

Report From Agency

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 06-116)

PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 1.02 (3), 3.01, the Note following Opt 4.02 (2), 6.02 (2) and (5), and 6.05 to 6.08; to renumber Opt 6.02 (1); to renumber and amend Opt 5.12; to amend Opt 1.01, 1.02 (intro.), 3.02 (1) (intro.), the second Note following 3.02 (1) (a), the Note following 3.02 (1) (c), 3.03, 3.09, ch. Opt 4 (title), 4.01 (intro.), (1) to (5) and (7), 4.02 (1) (intro.) and (c), 4.03 (1) and (2) (intro.), 5.12 (title), ch. Opt 6 (title), 6.01, 6.02 (6), ch. Opt 7 (title), 7.03 (title) and 7.03, and 7.05 (1) and (2) (intro.); to repeal and recreate Opt 1.02 (6), 1.03, 6.02 (3), 6.03 and 6.04; and to create Opt 4.01 (8) and (9), 5.02 (6), 5.12 (1), (2) and (3), 6.02 (1) and ch. Opt 8, relating to examinations, endorsement, delegation, TPA/DPA, renewal and continuing education relating to optometrists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Sections 449.02, (3), 449.04 (1), 449.055, 449.06 (1) and (2m), 449.08 (1), 449.17 (1), (1m) and (2), and 449.18 (1), (2), (5) and (6), Stats.

Statutes authorizing promulgation:

Sections 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297.

Explanation of agency authority:

Chapter 449, Stats., and 2005 Wisconsin Act 297, give authority to the Optometry Examining Board to promulgate rules relating to the issuance and renewal of licenses; the issuance of certificates to use diagnostic and therapeutic pharmaceutical agents; the issuance of licenses by endorsement; continuing education requirements and grounds for discipline of optometrists.

Related statute or rule:

Chapter RL 10 which identifies the diagnostic and therapeutic pharmaceutical agents that have been approved by the Department of Regulation and Licensing for use by optometrists.

Plain language analysis:

SECTIONS 1 and 2. The current rules include a reference in ss. Opt 1.01 and 1.02 to chs. Opt 1 to 7. These sections are being amended to clarify that these provisions also apply to ch. Opt 8.

SECTION 3. In this section, the board repeals the definition of “immediate supervision.”

SECTION 4. In this section the board creates a definition of “supervision.” The board also repeals the definition of “routine visual screening” that is found in s. Opt 1.02 (6).

SECTION 5. In this section, the board repeals and recreates s. Opt 1.03, which relates to delegation and supervision of unlicensed persons. The rule clarifies that, with 2 exceptions, optometrists may direct unlicensed persons working under their supervision to perform any act that is within the scope of the practice of optometry.

SECTION 6. Section Opt 3.01, which relates to fixing a time and place for examinations, is being repealed because the examinations are now administered on-line.

SECTION 7. Section Opt 3.02 (1) is being amended to clarify that applications for examination are no longer required to be submitted 30 days prior to the date of the examination, and to make minor and technical changes to the examination procedures. These changes are required primarily because examinations are now administered on-line.

SECTIONS 8 and 9. These sections amend Notes to identify where applications may be obtained.

SECTIONS 10 and 11. These sections make minor and technical revisions to the rules that relate to application and examination procedures.

SECTIONS 12-17. These sections amend ch. Opt 4 to incorporate the provisions for endorsement that are contained in 2005 Wisconsin Act 297. Those provisions require applicants to be “in good standing;” to have practiced optometry in another state that has substantially similar requirements, and to have completed the educational course work required to use diagnostic and therapeutic pharmaceutical agents. In addition, other minor and technical revisions relating to application and examination procedures are being made to the rules.

SECTION 18. Section Opt 5.02 (6) is being created to define “signature” to mean “a handwritten mark or an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

SECTIONS 19-21. Section Opt 5.12, which relates to supervision of unlicensed persons who perform routine vision screenings, is being repealed and recreated to state that it shall be unprofessional conduct for an optometrist to do any of the following:

(1) Delegate the prescribing of pharmaceutical agents, or the removal of foreign bodies from an eye or from an appendage to the eye, to an unlicensed person.

(2) Delegate the performance of tasks related to the practice of optometry to an unlicensed person that exceeds that person’s competence, education, training or experience.

(3) Fail to exercise supervision over an unlicensed person, as provided under s. Opt 1.03.

SECTIONS 22-31. These sections amend, repeal, and repeal and recreate ch. Opt 6 to incorporate the substantial changes made by 2005 Wisconsin Act 297 relating to the use of diagnostic and therapeutic pharmaceutical agents and removal of superficial foreign bodies from an eye or from an appendage to the eye. Chapter Opt 6, as recreated, incorporates the procedures for the issuance of certificates to use diagnostic and pharmaceutical agents; the education and examination requirements that must be completed in order for an optometrist to obtain a certificate, and the permitted use of diagnostic and therapeutic pharmaceutical agents. Some of the primary changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, which are incorporated into ch. Opt 6 or clarified in ch. Opt 6, include the following:

Section 449.17 – DPA Certificates. As a result of the revisions to the statutes, the Department of Regulation and Licensing will no longer grant DPA certificates. The board is now authorized to grant DPA certificates, but only to optometrists who were licensed by the board before August 1, 2006. Optometrists licensed by the board on or after August 1, 2006, will automatically be authorized to use diagnostic pharmaceutical agents (DPA) without having to obtain a separate DPA certificate. Note that the DPA certificates granted by the department prior to August 1, 2006, will remain in effect while the optometrist’s license remains in effect unless suspended or revoked by the board. [Wis. Stats. s. 449.17 (1m) (d).] Note also that the Secretary of the department retains the authority to promulgate rules specifying the topical ocular diagnostic pharmaceutical agents that may be used by optometrists. See also Wis. Adm. Code ch. RL 10.]

Section 449.18 – TPA Certificates. As a result of the revisions to the statutes, the board retains the authority to grant TPA certificates, but only to optometrists who were licensed by the board before August 1, 2006. Optometrists licensed by the board on or after August 1, 2006, will automatically be authorized to use therapeutic pharmaceutical

agents (TPA) without having to obtain a separate TPA certificate. Note that the TPA certificates granted by the board prior to August 1, 2006, will remain in effect while the optometrist's license remains in effect unless suspended or revoked by the board. [Wis. Stats. s. 449.18 (2) (e).] Note also that the Secretary of the department retains the authority to promulgate rules specifying the therapeutic pharmaceutical agents that may or may not be used by optometrists. [See also Wis. Adm. Code ch. RL 10.]

Section 449.06 – Renewal; continuing education. As a result of the revisions to the statutes, all optometrists will be required to complete 30 hours of continuing education. Note also that, as stated above, DPA and TPA certificates will not expire; therefore; the certificates will not need to be renewed.

SECTION 31. This section repeals ss. Opt 6.05 to 6.08, which relate to the approval of continuing education courses and the renewal of TPA certificates. The provisions relating to continuing education are being incorporated into ch. Opt 8. Under 2005 Wisconsin Act 297, TPA certificates no longer expire; therefore, optometrists are not required to renew them.

SECTIONS 32-34. These sections amend ss. Opt 7.03 and 7.05 to clarify that all optometrists must now complete the required continuing education course work in order to renew their registrations. Previously, only optometrists who held TPA certificates were required to complete continuing education course work.

SECTION 35. Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrists will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Section Opt 8.01 creates definitions for “biennium,” “COPE” and “hardship.”

Section Opt 8.02 identifies the course work that optometrists must complete and the procedure that they must follow in order to renew their registrations. The proposed rules require optometrists to complete 30 hours of approved continuing education in each biennial registration period. A minimum of 7 of the 30 hours must be approved glaucoma education. To obtain credit for completion of continuing education hours, optometrists must, at the time of each renewal of their registrations, sign a statement certifying that the course work has been completed. If audited, the optometrists will be required to submit their certificates of attendance issued by each course provider or other evidence of attendance satisfactory to the board. An optometrist who fails to meet the continuing education requirements by the renewal date may not engage in the practice of optometry until his or her registration is renewed under s. Opt 7.05.

Section Opt 8.03 creates the criteria for the approval of continuing education courses, which was previously contained in ch. Opt 6. In general, to apply for approval of a continuing education course, a course provider must submit to the board office an application on forms provided by the department that shall include the title, general description and an outline of the course, the dates, the location, the name and qualifications of the instructor of the course, and the sponsor of the course. The following criteria will be considered in the approval process:

- (1) The subject matter of the course pertains to the practice of optometry.
- (2) The provider of the continuing education courses agrees to monitor the attendance and furnish a certificate of attendance to each participant. The certificate of attendance shall certify successful completion of the course.
- (3) The provider of the course is approved by the board.
- (4) The course content and instructional methodologies are approved by the board.

In addition, alternate delivery method continuing education courses such as home-study courses, self-study packages, computer courses, televideo conferencing and other methods may be approved by the board. Finally, a continuing education course approved by the Council on Optometric Practitioner Education (COPE), or sponsored by a state optometric association, the American Optometric Association, the American Academy of Optometry, or an accredited school or college of optometry, which satisfies the criteria established under s. Opt 8.03 (2), shall be approved by the board without receipt of a course approval application from the course provider.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Illinois:

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Illinois are substantially equivalent to the requirements in Wisconsin. Both states require applicants to be a graduate of an accredited college of optometry and to pass a qualifying examination in order to obtain a license. In addition, both Illinois and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination.

In reference to continuing education, Illinois requires licensees to complete 24 hours of continuing education. Optometrists who are certified to use therapeutic ocular

pharmaceuticals are required to complete an additional 6 hours of continuing education in the treatment of ocular disease.

In reference to the practice of optometry by unlicensed individuals, Illinois requires that such individuals practice only under the direct supervision of a licensed optometrist. The term “direct supervision of any person assisting an optometrist” is defined in Illinois as follows:

Direct supervision of any person assisting an optometrist means:

- 1) The optometrist personally performs those procedures requiring professional judgment. Professional judgment requires that the optometrist shall perform those procedures for the diagnosis and treatment of anomalies of the eye, adnexa, and the visual system, including for example, but not limited to, biomicroscopy, ophthalmoscopy, all therapeutic procedures and the prescribing of any ophthalmic lenses, including contact lenses.
- 2) The optometrist shall specify all procedures to be performed by the assistant.
- 3) The optometrist is present in the facility while the assistant performs the procedure (does not mean that the optometrist must be present with the patient while the specified procedures are being performed).
- 4) The optometrist approves the results of the procedures performed by the assistant before dismissal of the patient.

In addition, Illinois prohibits an unlicensed individual from performing the following acts and from engaging in the practice of medicine except while acting under the direct supervision of a person so licensed.

- 1) Conducting or performing examinations of the human eye or its appendages employing either objective or subjective means, or both for the purpose of adapting lenses to the eyes of any person.
- 2) Using instruments or appliances of any type to determine the curvatures of the eye or of the cornea of any person for the purpose of ordering or supplying contact lenses for the person.
- 3) Determining, selecting or specifying the lens characteristics or the lens curvatures of contact lenses to be supplied to any person.
- 4) Converting, altering, or varying in any manner a prescription for contact lenses prepared by an optometrist or a person licensed to practice medicine in all its branches in this state.

- 5) Converting, altering, or varying in any manner a prescription for spectacles prepared by an optometrist or a person licensed to practice medicine in all of its branches in this state, including converting a spectacle prescription into a prescription for contact lenses.
- 6) Inserting, removing, adjusting or adapting contact lenses for the purpose of selecting, specifying or furnishing contact lenses for use by any person.
- 7) Conducting or performing any examination of the human eye or its appendages employing either objective or subjective means or both for the purpose of determining the effects that may have resulted from wearing contact lenses by any person.
- 8) Where a person has been provided with contact lenses pursuant to a prescription by an optometrist or a person licensed to practice medicine in all of its branches in this state, adjusting, adapting or changing the lens characteristics or the lens curvatures of the contact lens in any manner whatsoever.
- 9) Advertising, representing or informing the general public by any means, including, but not limited to, display advertising in newspapers and telephone directories within the state of Illinois, that he/she will fit or adapt contact lenses for the use of any person.

Illinois's administrative rules relating to the practice are found in Title 68: Professions and Occupations, Chapter VII: Department of Financial and Professional Regulation Part 1320, Optometric Practice Act of 1987. These rules may be found at:
<http://www.ilga.gov/commission/jcar/admincode.068/06801320sections.html>

Iowa:

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Iowa are substantially similar to the requirements in Wisconsin. Both states require applicants to be a graduate of an accredited college of optometry and to pass a qualifying examination in order to obtain a license. Iowa holds reciprocal agreements with certain states, but like Wisconsin, will accept applicants with equivalent licensure (endorsement). In addition, both Iowa and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination.

In reference to continuing education, Iowa and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Wisconsin requires all licensed optometrists to complete 30 hours of continuing education. Iowa requires optometrists who are not certified to use therapeutic pharmaceutical agents to complete 30 hours of continuing education, and optometrists who are certified to use therapeutic pharmaceutical agents to complete 50 hours of continuing education.

In reference to delegated authority, Iowa law did not appear to have provisions regarding specific definitions of supervision of unlicensed individuals or delegated authority.

Iowa's administrative rules relating to the practice of optometry are found in their chapters 179 to 183. These rules may be found at:

<http://www.idph.state.ia.us/licensure/laws.asp?board=opt>

Michigan:

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Michigan are substantially equivalent to the requirements in Wisconsin. Both states require applicants to be a graduate of an accredited college of optometry and to pass a qualifying examination in order to obtain a license. In addition, both Michigan and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination.

In reference to continuing education, Michigan and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Wisconsin requires 30 hours of continuing education. Michigan requires 40 hours of continuing education.

Michigan's administrative rules relating to the practice of Optometry are found in their sections R. 338.211 to 338.279 (General Rules) and R 338.291 (Ethical and Unprofessional Conduct). Their rules may be found at:

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33800251&Dpt=CH&RngHigh= and

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33800291&Dpt=CH&RngHigh=

Minnesota:

The requirements for licensure and certification to use diagnostic and therapeutic pharmaceutical agents in Minnesota are substantially equivalent to the requirements in Wisconsin. Both states require applicants to be a graduate of an accredited college of optometry and to pass a qualifying examination in order to obtain a license. Both states allow for applicants holding equivalent licensure from another jurisdiction to apply for licensure. In addition, both Minnesota and Wisconsin require applicants to complete specialized course work relating to the use of diagnostic and therapeutic pharmaceutical agents and to pass a qualifying examination.

In reference to experience required in order to obtain a certification to use therapeutic pharmaceutical agents, Minnesota requires 2 years of supervised clinical experience in differential diagnosis of eye disease or disorders as part of optometric training or one year of that experience and ten years of actual clinical experience as a licensed optometrist. Other than experience or training required in conjunction with an initial optometry degree program, Wisconsin does not require an applicant to complete experience in order to obtain a certificate to use therapeutic pharmaceutical agents.

In reference to continuing education, Minnesota and Wisconsin require licensees to complete course work every two years in order to renew their credentials. Wisconsin requires 30 hours of continuing education. Minnesota requires 40 hours of continuing education.

In reference to delegated authority, Minnesota specifies in their rules of unprofessional conduct that it is unlawful for an unlicensed person to sell, or dispose of, at retail, any spectacles, eyeglasses, or lenses for the correction of vision except under the supervision, direction, and authority of a duly licensed optometrist.

Minnesota's administrative rules relating to the practice of optometry are under their Chapter 6500 and may be found at: <http://www.revisor.leg.state.mn.us/arule/6500/>

Summary of factual data and analytical methodologies:

The Department of Regulation and Licensing is assisting in drafting of the board's rules as per recent amendments of ch. 449, Stats. The board's professional and public members provided their input and guidance into the rule drafting process.

The department relied on information provided by the Wisconsin Association of Optometrists (WOA) regarding their membership and projected costs of continuing education. For licensee counts, the numbers were derived from the credentialing database of the Department of Regulation and Licensing in September of 2006.

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

The proposed rules make a number of changes that may affect the practice of optometry as it relates to small business. The changes may be positive in terms of increasing flexibility in licensure requirements (licensure mobility), providing delegated authority and changing continuing education requirements.

These rules will affect those who are currently practicing under a Wisconsin license (913 active licensees in and out of state); those who may wish to renew their license (1,258 inactive licensees in and out of state), and those looking to begin practice in Wisconsin, transfer to another jurisdiction, or apply to Wisconsin through licensure by endorsement.

The following changes may affect small business:

Redefinition of Supervision: The existing rules provide for immediate supervision of staff within a clinic by a licensed optometrist. The board finds that these rules are outdated and not relevant to the modern practice of optometry. The board is proposing to introduce flexibility into the practice of optometry by developing a rule which allows optometrists to determine the level of oversight required for the supervision of unlicensed persons.

Delegated Authority: The amendments to ch. 449, Stats., allow an optometrist to train staff to provide certain services in the clinic which were formerly restricted to licensed professionals. This amendment allows unlicensed persons to practice certain services which are considered within the scope of practice of optometry, under their supervising optometrist's license, but only after adequate training has been provided. Delegated authority may generate costs to small business by requiring formal optometric training of staff, however the decision to delegate these tasks is entirely optional.

Endorsement: The new rules provide that a licensee of another jurisdiction with substantially equivalent licensure requirements may transfer to Wisconsin. This may increase competition, however as reported by the board, many states are moving to the licensure by endorsement model which would also allow Wisconsin optometrists to transfer easier to another jurisdiction. This may have a neutral effect as it relates only to licensure mobility.

Continuing Education: Under the existing rules – now outdated due to changes in statute – the only optometrists required to take continuing education course work for licensure renewal – were those certified by the board to use therapeutic pharmaceutical agents (TPA). Recent updates to ch. 449, Stats., (practice of optometry) requires all optometrists to take continuing education course work; therefore the board is drafting rules to require 30 hours of continuing education for renewal for all optometrists' licensure.

As of September, 2006, there were a total of 2,171 Wisconsin licensed optometrists (in and out of state, active and inactive licenses). Of that number, there were 913 active license holders (in and out of state) certified to use TPA and therefore required to complete 30 hours of continuing education in a biennium.

There are 328 active license holders who currently do not hold the TPA certification, who will have to meet the new renewal requirements of 30 hours of board approved continuing education in the biennium.

As per an estimate of the Wisconsin Optometric Association*, costs per hour of continuing education range from:

- \$30 per hour of continuing education; \$15-\$20 per hour for continuing education packages – WOA membership only
- \$90 per hour of continuing education; \$50 per hour for continuing education packages – Non-members

*The WOA reports that there is significant availability of continuing education hours available at no charge at the local level to optometrists which mitigates the biennial cost of renewal for licensure.

The impact on biennial continuing education costs would range from insignificant (free continuing education available), to \$450 to \$2,700 (maximum cost per hour of continuing education for non-WOA members).

Although the cost of continuing education is a factor in the operational costs of a license holder, continuing education is a standard requirement of many professional examining boards and is seen as valuable educational experience which not only increases and refreshes the practice knowledge of a license holder, but also serves to protect the public. Additionally, there is a wide availability of continuing education for optometrists that could be less or more expensive than what the WOA provides, however there is a wide range of choice available to optometrists for the market.

The Wisconsin Optometric Association provided an estimate (of their members) that over 50% of optometrists are operating as or working in a small business (25 people or less or under 5 million in sales).

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Fiscal estimate:

The department estimates that this rule will require staff time in the Divisions of Management Services and Professional Credentialing. The one-time salary and fringe costs in the Divisions of Management Services and Professional Counseling are estimated at \$747.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before December 7, 2006 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 1.01 is amended to read:

Opt 1.01 Authority. The rules in chs. Opt 1 to ~~7~~ 8 are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 449.01 and 449.07, Stats., to define the scope of practice of optometry in Wisconsin.

SECTION 2. Opt 1.02 (intro.) is amended to read:

Opt 1.02 Definitions. (intro.) As used in chs. Opt 1 to ~~7~~ 8:

SECTION 3. Opt 1.02 (3) is repealed.

SECTION 4. Opt 1.02 (6) is repealed and recreated to read:

Opt 1.02 (6) "Supervision" means availability to coordinate, direct, and inspect the practice of an unlicensed person on a regular basis, as determined by the supervising optometrist.

SECTION 5. Opt 1.03 is repealed and recreated to read:

Opt 1.03 Delegation and supervision. Except as provided under s. Opt 5.12 (1) and (2), an optometrist may direct an unlicensed person working under the optometrist's supervision to perform any act that is within the optometrist's scope of practice. The optometrist continues to be responsible for interpretation of test findings, as well as the diagnosis and management of any condition related to the care of the patient.

SECTION 6. Opt 3.01 is repealed.

SECTION 7. Opt 3.02 (1) (intro.) is amended to read:

Opt 3.02 Application for examination. (1) (intro.) ~~An~~ Prior to taking the examination for licensure as an optometrist, an applicant for examination for licensure as an optometrist shall file with the board at least 30 days prior to the date of the scheduled examination under s. Opt 3.03, a completed application on a form provided by the board. The application shall include:

SECTION 8. The second Note following Opt 3.02 (1) (a) is amended to read:

Note: An otherwise qualified applicant with a disability shall be provided with reasonable accommodations. Application forms for examination may be obtained from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 or from the department's website at <http://drl.wi.gov>.

SECTION 9. The Note following Opt 3.02 (1) (c) is amended to read:

Note: The board annually reviews for approval the colleges of optometry accredited by the council on optometry education of the American Optometric Association or other accrediting bodies. A list of board approved colleges of optometry is ~~available from the board upon request~~ included in the application packet on-line at <http://drl.wi.gov>. It is the responsibility of the applicant to contact the appropriate college to request that the college forward a certified transcript to the board office. An application will not be considered complete until after the board receives a copy of the transcript and other essential information.

SECTION 10. Opt 3.03 is amended to read:

Opt 3.03 State law examination. An applicant shall pass a written examination on state law relating to optometry including, but not limited to, ch. 449, Stats., and chs. Opt 1 to ~~5~~ 8.

SECTION 11. Opt 3.09 is amended to read:

Opt 3.09 Announcement of results. Examination results shall be released to the applicant ~~after all papers are graded and the results have been approved by the board~~ completion of the examination.

SECTION 12. Ch. Opt 4 (title) is amended to read:

Chapter Opt 4 (title)

LICENSURE BY ~~RECIPROCITY~~ ENDORSEMENT

SECTION 13. Opt 4.01 (intro.), (1) to (5) and (7) are amended to read:

Opt 4.01 Qualifications. (intro.) An optometrist holding a license, in good standing, to practice optometry in another state that has substantially similar requirements may become licensed and registered in Wisconsin if the applicant submits evidence satisfactory to the board that he or she satisfies all of the following criteria:

(1) Has graduated from an accredited school or college of optometry approved and recognized by the board.

(2) Has passed the examination of the national board of examiners in optometry as ~~provided in required under~~ s. Opt 4.03, ~~or a licensing examination in another state~~ (2).

(3) Has practiced optometry in the other state for at least 5 years.

(4) Has passed the required state law examination administered by the board as ~~set forth in required under~~ s. Opt 4.03 (1).

(5) Has never been disciplined by the licensing authority in any other state, territory of the United States, or another country for any misconduct or violations which evidence lack of competence to practice optometry in Wisconsin as determined by the board.

(7) Does not have a ~~pending criminal charge~~ an arrest or a conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats.

SECTION 14. Opt 4.01 (8) and (9) are created to read:

Opt 4.01 (8) Pays the fee specified in s. 440.05 (1), Stats.

(9) Has completed the study specified in ss. 449.17 (1m) (b) and 449.18 (2) (a) 2., Stats., and passed the examinations specified in ss. 449.17 (1m) (c) and 449.18 (2) (a) 3., Stats.

SECTION 15. Opt 4.02 (1) (intro.) and (c) are amended to read:

Opt 4.02 Application procedures. (1) (intro.) An applicant for licensure under this chapter shall file with the board, ~~no later than 30 days prior to the examination~~, a completed application on a form provided by the board. The application shall include:

(c) The fees authorized in s. 440.05 (1) ~~and (2)~~, Stats.

SECTION 16. The Note following Opt 4.02 (2) is repealed.

SECTION 17. Opt 4.03 (1) and (2) (intro.) are amended to read:

Opt 4.03 Examinations. (1) An applicant for a license by ~~reciprocity~~ endorsement under this chapter shall take and pass the state law examination as set forth in s. Opt 3.03.

(2) (intro.) An applicant for a license by ~~reciprocity~~ endorsement under this chapter shall successfully complete a ~~licensing examination in another state~~ or one of the following:

SECTION 18. Opt 5.02 (6) is created to read:

Opt 5.02 (6) “Signature” means a handwritten mark or an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

SECTION 19. Opt 5.12 (title) is amended to read:

Opt 5.12 (title) ~~Supervision~~ Delegation and supervision of unlicensed persons.

SECTION 20. Opt 5.12 is renumbered Opt 5.12 (intro.) and is amended to read:

Opt 5.12 (intro.) It shall be unprofessional conduct for an optometrist to ~~fail to exercise immediate supervision over individuals to whom the optometrist has delegated the task of routine visual screening under s. Opt 1.03.~~ do any of the following:

SECTION 21. Opt 5.12 (1), (2) and (3) are created to read:

Opt 5.12 (1) Delegate the prescribing of pharmaceutical agents, or the removal of foreign bodies from an eye or from an appendage to the eye, to an unlicensed person.

(2) Delegate the performance of tasks related to the practice of optometry to an unlicensed person that exceed that person’s competence, education, training, or experience.

(3) Fail to exercise supervision over an unlicensed person, as provided under s. Opt 1.03.

SECTION 22. Ch. Opt 6 (title) is amended to read:

Chapter Opt 6 (title)

~~CERTIFICATION TO USE OF DIAGNOSTIC AND THERAPEUTIC PHARMACEUTICAL AGENTS AND TO REMOVE~~ REMOVAL OF SUPERFICIAL FOREIGN BODIES FROM AN EYE OR FROM AN APPENDAGE TO THE EYE

SECTION 23. Opt 6.01 is amended to read:

Opt 6.01 Authority. The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2), 449.17 and 449.18, Stats.

SECTION 24. Opt 6.02 (1) is renumbered Opt 6.02 (1m).

SECTION 25. Opt 6.02 (1) is created to read:

Opt 6.02 (1) “Adverse drug reaction” has the meaning given under s. RL 10.01.

SECTION 26. Opt 6.02 (2) is repealed.

SECTION 27. Opt 6.02 (3) is repealed and recreated to read:

Opt 6.02 (3) "DPA" or "diagnostical pharmaceutical agent" has the meaning given under s. RL 10.01.

SECTION 28. Opt 6.02 (5) is repealed.

SECTION 29. Opt 6.02 (6) is amended to read:

Opt 6.02 (6) "TPA" or "therapeutic pharmaceutical agent" ~~means the agents as defined in~~ has the meaning given under s. RL 10.01.

SECTION 30. Opt 6.03 and 6.04 are repealed and recreated to read:

Opt 6.03 Use of diagnostic pharmaceutical agents. (1) **APPLICABILITY.** An optometrist may use topical ocular diagnostic pharmaceutical agents only if the optometrist establishes an adverse reaction plan, as provided under sub. (3), and if one of the following applies:

(a) The board initially issues a license to practice optometry to the optometrist on or after August 1, 2006.

(b) The department issued a certificate to the optometrist under s. 449.17, 2003 Stats.

(c) The board issues a certificate under sub. (2) to an optometrist issued a license to practice optometry before August 1, 2006.

(2) **LICENSES ISSUED BEFORE AUGUST 1, 2006.** (a) The board shall certify an optometrist to use topical ocular diagnostic pharmaceutical agents if the optometrist was issued a license to practice optometry before August 1, 2006, and the optometrist satisfies the education requirements under par. (b) and successfully completes the examination required under par. (c).

(b) In addition to the requirements under par. (c), the board may issue certificates under par. (a) only to optometrists who successfully complete 60 classroom hours of study in general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents. At least 30 of the 60 classroom hours of study shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to pharmaceutical agents, including the treatment of any adverse reactions that may occur. The course of study shall be offered by an institution approved by the board and accredited by a regional or professional accrediting organization which is recognized by the Council for Higher Education

Accreditation or its successor or the federal department of education, and shall be completed prior to entering the examination required under par. (c).

(c) The board may issue certificates under par. (a) only to optometrists who successfully complete an examination approved or conducted by the board on the subject of general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents. The examination shall be prepared or approved by the board. The board shall periodically review the validity, reliability, and appropriateness of the examination. The board may do any of the following:

1. Prepare, administer, and grade the examination.
2. Approve in whole or in part an examination prepared, administered, and graded by the national board of examiners in optometry or another examination provider approved by the board.
3. Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry or another examination provider approved by the board.

(d) No fee may be charged for a certificate issued under this subsection. A certificate issued under this subsection or s. 449.17, 2003 Stats., remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the board.

(3) **ADVERSE REACTION PLAN.** Topical ocular diagnostic pharmaceutical agents may be used only by optometrists who have established a plan for the referral of patients who experience adverse reactions from the application of those agents to appropriate medical services.

(4) **USE OF DIAGNOSTIC PHARMACEUTICAL AGENTS.** An optometrist who is allowed under sub. (1) to use diagnostic pharmaceutical agents may not use any pharmaceutical agent that he or she is prohibited from using under ch. RL 10.

Opt 6.04 Use of therapeutic pharmaceutical agents and removal of foreign bodies from eyes. (1) **APPLICABILITY.** No optometrist may use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye unless one of the following applies:

- (a) The board initially issues a license to practice optometry to the optometrist on or after August 1, 2006.
- (b) The board issued a certificate to the optometrist under s. 449.18, 2003 Stats.

(c) The board issues a certificate under sub. (2) to an optometrist issued a license to practice optometry before August 1, 2006.

(2) LICENSES ISSUED BEFORE AUGUST 1, 2006. (a) The board shall certify an optometrist to use therapeutic pharmaceutical agents and remove foreign bodies from an eye or from an appendage to the eye if the optometrist was issued a license to practice optometry before August 1, 2006, and the optometrist satisfies all of the following:

1. The optometrist is certified under s. 449.17, 2003 Stats., or s. 449.17 (1m) (a), Stats., to use topical ocular diagnostic pharmaceutical agents.

2. The optometrist has successfully completed 100 hours of approved study in the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye. The course of study shall be offered by an institution approved by the board and accredited by a regional or professional accrediting organization that is recognized by the Council for Higher Education Accreditation or its successor or the federal department of education.

3. The optometrist has passed an examination conducted or approved by the board. The board shall periodically review the validity, reliability, and appropriateness of the examination that it conducts or approves under this subdivision.

(b) No fee may be charged for the issuance of a certificate under par. (a).

(c) A certificate issued under par. (a) or s. 449.18, 2003 Stats., remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the board.

(3) REMOVALS FROM EYES. An optometrist who is allowed under sub. (1) to remove a foreign body from an eye or from an appendage to the eye may not remove a foreign body from an eye or from an appendage to the eye if the foreign body is deeper than Bowman's layer of the cornea or deeper than the conjunctiva.

(4) USE OF THERAPEUTIC PHARMACEUTICAL AGENTS. (a) An optometrist who is allowed under sub. (1) to use therapeutic pharmaceutical agents may not do any of the following:

1. Prescribe or administer any therapeutic pharmaceutical agent that he or she is prohibited from prescribing or administering under ch. RL 10.

2. Dispense, as defined in s. 450.01 (7), Stats., other than by prescribing or administering. This subdivision does not prohibit the optometrist from

providing a complimentary sample of a therapeutic pharmaceutical agent to a patient to whom the optometrist has rendered therapeutic care.

(b) An optometrist who is allowed under sub. (1) to use therapeutic pharmaceutical agents shall include with each prescription order all of the following:

1. A statement that he or she is allowed under sub. (1) to use therapeutic pharmaceutical agents.

2. The indicated use of the therapeutic pharmaceutical agent so prescribed.

SECTION 31. Opt 6.05 to 6.08 are repealed.

SECTION 32. Chapter Opt 7 (title) is amended to read:

Chapter Opt 7 (title)

RENEWAL OF CERTIFICATE OF REGISTRATION

SECTION 33. Opt 7.03 (title) and 7.03 are amended to read:

Opt 7.03 (title) Renewal of certificate of registration. Persons practicing optometry shall on or before ~~January 4~~ December 15 of each ~~even-numbered~~ odd-numbered year renew their certificates of registration by registering with the department, certifying completion of the continuing education hours required under s. Opt 8.02, and paying the renewal fee specified in s. 449.08 (2) (a), Stats.

SECTION 34. Opt 7.05 (1) and (2) (intro.) are amended to read:

Opt 7.05 (1) If applying less than 5 years after the renewal date, submit an application on a form provided by the department, certify completion of the continuing education hours required under s. Opt 8.02, and pay the renewal fees specified in s. 440.08 (2) (a) and (3), Stats.

(2) (intro.) If applying 5 years or more after the renewal date, submit an application on a form provided by the department, certify completion of the continuing education hours required under s. Opt 8.02; pay the renewal fees specified in s. 440.08 (2) (a) and (3), Stats.; and submit proof of all of the following, as ordered by the board:

SECTION 35. Chapter Opt 8 is created to read:

Chapter Opt 8

CONTINUING EDUCATION

Opt 8.01 Definitions. As used in this chapter:

(1) “Biennium” means a 2-year period beginning December 16 of odd-numbered years.

(2) “COPE” means the council on optometric practitioner education.

(3) “Hardship” means serious illness, as determined by a licensed health care provider, or some other personal adversity, as determined by the board.

Opt 8.02 Continuing education. (1) A licensee shall complete 30 hours of approved continuing education in each biennial registration period. A minimum of 7 of the 30 hours shall be approved glaucoma education.

(2) Except as provided in sub. (4), approved continuing education hours required for optometrists who are allowed to use diagnostic and therapeutic pharmaceutical agents shall relate to the diagnosis and management of eye disease or the removal of superficial foreign bodies from an eye or from an appendage to the eye.

(3) Except as provided in sub. (4), approved continuing education hours required for optometrists who are not allowed to use diagnostic and therapeutic pharmaceutical agents shall relate to the diagnosis and management of eye disease.

(4) No more than a combined total of 6 hours of continuing education per biennium may be claimed for course work that relates to one or more of the following subject matter:

- (a) Contact lens.
- (b) Functional vision.
- (c) General optometry.
- (d) Low vision.
- (e) Jurisprudence.
- (f) Practice management.

(5) Except for purposes of obtaining continuing education in order to satisfy the requirements for late renewal under s. Opt 7.05, continuing education hours may be applied only to the biennial registration period in which the continuing education hours are acquired.

(6) To obtain credit for completion of continuing education hours, an optometrist shall, at the time of each renewal of registration, sign a statement certifying that the course work has been completed. If audited, an optometrist shall submit certificates of attendance issued by each course provider or other evidence of attendance satisfactory to the board.

(7) An optometrist who fails to meet the continuing education requirements by the renewal date may not engage in the practice of optometry until his or her registration is renewed under s. Opt 7.05.

(8) Optometrists initially licensed within a biennium shall complete one hour of board approved continuing education per month or partial month of licensure reported on or before December 15 of the second year of the biennium. A minimum of one-quarter of the continuing education hours shall be in the diagnosis and management of glaucoma.

(9) Except as provided in sub. (8), no more than a combined total of 6 hours of continuing education per biennium may be claimed for course work obtained through alternative delivery methods such as home-study courses, self-study packages, computer courses, televideo conferencing, or other delivery methods approved by the board under s. Opt 8.03 (4).

(10) The board may permit a certificate holder to claim more than 6 hours of continuing education per biennium for course work obtained through alternative delivery methods such as home-study courses, self-study packages, computer courses, televideo conferencing, or other delivery methods approved by the board, if the credential holder submits evidence satisfactory to the board of hardship.

Opt 8.03 Approval of continuing education courses. (1) Except as provided in sub. (5), to apply for approval of a continuing education course, a course provider shall submit to the board office an application on forms provided by the department and shall include the title, general description and an outline of the course, the dates, the location, the name and qualifications of the instructor of the course, and the sponsor of the course.

Note: An application for continuing education course approval may be obtained from the board office at the Department of Regulation and Licensing, Office of Examination and Education, P.O. Box 8935, Madison, Wisconsin, 53708, or from the department's website at: <http://drl.wi.gov>.

(2) A continuing education course must meet all of the following criteria to be approved as a continuing education course:

(a) The subject matter of the course pertains to the practice of optometry.

(b) The provider of the continuing education course agrees to monitor the attendance and furnish a certificate of attendance to each participant. The certificate of attendance shall certify successful completion of the course.

(c) The provider of the course is approved by the board.

(d) The course content and instructional methodologies are approved by the board.

(3) Except as provided in sub. (5), a separate application shall be submitted for each continuing education course approval request.

(4) The board may approve alternate delivery method continuing education courses such as home-study courses, self-study packages, computer courses, televideo conferencing and other methods.

(5) A continuing education course approved by COPE, or sponsored by a state optometric association, the American Optometric Association, the American Academy of Optometry, or an accredited school or college of optometry, which satisfies the criteria established under sub. (2), shall be approved by the board without receipt of a course approval application from the course provider.

Note: The Council on Optometric Practitioner Education (COPE), which is a committee of the Association of Regulatory Boards of Optometry (ARBO), may be contacted at 1750 South Brentwood Boulevard, Suite 503, St. Louis, Missouri 63144, (314) 785-6000. The American Optometric Association may be contacted at 243 N. Lindbergh Blvd., 1st Floor, St. Louis, MO 63141, (800) 365-2219. The American Academy of Optometry may be contacted at 6110 Executive Blvd., Suite 506, Rockville, MD 20852, (301) 984-1441.

(END OF TEXT OF RULE)

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.

Dated _____ Agency _____
Chairperson
Optometry Examining Board