

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 010-19, was approved by the Governor on January 3, 2019, published in Register No. 757A3 on January 14, 2019, and approved by the Optometry Examining Board on February 7, 2019. This emergency rule was approved by the Governor on February 22, 2019.

ORDER

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

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Optometry Examining Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Optometry Examining Board requires that license applicants pass Parts I, II, and III of the National Board of Examiners in Optometry (NBEO) examination. Part II of the NBEO has an embedded portion on the Treatment and Management of Ocular Disease (TMOD). The TMOD questions, “test knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye,” in accordance with s. 449.04 (2), Stats. Therapeutic pharmaceutical agents include opioids, under s. 961.39, Stats. However, the passing score of Part II is determined as an overall score, so that applicants can fail the TMOD embedded questions yet pass Part II of the examination. The Board needs to amend the administrative rules for the health, safety, and welfare of the people of Wisconsin to clarify that applicants need to pass the TMOD portion as part of Part II.

ANALYSIS

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

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

Explanation of agency authority:

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

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

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

Section 449.04 (1) (c), Stats., requires that a, “person passes an examination approved or conducted by the examining board” in order to be granted a license. Subsection (2) states that, “[t]he examination shall test knowledge regarding general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents and therapeutic pharmaceutical agents, including the treatment of adverse reactions to such pharmaceutical agents, and knowledge regarding the removal of foreign bodies from an eye or from an appendage to the eye,” and that “the examining board may do any of the following:

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

Related statute or rule:

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

Plain language analysis:

The rules for licensure by examination, licensure by endorsement, and late renewal are amended to conform to statute, specifically to clarify that applicants need to pass the TMOD exam in order to meet the statutorily-defined minimum standards.

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

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

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

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

Comparison with rules in adjacent states:

Illinois:

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

Iowa:

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

Michigan:

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

Minnesota:

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

Summary of factual data and analytical methodologies:

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

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

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

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

Fiscal Estimate:

These rules will have no fiscal impact.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Nia.Trammell1@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Helen Leong, Administrative Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366,

Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Helen Leong, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be submitted by the date and time at which the public hearing on these rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Department of Safety and Professional Services' website and in the Wisconsin Administrative Register.

TEXT OF RULE

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

Opt 3.02 (3) Verification of passing parts I, II, ~~and III~~, and the Treatment and Management of Ocular Disease examination of the National Board of Examiners in Optometry examination.

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

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

SECTION 3. Opt 7.05 (2) (b) 2. a. is amended to read:

Opt 7.05 (2) (b) 2. a. Passing parts I, II, ~~and III~~, and the Treatment and Management of Ocular Disease examination of the National Board of Examiners in Optometry examination.

SECTION 4. EFFECTIVE DATE. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Optometry Examining Board