

CR 89-151

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CERTIFICATE

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STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Ramona Weakland Warden, Director, Bureau of Health Service Professions in the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Optometry Examining Board do hereby certify that the annexed rules were duly approved and adopted by the Optometry Examining Board on the 20th day of April, 1990.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the board at 1400 East Washington Avenue, Madison, Wisconsin this 20th day of April, 1990.

Ramona Weakland Warden
Ramona Weakland Warden, Director
Bureau of Health Service Professions
Department of Regulation and
Licensing

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STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD	:	ADOPTING RULES

(Clearinghouse Rule 89-151)

ORDER

An order of the Optometry Examining Board to repeal Opt 3.08 and 5.03; to renumber Opt 1.02 (1), 2.03, 2.05, 5.02 (1), (2), (3) and (4),; to renumber and amend Opt 1.02 (2) and (4), 2.04 and 3.10; to amend Opt 4.02 (1) (intro.) and (1) (c), 5.07, 5.09, 5.10 (3) and 5.12; and to create Opt 1.02 (intro), 3.10, 3.11, 5.02 (2) and 5.10 (4) of the administrative code relating to definitions, exam review procedures, examination fees, unprofessional conduct and defining lens prescriptions.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2) (a), Stats.

Statutes interpreted: ss. 449.01, 449.04 and 449.08, Stats.

In this order the rules of the Optometry Examining Board, chapters 1 through 5, are modified to allow better organization, to correct typographical errors, to allow exam review procedures and to define lens prescriptions.

Certain definitions previously found in chapter Opt 5 have been moved to chapter Opt 1 in the Definitions section. The sections and references in chapters 1 and 5 have been renumbered accordingly.

Changes in chapter Opt 2 allow for more accurate reflection of actual board and department procedures in leadership of the board and participation in the international association of boards.

Changes in chapter Opt 3 will allow for a procedure by which examination candidates may request review of the exam after a failure and may appeal to the board with a claim of error in scoring. A change in Opt 3.12 specifies more clearly the fee required.

Changes in chapter Opt 4 clarify the single board examination, and specify exactly the reference for the fee.

In chapter Opt 5 the term "lens" is added in section 5.10 (3) when referring to "prescription," in order to specify the type of prescription. The wording clarifies that this prescription refers to lens prescriptions as opposed to drug prescriptions. Further, it is clarified that such prescription shall be signed by the optometrist and marked "prescription." A note clarifies the effect of FTC Rule 16 CFR. S. 456.7 (a) on the release of lens prescriptions. Finally, a section is created to clarify the requirements with respect to release of patient records containing lens prescription specifications.

TEXT OF RULE

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SECTION 1. Opt 1.02 (intro) is created to read:

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Opt 1.02 (intro) In this chapter:

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SECTION 2. Opt 1.02 (1) and (2) are renumbered (2) and (3) and (2) (h) is amended to read:

Opt 1.02 (2) (h) Any procedure listed in s. Opt ~~5.02-(2)~~ 1.02 (4).

SECTION 3. Opt 1.02 (4) is renumbered (6) and (6) (c) is amended to read:

Opt 1.02 (6) (c) Measuring ~~stereopsis~~ stereopsis;

SECTION 4. Opt 2.04 is renumbered 2.02 and 2.02 (title) and 2.02 are amended to read:

Opt 2.02 (title) VICE-CHAIRPERSON. In the event of the ~~chairman's~~ chairperson's absence or incapacity, the ~~vice-chairman~~ vice-chairperson shall exercise the powers of ~~chairman~~ chairperson with the approval of the other board members.

SECTION 5. Opt 2.05 and 2.03 are renumbered 2.03 and 2.04.

SECTION 6. Opt 3.08 is repealed.

SECTION 7. Opt 3.10 is renumbered 3.12 and 3.12 (1) is amended to read:

Opt 3.12 (1) CLINICAL EXAMINATION. An applicant who fails ~~the clinical examination due to the failure of one part of the examination may retake the failed part only. An applicant who fails the clinical examination due to the failure of 2 or more parts of the clinical examination, or who fails to~~ achieve an overall average a grade of 75, shall be required to retake the entire clinical examination. The fee for re-examination shall be as specified in ~~s. RL 4.04-(3)~~ Figure RL 4.04 (3), column 4.

SECTION 8. Opt 3.10 and 3.11 are created to read:

Opt 3.10 FAILURE AND REVIEW. (1) In case of failure of an applicant on the practical examination, all grades below 75 shall be reviewed by the board or by 2 members designated by the chairperson.

(2) An applicant who fails the state board examination may request a review of that examination. The applicant shall file a written request to the board within 30 days of the date on which examination results were mailed.

(3) The time for review shall be limited to 4 hours.

(4) The examination shall be reviewed only by the applicant and in the presence of the proctor.

(5) The proctor shall not respond to inquiries by the applicant regarding allegations of examination error.

(6) Any comments or claims of error regarding specific questions or procedures in the examination may be placed in writing on the provided form. These comments shall be retained and made available to the applicant for use at a subsequent hearing.

(7) An applicant shall be permitted to review the examination only once.

Opt 3.11 CLAIM OF EXAMINATION ERROR. (1) An applicant wishing to claim examination error shall file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include:

(a) The applicant's name and address;

(b) The type of license applied for;

(c) A description of the perceived error, including specific questions or procedures claimed to be in error; and,

(d) The facts which the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The board shall review the claim and notify the applicant in writing of the board's decision and any resulting grade changes.

(3) If the decision does not result in the applicant passing the examination, the applicant may request a hearing under s. RL 1.05, Stats.

SECTION 9. Opt 4.02 (1) (intro.) and (1) (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 60 days prior to the ~~examinations under s. Opt 4.03~~ examination, a completed, sworn application on a form provided by the board. The application shall include:

(1) (c) The fee specified ~~under s. 440.05-(1), Stats~~ in Figure RL 4.04 (3), column 3.

SECTION 10. Opt 5.02 (1), (3) and (4) are renumbered 1.02 (1), (4) and (5).

SECTION 11. Opt 5.02 (2) is renumbered 5.02 (1).

SECTION 12. Opt 5.02 (2) is created to read:

Opt 5.02 (2) "Lens prescription" means a written order which contains the specifications for ophthalmic materials for a particular patient for the purpose of treating the refractive or functional abilities of the visual system or the enhancement of visual performance.

SECTION 13. Opt 5.03 is repealed.

SECTION 14. Opt 5.07 is amended to read:

Opt 5.07 ADEQUATE EQUIPMENT. It shall be unprofessional conduct for an optometrist to fail to have in good working order adequate equipment and instruments as are necessary to perform the minimum visual examination specified in ~~s. Opt 5.02-(4)~~ s. Opt 1.02 (5).

SECTION 15. Opt 5.09 is amended to read:

Opt 5.09 PERFORMING MINIMUM EXAMINATION FOR FITTING OF CONTACT LENSES. Except in cases where the patient is unable to participate, it shall be unprofessional conduct for an optometrist to fail to perform an examination as defined in ~~s. Opt 5.02-(3)~~ s. Opt 1.02 (4) in the fitting of contact lenses for a patient.

SECTION 16. Opt 5.10 (3) is amended to read:

Opt 5.10 (3) It shall be unprofessional conduct for an optometrist to provide a patient with a copy of a lens prescription without considering whether the prescription may have changed, is outdated or may become outdated. In any of these instances, it shall be unprofessional conduct to fail to print or stamp across the face of the ~~record-copy~~ prescription, "Warning: This lens prescription may be outdated and may not be relied upon for proper fit and correction" or, "Warning: This lens prescription expires on _____, and may not be relied upon after this date for a proper fit or correction" or, "Expired." A prescription order shall be signed by a licensed optometrist, and the words "lens prescription" written or typed on the face of the order.

Note: FTC Rule 16 CFR. S. 456.7 (a) requires the release of a spectacle prescription but does not require the release of a contact lens prescription.

SECTION 17. Opt 5.10 (4) is created to read:

Opt 5.10 (4) It shall be unprofessional conduct for an optometrist to fail to release a patient's records in accordance with s. 146.83, Stats. It shall also be unprofessional conduct to release the lens prescription specifications contained in the patient records without indicating that those specifications

do not constitute a legal prescription and that lenses are not to be filled or dispensed from that record. This may be done by stamping or writing on the face of the record containing the lens prescription specifications "This is NOT a prescription and shall not be used to dispense lenses."

SECTION 18. Opt 5.12 is amended to read:

Opt 5.12 SUPERVISION. 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 Opt 1.03.

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 4/20/90

Agency Lynnda Farrell, O.D.
Chairperson
Optometry Examining Board

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CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: April 27, 1990

FILE REF:

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

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Agency: OPTOMETRY EXAMINING BOARD

Clearinghouse Rule: 89-151

Attached is a copy and a certified copy of a final order adopting rules.

Would you please publish these rules in the code.

Thank you.