

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : NOTICE OF PUBLIC HEARING
OPTOMETRY EXAMINING BOARD : ON EMERGENCY RULES

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Optometry Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 449.06 (2m), Stats., as created by 2005 Wisconsin Act 297, and interpreting 449.06 (1) and (2m), Stats., the Optometry Examining Board will hold a public hearing at the time and place indicated below to consider an order to create ch. Opt 8, relating to continuing education relating to optometrists.

Hearing Date, Time and Location

Date: December 7, 2006
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121C
Madison, Wisconsin

APPEARANCES AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by December 7, 2006, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 449.06 (1) and (2m), 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:

The Optometry Examining Board is authorized under s. 449.06 (2m), Stats., as amended by 2005 Wisconsin Act 297, to promulgate rules relating to continuing education requirements for optometrists.

Related statute or rule:

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

Plain language analysis:

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 optometrist 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 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.

(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:

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:

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:

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).

There 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:

Minnesota's administrative rules relating to the practice of optometry are under their Chapter 6500 and maybe 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:

Under the existing rules, which are now outdated due to changes in statute, the only optometrists required to take continuing education course work – 30 hours of board approved continuing education in the biennium – 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 in the biennium 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 (max cost per hour 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.

Anticipated costs incurred by private sector:

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

Fiscal estimate:

The department estimates that this rule will have no significant fiscal impact.

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:

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.

TEXT OF RULE

SECTION 1. 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 the 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 shall 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 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. (10), 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 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) The following criteria will be considered in the approval process:

(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) 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.

(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, Missouri 63141, (800) 365-2219. The American Academy of Optometry may be contacted at 6110 Executive Blvd., Suite 506, Rockville, MD 20852, (301) 984-1441.

FINDING OF EMERGENCY

SECTION 58. Nonstatutory provisions of 2005 Wisconsin Act 297 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.”

This emergency rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.