



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

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CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 01-060

AN ORDER to renumber Opt 5.02 (1) and (1m); to renumber and amend Opt 5.02 (2); to amend Opt 5.10 (3) and Note; and to create Opt 5.02 (1) and (5) and 5.16, relating to contact lens prescription release by optometrists.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

05-22-01 RECEIVED BY LEGISLATIVE COUNCIL.

06-18-01 REPORT SENT TO AGENCY.

RNS:DD:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Should "lens" modify "prescription" as the latter initially appears in the first and last sentences of s. Opt 5.10 (3)?

b. It is suggested that consideration be given to placing s. Opt 5.16 in s. Opt 5.10.

c. Is it necessary to define "replacement contact lens" in light of the following language in s. Opt 5.16, which repeats language from the definition: "following release of the patient from contact lens fitting and initial follow-up care"? Could both the definition and the phrase "for a replacement contact lens" in s. Opt 5.16 be deleted? Also, might the term "replacement contact lens" lead a reader to believe that s. Opt 5.16 applies only to contact lenses that replace older contact lenses?

4. Adequacy of References to Related Statutes, Rules and Forms

The board should examine s. Opt 5.10 (4) to determine whether it needs to be changed. Presumably, an optometrist would still be permitted to release the lens specifications only if the required note were included, but this note would not be required if the specifications were included in a prescription.

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

The second paragraph of the department's analysis does not accurately describe the substance of s. Opt 5.10 (3). Similarly, the last paragraph of the analysis does not accurately describe the substance of s. Opt 5.02 (5).

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 01-)

PROPOSED ORDER

An order of the Optometry Examining Board to renumber Opt 5.02 (1) and (1m); to renumber and amend Opt 5.02 (2); to amend Opt 5.10 (3) and the Note following Opt 5.10 (3); and to create Opt 5.02 (1) and (5) and 5.16, relating to contact lens prescription release by optometrists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 449.08, Stats.

Statutes interpreted: 449.01 (1), 449.07 and 449.08, Stats.

In this proposed rule-making order the Optometry Examining Board amends ch. Opt 5, relating to unprofessional conduct by optometrists.

Section Opt 5.02 (1), (1m) and (2) are renumbered Opt 5.02 (2), (3) and (4). Section Opt 5.10 (3) is amended to clarify that an optometrist is required to provide patients with copies of contact lens prescriptions under all circumstances, even if the prescriptions have changed, are outdated or may become outdated. The Note following s. Opt 5.10 (3) is amended to include a reference to s. Opt 5.16 relating to unprofessional conduct by optometrists for failure to release contact lens prescriptions.

Section Opt 5.02 (1) is created to define "contact lens prescription" and s. Opt 5.02 (5) is created to state that it shall be unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription for replacement contact lenses following release of the patient from contact lens fitting and initial follow-up care.

TEXT OF RULE

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

SECTION 2. Opt 5.02 (1) is created to read:

Opt 5.02 (1) "Contact lens prescription" means a prescription order for a contact lens that includes all of the following:

- (a) The specifications needed to adequately duplicate a contact lens.
- (b) The name, signature and license number of the prescribing optometrist.
- (c) The date of the prescription.
- (d) The date of expiration.
- (e) Provisions for a reasonable number of refills.

SECTION 3. Opt 5.02 (1m) is renumbered Opt 5.02 (3).

SECTION 4. Opt 5.02 (2) is renumbered Opt 5.02 (4) and amended to read:

Opt 5.02 (4) "Lens prescription" means a written order ~~which~~ that 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 5. Opt 5.02 (5) is created to read:

Opt 5.02 (5) "Replacement contact lens" means a contact lens that is dispensed to a patient following contact lens fitting and initial follow-up care.

SECTION 6. Opt 5.10 (3) and the Note following Opt 5.10 (3) are 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~~ In any instance in which a prescription may have changed, is outdated or may become outdated, it shall be unprofessional conduct for an optometrist to fail to print or stamp across the face of the 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: ~~ETC Federal Trade Commission Rule 16 CFR456.7 (a)~~ 456.2 (a) requires the release of a spectacle prescription but does not require the release of a contact lens prescription. Under s. Opt 5.16, it is unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription for replacement contact lens following release of the patient from contact lens fitting and initial follow-up care.

cf OPT 5.10(2)

SECTION 7. Opt 5.16 is created to read:

Opt 5.16 Contact lens prescription release. It shall be unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription for a replacement contact lens following release of the patient from contact lens fitting and initial follow-up care.

Placed in OPT 5.12

(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

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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5/11/01

SEP 14 2001

**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 01-060)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the OPTOMETRY EXAMINING BOARD is submitting in final draft form rules relating to contact lens prescription release by optometrists.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

**STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD**

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 01-060
OPTOMETRY EXAMINING BOARD : (s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

In this proposed rule-making order the Optometry Examining Board amends ch. Opt 5, relating to unprofessional conduct by optometrists.

Section Opt 5.02 (1), (1m) and (2) are renumbered Opt 5.02 (2), (3) and (4). Section Opt 5.10 (3) is amended to clarify that an optometrist is required to provide patients with copies of contact lens prescriptions. The Note following s. Opt 5.10 (3) is amended to include a reference to s. Opt 5.16 relating to unprofessional conduct by optometrists for failure to release contact lens prescriptions.

Section Opt 5.02 (1) is created to define "contact lens prescription" and s. Opt 5.16 is created to state that it shall be unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription following release of the patient from contact lens fitting and initial follow-up care.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on July 13, 2001.

Peter Theo, Madison, WI, representing the Wisconsin Optometric Association, appeared in support of the proposed rules. Written comments in support of the proposed rules were received from Franklin D. Rozak, Secretary-Treasurer, National Association of Optometrists and Opticians, Marblehead, OH.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2.b. It is suggested that consideration be given to placing s. Opt 5.16 in s. Opt 5.10.

Response: Following consideration of the Council's recommendations, the board concluded that a separate provision in the rules relating to contact lens prescription release would place emphasis upon the requirement and make it easier to refer to.

Comment 4. The board should examine s. Opt 5.10 (4) to determine whether it needs to be changed. Presumably, an optometrist would still be permitted to release the lens specifications only if the required note were included, but this note would not be required if the specifications were included in a prescription.

Response: Following consideration of the Council's recommendations, the board concluded that no revisions to the rule are required.

The remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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8/7/01

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 01-060)

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- (a) The specifications needed to adequately duplicate a contact lens.

(b) The name, signature and license number of the prescribing optometrist.

(c) The date of the prescription.

(d) The date of expiration.

(e) Provisions for a reasonable number of refills.

SECTION 3. Opt 5.02 (1m) is renumbered Opt 5.02 (3).

SECTION 4. Opt 5.02 (2) is renumbered Opt 5.02 (4) and amended to read:

Opt 5.02 (4) "Lens prescription" means a written order ~~which that~~ 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 5. Opt 5.10 (3) and the Note following Opt 5.10 (3) are 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~~ In any instance in which a lens prescription may have changed, is outdated or may become outdated. ~~In any of these instances,~~ it shall be unprofessional conduct for an optometrist to fail to print or stamp across the face of the 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 lens prescription order shall be signed by a licensed optometrist, and the words "lens prescription" written or typed on the face of the order.

Note: ~~ETC Federal Trade Commission Rule 16 CFR456.7 (a)~~ 456.2 (a) requires the release of a spectacle prescription but does not require the release of a contact lens prescription. Under s. Opt 5.16, it is unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription following release of the patient from contact lens fitting and initial follow-up care.

SECTION 6. Opt 5.16 is created to read:

Opt 5.16 Contact lens prescription release. It shall be unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription following release of the patient from contact lens fitting and initial follow-up care.

(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

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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