falsely using the title of Optometrist;
- (11) Failing to pay the costs assessed in a disciplinary matter pursuant to Section 212(b)(8) or failing to comply with any stipulation or agreement involving probation or settlement of any disciplinary matter with the Board or with any order entered by the Board;
- (12) Being found by the Board to be in violation of any of the provisions of this Act or rules adopted pursuant to this Act;

(13) (i) Conduct which violates the security of any licensure Examination materials; removing from the Examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing Examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing Examination; paying or using professional or paid Examination-takers for the purpose of reconstructing any portion of the licensing Examination; obtaining Examination questions or other Examination material, except by specific authorization either before, during or after an Examination; or using or purporting to use any Examination questions or materials which were improperly removed or taken from any Examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing Examination;

(ii) Communicating with any other examinee during the administration of a licensing Examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing Examination any books, equipment, notes, written or printed materials, or data of any kind, other than the Examination materials distributed, or otherwise authorized to be in one's possession during the Examination; or impersonating any examinee or having an impersonator take the licensing Examination on one's behalf;

(14) Being the subject of the revocation, suspension, surrender or other disciplinary sanction of an Optometrist or related license or of other adverse action related to an Optometrist or related license in another jurisdiction or country including the failure to report such adverse action to the Board;

(15) Being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent or mentally ill, chemically dependent, mentally ill and dangerous to the public;

(b) (1) The Board may defer action with regard to an impaired Licensee who voluntarily signs an agreement, in a form satisfactory to the Board, agreeing not to practice optometry and to enter an approved treatment and monitoring program in accordance with this section, provided that this section should not apply to a Licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act or an offense relating to a controlled substance in a court of law of the United States or any other state, territory, or country or a Conviction related to sexual misconduct. A Licensee who is physically or mentally impaired due to mental illness or addiction to drugs or alcohol may qualify as an impaired Optometrist and have disciplinary action deferred and ultimately waived only if the Board is satisfied that such action will not endanger the public and the Licensee enters into an agreement with the Board for a treatment and monitoring plan approved by the Board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the

agreement and all other applicable terms of subsection (b)(2). Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the Licensee from the provisions of this section and the Board may activate an immediate investigation and disciplinary proceeding. Upon completion of the rehabilitation program in accordance with the agreement signed by the Board, the Licensee may apply for permission to resume the Practice of Optometry upon such conditions as the Board determines necessary.

(2) The Board may require a Licensee to enter into an agreement which includes, but is not limited to, the following provisions:

(i) Licensee agrees that the license shall be suspended or revoked indefinitely under subsection (b)(1).

(ii) Licensee will enroll in a treatment and monitoring program approved by the Board.

(iii) Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the Board by the treating professional who shall be immune from any liability for such reporting made in good faith.

(iv) Licensee consents to the treating physician or professional of the approved treatment and monitoring program reporting to the Board on the progress of Licensee at such intervals as the Board deems necessary and such individual making such report will not be liable when such reports are made in good faith.

(3) The ability of an impaired Optometrist to practice shall only be restored and charges dismissed when the Board is satisfied by the reports it has received from the approved treatment program that Licensee can resume practice without danger to the public.

(4) Licensee consents, in accordance with applicable law, to the release of any treatment information to the Board from anyone within the approved treatment program.

(5) The impaired Licensee who has enrolled in an approved treatment and monitoring program and entered into an agreement with the Board in accordance with subsection (b)(1) hereof shall have the license suspended or revoked but enforcement of this suspension or revocation shall be stayed by the length of time the Licensee remains in the program and makes satisfactory progress, and complies with the terms of the agreement and adheres to any limitations on the practice imposed by the Board to protect the public. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify

the Licensee from the provisions of this section and the Board shall activate an immediate investigation and disciplinary proceedings.

(6) Any Optometrist who has substantial evidence that a Licensee has an active addictive disease for which the Licensee is not receiving treatment under a program approved by the Board pursuant to an agreement entered into under this section, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of the license, shall make or cause to be made a report to the Board. Any individual who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the Licensee so failing to report.

(c) Subject to an order duly entered by the Board, any individual whose license to practice optometry in this state has been suspended or restricted pursuant to this Act, whether voluntarily or by action of the Board, shall have the right, at reasonable intervals, to petition the Board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the Board. Upon investigation and hearing, the Board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The Board, also at its discretion, may require such individual to complete other requirements including but not limited to passing an Examination(s).

(d) The Board may in its own name issue a cease and desist order to stop an individual from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order which the Board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the individual's right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.

(e) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.

(f) Any individual whose license to practice Optometry is revoked, suspended, or not renewed shall return such license to the offices of the Board within 10 days after notice of such action.

Section 402. Procedure.

Notwithstanding any provisions of the state Administrative Procedures Act, the Board may, without a hearing, temporarily suspend a license for not more than (60 days) if the Board finds that an Optometrist has violated a law or rule that the Board is empowered to enforce, and if continued practice by the Optometrist would create an imminent risk of harm to the public. The suspension shall take effect upon written notice to the Optometrist specifying the statute or rule violated. At the time it issues the suspension

Commented [LF10]: This time period will vary by jurisdiction.

notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within 20 days thereafter. The Optometrist shall be provided with at least 20 days notice effective with the date of issuance of any hearing held under this subsection.

Article V. Confidentiality.

Section 501. Privileged Communications and Exceptions.

(a) No Optometrist shall disclose any information acquired from or provided by a Patient or from individuals consulting with the Optometrist in a professional capacity, except that which may be voluntarily disclosed under the following circumstances:

(1) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues or consultants who share professional responsibility, in which instance all recipients of such information are similarly bound to regard the communication as privileged;

(2) With the written consent of the individual who provided the information;

(3) In case of death or disability, with the written consent of a personal representative, other individual authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition;

(4) When a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the Optometrist to protect any individual from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety; or

(5) When the individual waives the privilege by bringing any public charges against the Licensee.

(b) When the individual is a minor under the laws of the _____ of _____ and the information acquired by the Optometrist indicates the minor was the victim of or witness to a crime, the Optometrist may be required to testify in any judicial proceedings in which the commission of that crime is the subject of inquiry and when the court determines that the interests of the minor in having the information held privileged are outweighed by the requirements of justice, the need to protect the public safety or the need to protect the minor.

(c) Any individual having access to records or anyone who engages in the Practice of Optometry or who is supervised by an Optometrist, is similarly bound to regard all information and communications as privileged in accord with the section.

(d) Nothing shall be construed to prohibit an Optometrist from voluntarily testifying in court hearings concerning matters of adoption, child abuse, child neglect or other

matters pertaining to children, elderly, and physically and mentally impaired adults, except as prohibited under the applicable state and federal laws.

(e) The _____, as now or hereafter amended, is incorporated herein as if all of its provisions were included in this Act.

Article VI. Mandatory Reporting.

Section 601. Permission to Report.

An individual who has knowledge of any conduct by an Applicant or a Licensee which may constitute grounds for disciplinary action under this chapter or the rules of the Board or of any unlicensed practice under this chapter may report the violation to the Board.

Section 602. Professional Societies or Associations.

A national, state or local professional society or association for Licensees shall forward to the Board any complaint received concerning the ethics or conduct of the practice which the Board regulates. The society or association shall forward a complaint to the Board upon receipt of the complaint. The society or association shall also report to the Board any disciplinary action taken against a member.

Section 603. Optometrists.

(a) Optometrists shall report to the Board information on the following conduct by an applicant or a Licensee:

- (1) sexual contact or sexual conduct with a Patient or a former Patient; the Patient shall only be named with the Patient's consent;
- (2) failure to report as required by law;
- (3) impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;
- (4) improper or fraudulent billing practices,
- (5) fraud in the licensure application process or any other false statements made to the Board;
- (6) conviction of any Felony or any crime reasonably related to the Practice of Optometry;
- (7) a violation of Board order.

(b) Optometrists shall also report to the Board information on any other conduct by any individual Licensee that constitutes grounds for disciplinary action under this chapter or the rules of the Board.

(c) Any Optometrist who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death shall immediately report this information pursuant to _____.

Section 604. Reporting Other Licensed Professionals.

An Applicant or Licensee shall report to the applicable Board conduct by a licensed health professional which would constitute grounds for disciplinary action under the chapter governing the practice of the other licensed health professional and which is required by law to be reported to the Board.

Section 605. Courts.

The court administrator of district court or any other court of competent jurisdiction shall report to the Board any judgment or other determination of the court that adjudges or includes a finding that an Applicant or a Licensee is mentally ill, mentally incompetent, guilty of a Felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the applicant or Licensee or commits an applicant or Licensee pursuant to applicable law.

Section 606. Self-Reporting.

An Applicant or Licensee shall report to the Board any personal action that would require that a report be filed pursuant to this Act.

Section 607. Deadlines, Forms.

Reports required by this Act must be submitted not later than 30 days after learning of the reportable event or transaction. The Board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Section 608. Immunity.

Any individual, Optometrist, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under this Act or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter.

Article VII. Other.

Section 701. Severability.

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any individual or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other individuals and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

Section 702. Effective Date.

This Act shall be in full force and effect on (date).

DRAFT

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Tom Ryan		2) Date when request submitted: 3/8/2024 <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: 4/4/24	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Association of Regulatory Boards of Optometry Matters <ul style="list-style-type: none"> • Annual Meeting Survey Question 	
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 applicable: N/A
10) Describe the issue and action that should be addressed: ARBO's questionnaire for its annual meeting in June asks the following question: List the three current issues of greatest concern to your Board and any suggestions on how ARBO can assist you with these issues. The Board may respond or consider this informational.			
11) Authorization			
<i>Tom Ryan</i>		2/8/2024	
Signature of person making this request		Date	
Supervisor (Only required for post agenda deadline items)		Date	
Executive Director signature (Indicates approval for post agenda deadline items)		Date	
Directions for including supporting documents: 1. This form should be saved with any other documents submitted to the Agenda Items folders. 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
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Board Member Peter Sorce		2) Date when request submitted: 2/27/2024 <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: 4/4/2024	5) Attachments: <input type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Association of Regulatory Boards of Optometry (ARBO) invitation for Peter Sorce to serve on the 2024 ARBO Resolutions Committee	
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 applicable: N/A	
10) Describe the issue and action that should be addressed: Peter Sorce would like the Board to consider a motion authorizing him to serve on the 2024 ARBO Resolutions Committee. The Committee will review any resolutions that are submitted prior to the ARBO annual meeting and will present those that are appropriate to the members for discussion at the June ARBO Annual Meeting.			
11) Authorization			
<i>Peter Sorce</i>		2/27/2024	
Signature of person making this request		Date	
Supervisor (Only required for post agenda deadline items)		Date	
Executive Director signature (Indicates approval for post agenda deadline items)		Date	
Directions for including supporting documents: 1. This form should be saved with any other documents submitted to the Agenda Items folders. 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.			