CHAPTER 449

OPTOMETRY EXAMINING BOARD

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Cross−reference: See definitions in s. 440.01.
Cross−reference: See also Opt, Wis. adm. code.

449.01 Definitions. (1) OPTOMETRY. (a) The practice of the profession of optometry is defined as:

1. The employment of any optometric means, including topical ocular diagnostic pharmaceutical agents under s. 449.17, to determine the visual efficiency of the human visual system, including refractive and functional abilities, or to diagnose the presence of ocular disease or ocular manifestations of systemic disease and other departures from normal.

2. The diagnosis and treatment of the refractive and functional ability of the visual system and enhancement of visual performance by any of the following:

a. Prescribing, furnishing, fitting or employing ophthalmic lenses, contact lenses, frames, aids or prosthetic materials.

b. Administering visual training, orthoptics, visual therapy or any other optometric means.

c. Prescribing or administering drugs for ocular therapeutic purposes, dispensing contact lenses that deliver a therapeutic pharmaceutical agent under s. 449.18 (6) (am) 2. b., or removing superficial foreign bodies from the eye or an appendage to the eye under s. 449.18.

3. Examining into the fact, condition or cause of ocular health or disease, or treating or rendering advice regarding a condition or cause of ocular health or disease, by any optometric means or instrumentality.

4. Applying principles or techniques of optometric sciences in the diagnosis, prevention or treatment of a condition or cause of ocular health or disease.

(b) Except as provided in par. (a), the practice of the profession of optometry does not include surgery or medical treatment.

(2) DISPENSING OPTICIANS. A dispensing optician is one who practices optical dispensing. The practice of optical dispensing comprises the taking of necessary facial measurements and the processing, fitting and adjusting of mountings, frames, lenses and kindred products in the filling of prescriptions of duly licensed physicians or optometrists for ophthalmic lenses. Duplications, replacements or reproductions not requiring optometric service may be done without prescription. Nothing herein contained shall change the responsibility of physician to patient, or optometrist to patient.

(4) EXAMINING BOARD. In this chapter, "examining board" means optometry examining board.

History: 1977 c. 83, 280; 1979 c. 32; 1989 a. 31; 1999 a. 85; 2009 a. 168.

449.015 Discrimination prohibited. Any agency of the state, county, municipality or school district shall accept the optometric services of optometrists licensed under this chapter, on the same basis as those of any other person authorized by law to render optometric services.

History: 1999 a. 85 s. 105.

449.02 Licenses; exemptions. (1) No person shall practice optometry within the meaning of this chapter without a license to do so and a valid certificate of registration issued by the examining board, except that a dispensing optician need not be so licensed for the practice of optical dispensing.

(2) This section shall not apply to physicians and surgeons duly licensed as such in Wisconsin nor shall this section apply to the sale of spectacles containing simple lenses of a plus power only at an established place of business incidental to other business conducted therein, without advertising other than price marking on the spectacles, if no attempt is made to test the eyes. The term "simple lens" shall not include bifocals.

(3) This section does not apply to a person who practices optometry under the supervision of an optometrist licensed under this chapter. The examining board shall promulgate rules specifying the conditions for supervision required under this subsection.

History: 2005 a. 297.
Cross−reference: See also ch. Opt 4, Wis. adm. code.

An ophthalmic assistant performing functions within the definition of optometry delegated and supervised by an ophthalmologist is not engaged in the unlawful practice of optometry. A certified optometric technician who performs services within the definition of optometry delegated and supervised by a licensed optometrist is engaged in the unlicensed practice of optometry. 74 Atty. Gen. 146.

449.03 Enforcement. (1) No rule made by the examining board shall expand the practice of optometry or affect the practice of dispensing opticians, nor shall the examining board enact rules which forbid the employment of an optometrist or declare such employment unprofessional conduct, or prohibit the operation of an optometric department by optometrists in a mercantile establishment.

(2) The chairperson or the secretary of the examining board shall cause actions to be instituted for violations of this chapter. The district attorney of the county in which the offense has been committed shall promptly prosecute upon being informed thereof from any source.

History: 1979 c. 162 s. 38 (10); 2005 a. 297; 2011 a. 257 s. 55.
Cross−reference: See also Opt, Wis. adm. code.

Under sub. (1), the board is prohibited from enacting rules that affect the practice of dispensing opticians or forbidding the employment by them of optometrists or declaring such employment unprofessional conduct. Feinberg v. Hasler, 63 Wis. 2d 268, 217 N.W.2d 334 (1974).

449.04 Examination and licensure. (1) The examining board may grant a license to engage in the practice of optometry only to a person who satisfies all of the following conditions:

(a) The person presents proof satisfactory to the examining board that, subject to ss. 111.321, 111.322, and 111.335, he or she does not have an arrest or conviction record.

(b) The person has graduated from an accredited college of optometry approved and recognized by the examining board.

(c) The person passes an examination approved or conducted by the examining board.

(d) The person pays the fee specified in s. 440.05 (1).

(2) The examination shall reasonably relate to the skills likely to be needed for an applicant to practice optometry in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise such skills. The 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. The examination shall also test knowledge of state laws and administrative rules regarding the practice of optometry. 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.

History: 1977 c. 29, 418; 1991 a. 39; 2005 a. 297; 2013 a. 114 ss. 19, 20, 22, 23.
Cross−reference: See also ch. Opt 3, Wis. adm. code.

449.055 Endorsement. The examining board may issue a license and certificate of registration to a person who is licensed in good standing to practice optometry in another state that has substantially similar requirements if all of the following conditions are satisfied:

(1) The person has passed an examination in pathology and practical optometry.

(2) The person passes an examination that tests knowledge of state and federal laws and administrative rules and regulations regarding the practice of optometry.

(3) The person pays the fee specified in s. 440.05 (1).

(4) The person submits satisfactory evidence that the person has actually practiced in the other state for 5 years.

(5) The person satisfies the requirements under s. 449.04 (1) (a) and (b).

(6) The person has completed the study specified in ss. 449.17 (1m) (b) and 449.18 (2) (a) 2. and passes the examinations specified in ss. 449.17 (1m) (c) and 449.18 (2) (a) 3.

History: 2005 a. 297, ss. 16 to 19; 2013 a. 114.

449.06 Renewal; continuing education. (1) Persons practicing optometry shall, on or before the applicable renewal date specified under s. 440.08 (2) (a), register with the department, pay the applicable renewal fee determined by the department under s. 440.03 (9) (a), and provide evidence satisfactory to the examining board that he or she has complied with the rules promulgated under sub. (2m).

(2m) 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.

History: 1977 c. 29; 1991 a. 39, 207; 2005 a. 297; 2007 a. 20.
Cross−reference: See also ch. Opt 7, Wis. adm. code.

449.065 Display of registration. Every practicing optometrist shall display in a conspicuous place, at the entrance of his or her office, the name of the person so practicing and shall keep the certificate of registration issued by the examining board conspicuously displayed in that place of business so that it can easily be seen and read.

History: 2005 a. 297, s. 22.

449.07 Denial, limitation, suspension, revocation, reprimand. (1) The examining board, by order, may reprimand and may deny, limit, suspend or revoke any license or certificate of registration if the licensee or registrant:

(a) Obtained the license or certificate through error or fraud;

(b) Is grossly incompetent;

(c) Is habitually drunk or addicted to the use of habit−forming drugs;

(d) Has been convicted in a court of competent jurisdiction, either within or without this state, of any violation of any law governing the practice of optometry or of any felony, subject to ss. 111.321, 111.322 and 111.335, a certified copy of the record of conviction to be conclusive evidence of such conviction;

(e) Has obtained or sought to obtain anything of value by fraudulent representation in the practice of optometry;

(f) Is guilty of immoral or unprofessional conduct;

(fm) Violates s. 449.17, 449.18 or 449.19;

(g) Continued practice, knowingly having an infectious or contagious disease; or

(h) If the applicant or registrant maintains a professional connection or association with any other person continuing to violate this chapter after 10 days' notice in writing by the examining board.

(3) Upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the examining board may reinstate any license or registration by it suspended or revoked. This subsection does not apply to a license or registration that is suspended under s. 440.13 (2) (c) or that is revoked under s. 440.12.

History: 1975 c. 39, 199; 1977 c. 29, 125, 280; 1977 c. 418 ss. 851, 853; 1979 c. 162; 1981 c. 334 s. 25 (1); 1983 a. 289; 1989 a. 31; 1991 a. 39; 1997 a. 191, 237.

449.08 Unprofessional conduct. (1) Unprofessional conduct includes without limitation because of enumeration:

(a) Any conduct of a character likely to deceive or defraud the public;

(b) Loaning of an optometric license or certificate to anyone;

(d) Splitting or dividing any fee for optometric service with any person, except an associate licensed optometrist; or

(e) Engaging in conduct unbecoming a person licensed to practice.

(2) Unprofessional advertising includes advertising professional superiority or the performance of professional services in a superior manner.

History: 1977 c. 362; 1979 c. 337; 2005 a. 297.
Cross−reference: See also ch. Opt 5, Wis. adm. code.

449.09 Investigations. Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to the conduct of any licensed optometrist or any person who, it has reason to believe, is acting or has acted in such capacity within the state. The person complained against may proceed to review such action of the examining board under ch. 227.

History: 1977 c. 418.

449.10 Advertising. No rule of the examining board, unless intended to regulate false or misleading advertising, may restrict advertising on products and nonvariable services. In this section, "nonvariable services" means services for which a fee can be objectively determined prior to the time the services are rendered.

History: 1977 c. 362.

449.11 Penalties. Any person not lawfully authorized to practice optometry, who shall practice optometry or shall hold himself or herself out as a practitioner thereof, or who shall impersonate another practitioner or who shall violate any provisions of this chapter, or any rule or regulation made under authority thereof, shall be punished for the first offense by a fine not less than $50 nor more than $200, or by imprisonment for not more than 3 months, or both. And for a subsequent offense by a fine not

less than $200 nor more than $500 or by imprisonment for not less than 3 nor more than 6 months, or both.

History: 1979 c. 162 s. 38 (9).

449.12 Interpretation. This chapter is passed in the interests of public health, safety and welfare and its provisions shall be liberally construed to carry out its objects and purposes.

449.17 Use of diagnostic pharmaceuticals. (1) APPLICABILITY. An optometrist may use topical ocular diagnostic pharmaceutical agents only if the optometrist establishes a plan specified in sub. (2) and if one of the following applies:

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

(1m) LICENSES ISSUED BEFORE AUGUST 1, 2006. (a) The examining 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 an examination under par. (c).

(b) In addition to the requirements under par. (c), the examining 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 examining 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 examining board may issue certificates under par. (a) only to optometrists who successfully complete an examination approved or conducted by the examining 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 examining board. The examining board shall periodically review the validity, reliability, and appropriateness of the examination. The examining 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 examining 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 examining 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 examining board.

(2) 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 such agents to appropriate medical services.

(5) The secretary shall, after consultation with the examining board, the medical examining board and the pharmacy examining board, promulgate rules specifying the topical ocular diagnostic pharmaceutical agents which optometrists may utilize in this state.

(8) REIMBURSEMENT PROHIBITED. No optometrist may be reimbursed under s. 49.46 (2) (a) 3. or 49.471 (11) for any increase in charges or separate charge which is attributable to the use of topical ocular diagnostic pharmaceutical agents.

History: 1977 c. 280; 1979 c. 162; 1981 c. 15; 1983 a. 273, 524; 1989 a. 31; 1991 a. 39; 2005 a. 297; 2007 a. 20.

Cross−reference: See also ch. SPS 10, Wis. adm. code.

449.18 Removals from eyes; use of therapeutic pharmaceuticals. (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 examining 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. 449.18, 2003 stats.

(c) The examining 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 examining 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) 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 examining 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 examining board. The examining board shall periodically review the validity, reliability, and appropriateness of the examination that it conducts or approves under this subdivision.

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

(e) 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 examining board.

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

(6) USE OF THERAPEUTIC PHARMACEUTICALS. (am) 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 the rules promulgated under par. (cm).

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

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

b. Dispensing a contact lens that also delivers a therapeutic pharmaceutical agent, if the optometrist is authorized to prescribe or administer the therapeutic pharmaceutical agent under the rules promulgated under par. (cm).

(bm) 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.

(cm) The secretary shall, after consultation with the examining board, the medical examining board and the pharmacy examining board, promulgate rules specifying those therapeutic pharmaceutical agents that may or may not be prescribed or administered.

History: 1989 a. 31; 1991 a. 39; 2005 a. 297; 2007 a. 97; 2009 a. 168.

Cross−reference: See also chs. Opt 6 and SPS 10, Wis. adm. code.

449.19 Referral to other health care professionals. If, during the course of examining a person, an optometrist determines the existence of a pathological condition requiring treatment outside the scope of the practice of optometry, the optometrist shall so advise the person and shall refer the person to an appropriate health care professional, as defined in s. 180.1901 (1m), for further evaluation.

History: 1977 c. 280; 1989 a. 31; 2005 a. 297.

449.20 Civil immunity. No optometrist shall be liable for any civil damages for either of the following:

(1) Reporting in good faith to the department of transportation under s. 146.82 (3) a patient's name and other information relevant to the vision of the patient which in the optometrist's judgment impairs the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

(2) In good faith, not reporting to the department of transportation under s. 146.82 (3) a patient's name and other information relevant to the vision of the patient which in the optometrist's judgment does not impair the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

History: 1987 a. 215.

449.25 Informed consent. (1) Any 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. The reasonable optometrist standard is the standard for informing a patient under this section. The reasonable optometrist standard requires disclosure only of information that a reasonable optometrist would know and disclose under the circumstances. The optometrist's duty to inform the patient under this section does not require disclosure of any of the following:

(a) Detailed technical information that in all probability a patient would not understand.

(b) Risks apparent or known to the patient.

(c) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(d) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(e) Information in cases where the patient is incapable of consenting.

(f) Information about alternate modes of treatment for any condition the optometrist has not included in his or her diagnosis at the time the optometrist informs the patient.

(2) The examining board shall promulgate rules implementing sub. (1).

History: 2013 a. 345.