

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 21-005)

PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 1.02 (2), 5.03 (23), 5.10 (1) (d), 5.11, and 5.14; to amend Opt 5.03 (16), 5.03 (17) (a) 3., 5.03 (17) (b) 3., and 5.10 (1) (f); to repeal and recreate Opt 1.02 (4) and (5); and to create Opt 1.02 (5m) and 5.045 (3), relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 449.03, 449.08 and 449.25, Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a) and 449.25, Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., states that the examining board, “[s]hall 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) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 449.25, Stats., provides that the examining board shall promulgate rules relating to informed consent, stating that, “[a]ny 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....”

Related statute or rule:

Sections 449.01 (2), 449.03 (1), and 990.01 (20), Stats.

Plain language analysis:

The proposed rule clarifies that it is unprofessional conduct for an optometrist to fail to conduct certain procedures during a minimum eye examination and a minimum eye examination for the fitting of contact lenses.

It also removes the requirement that optometrists provide a written disclosure to extended wear contact lens patients describing the risks associated with extended wear contact lenses. The language in the rule is outdated and rewriting the disclosure statement would place unnecessary administrative requirements on optometrists. The public is protected by s. 449.25 (1), Stats., designating a “reasonable optometrist” standard requiring “...disclosure only of information that a reasonable optometrist would know and disclose under the circumstances.”

The proposed rule removes the requirement that optometrists make a notation in the patient file that ophthalmic lenses have been verified prior to dispensing and that they verify that ophthalmic lenses meet an obsolete American National Institute Standards, Inc. (ANSI) standard prior to dispensing.

It also clarifies that where the patient is a minor or is an incompetent person, informed consent must be received from the patient’s parent or legal guardian prior to treatment.

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

No existing or proposed federal regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:**Comparison with rules in adjacent states:****Illinois:**

No existing or proposed Illinois regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Iowa:

No existing or proposed Iowa regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Michigan:

No existing or proposed Michigan regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Minnesota:

No existing or proposed Minnesota regulations relate to disclosure to patients of risks associated with extended wear contact lens or verification of technical standards for ophthalmic lenses prior to dispensing to a patient.

Summary of factual data and analytical methodologies:

The Optometry Examining Board performed a comprehensive review of chapter Opt 5. This rule project reflects the Board's efforts to revise the chapter for clarity, remove obsolete provisions, and ensure the chapter is current with professional standards and practices.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Attorney, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

A public hearing was held on March 25, 2021.

TEXT OF RULE

SECTION 1: Opt 1.02 (2) is repealed.

SECTION 2: Opt 1.02 (4) and (5) are repealed and recreated to read:

Opt 1.02 (4) “Minimum eye examination” means performance of all of the following procedures:

- (a) Recording a complete case history of the patient.
- (b) Measuring far and near visual acuity.
- (c) Conducting an internal and external examination of the eye and adnexa.
- (d) Measuring corneal curvature.
- (e) Obtaining objective measurement of refractive error.
- (f) Evaluating convergence and accommodation.
- (g) Obtaining far and near refraction.
- (h) Evaluating muscle balance.
- (i) Measuring intraocular pressure.
- (j) Recording spectacle prescription including far and near visual acuity.

Opt 1.02 (5): “Minimum eye examination for the fitting of contact lenses” means the performance of all of the following procedures:

- (a) Performing the minimum eye examination procedures under sub. (4).
- (b) Determining whether a patient may safely and comfortably wear contact lenses.
- (c) Using a spectacle prescription as a basis for selecting, designing, manufacturing, or duplicating a contact lens.
- (d) Placing a trial contact lens upon the eye of a patient for diagnostic purposes.
- (e) Evaluating the physical fit of the trial contact lens.
- (f) Using a phoropter, hand-held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens.
- (g) Determining contact lens specifications.
- (h) Counseling the patient on all the following:
 - 1. The proper care and use of the prescribed contact lenses.
 - 2. The appropriate contact lens wearing schedule.
 - 3. Contact lens replacement schedule.
- (i) When contact lenses are prescribed for extended wear, informing the patient of the potential risks or complications.
- (j) Performing progress evaluations and recording in the patient record the recommended date of the patient's next visit.

SECTION 3: Opt 1.02 (5m) is created to read:

Opt 1.02 (5m) “Minor” has the meaning given in s. 990.01 (20), Stats.

SECTION 4: Opt 5.03 (16) is amended to read:

Opt 5.03 (16) Failing to have in good working order adequate equipment and instruments as are necessary to perform the minimum eye examination procedures specified in s. Opt. 1.02 ~~(5)~~ (4).

SECTION 5: Opt 5.03 (17) (a) 3. is amended to read:

Opt 5.03 (17) (a) 3. ~~An~~ A minimum eye examination for the fitting of contact lenses as defined in s. Opt 1.02 ~~(4)~~ (5).

SECTION 6: Opt 5.03 (17) (b) 3. is amended to read:

Opt 5.03 (17) (b) 3. Where written verification of all examination findings has been received from a licensed optometrist or an ophthalmologist, stating that a minimum eye examination, as defined in s. Opt 1.02 ~~(5)~~ (4), has been performed for the patient within the 6 month period immediately preceding the date of the patient's visit.

SECTION 7: Opt 5.03 (23) is repealed.

SECTION 8: Opt 5.045 (3) is created to read:

Opt 5.045 (3) If the patient is a minor or incompetent, the patient's parent or legal guardian shall be informed of all disclosures required under sub. (1).

SECTION 9: Opt 5.10 (1) (d) is repealed.

SECTION 10: Opt 5.10 (1) (f) is amended to read:

Opt 5.10 (1) (f) Documentation that alternate modes of treatment have been communicated to the patient and prior informed consent has been obtained from the patient. If the patient is a minor or incompetent, documentation that prior consent for treatment was received from the patient's parent or legal guardian.

SECTION 11: Opt 5.11 is repealed.

SECTION 12: Opt 5.14 is repealed.

SECTION 13: EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)

This Proposed Order of the Optometry Examining Board is approved for submission to the Governor and Legislature.

Dated _____
_____ Chairperson