



VIRTUAL TELECONFERENCE

OPTOMETRY EXAMINING BOARD **Room 121A, 1400 East Washington Avenue, Madison** **Contact: Thomas Ryan (608) 266-2112** **October 27, 2016**

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.

AGENDA

9:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1-3)

B. Approval of Minutes – March 31, 2016 (4-6)

C. Administrative Matters

- 1) Staff Updates
- 2) Board Member – Term Expiration Date
 - a. Ann Meier Carli – 07/01/2014
 - b. Richard Foss – 07/01/2017
 - c. Brian Hammes – 07/01/2019
 - d. Mark Jenkins – 07/01/2016
 - e. Robert Schulz – 07/01/2020
- 3) Recusal Information **(7-8)**

D. Passing of Dr. Victor Connors – Board Discussion

E. Legislative and Administrative Rule Matters – Discussion and Consideration (9-25)

- 1) Adoption Order Clearinghouse Rule 15-079 Relating to Board Organization
- 2) Adoption Order Clearinghouse Rule 15-078 Relating to Exam, Unprofessional Conduct and Renewal
- 3) Proposal for Amending Opt 8 Relating to Continuing Education
- 4) Update on Legislation and Pending or Possible Rulemaking Projects

F. National Transportation Safety Board (NTSB) Safety Recommendations for Prescribing Controlled Substances – Discussion and Consideration (26-31)

G. Speaking Engagement(s), Travel, or Public Relation Request(s) – Discussion and Consideration

- 1) Travel Report from Dr. Carli on Association of Regulatory Boards of Optometry (ARBO) Annual Meeting – June 26-28, 2016 – Boston, MA **(32-36)**
 - a. ARBO Letter to Members **(37-39)**

H. Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Administrative Updates
- 3) Education and Examination Matters
- 4) Credentialing Matters
- 5) Practice Matters
- 6) Legislation/Administrative Rule Matters
- 7) Liaison Reports
- 8) Informational Items
- 9) Disciplinary Matters
- 10) Presentations of Petitions for Summary Suspension
- 11) Presentation of Proposed Stipulations, Final Decisions and Orders
- 12) Presentation of Proposed Decisions
- 13) Presentation of Interim Orders
- 14) Petitions for Re-Hearing
- 15) Petitions for Assessments
- 16) Petitions to Vacate Orders
- 17) Petitions for Designation of Hearing Examiner
- 18) Requests for Disciplinary Proceeding Presentations
- 19) Motions
- 20) Petitions
- 21) Appearances from Requests Received or Renewed
- 22) Speaking Engagement(s), Travel, or Public Relation Request(s)

I. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.).

J. Deliberation on Division of Legal Services and Compliance (DLSC) Matters

- 1) Proposed Stipulation(s), Final Decisions and Order(s)
 - a. 15 OPT 005 – Darwin Chentnik, O.D. **(40-46)**

K. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) Disciplinary Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Proposed Stipulations, Final Decisions and Order
- 8) Administrative Warnings
- 9) Proposed Decisions
- 10) Matters Relating to Costs
- 11) Case Closings
- 12) Case Status Report
- 13) Proposed Interim Orders
- 14) Petitions for Assessments and Evaluations
- 15) Petitions to Vacate Orders

- 16) Remedial Education Cases
- 17) Motions
- 18) Petitions for Re-Hearing
- 19) Appearances from Requests Received or Renewed

L. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

M. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

N. Open Session Items Noticed Above not Completed in the Initial Open Session

ADJOURNMENT

The Next Scheduled Meeting is February 16, 2017.

**OPTOMETRY EXAMINING BOARD
MEETING MINUTES
MARCH 31, 2016**

PRESENT: Ann Meier Carli, Victor Connors, Richard Foss, Mark Jenkins (*via GoToMeeting*)

EXCUSED: Brian Hammes, Robert Schulz

STAFF: Thomas Ryan - Executive Director, Nilajah Hardin - Bureau Assistant, Sharon Henes – Administrative Rules Coordinator and other DSPS Staff

CALL TO ORDER

Ann Meier Carli, Chair, called the meeting to order at 9:12 a.m. A quorum of four (4) members was confirmed.

ADOPTION OF AGENDA

MOTION: Victor Connors moved, seconded by Ann Meier Carli, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

MOTION: Richard Foss moved, seconded by Victor Connors, to approve the minutes of February 4, 2016 as published. Motion carried unanimously.

LEGISLATIVE AND ADMINISTRATIVE RULE MATTERS

Update on Opt 2 and 3, 5, 7

MOTION: Ann Meier Carli moved, seconded by Mark Jenkins, to approve the Legislative Report and Draft for Clearinghouse Rule 15-078 revising Opt 3, 5, 7 with the amendment of retaining Opt 5.11(2) for submission to the Governor's Office and Legislature. Motion carried unanimously.

MOTION: Richard Foss moved, seconded by Victor Connors, to request DSPS staff draft a Scope Statement revising Opt 5.11 (2). Motion carried unanimously.

Draft of Opt 8 Relating to Continuing Education

MOTION: Richard Foss moved, seconded by Victor Connors, to authorize the Chair to approve the preliminary rule draft of Opt 8 relating to Continuing Education for posting of economic impact comments and submission to the Clearinghouse. Motion carried unanimously.

SPEAKING ENGAGEMENT(S), TRAVEL, OR PUBLIC RELATION REQUEST(S)

2016 National Board of Examiners in Optometry (NBEO) Annual Workshop – June 26, 2016 – Boston, MA

MOTION: Victor Connors moved, seconded by Richard Foss, to designate Ann Meier Carli, as the Board's delegate, to attend the 2016 National Board of Examiners in Optometry (NBEO) Annual Workshop on June 26, 2016 in Boston, MA and to authorize travel. Motion carried unanimously.

2016 Association of Regulatory Boards of Optometry (ARBO) Annual Meeting – June 26-28, 2016 – Boston, MA

MOTION: Victor Connors moved, seconded by Richard Foss, to designate Ann Meier Carli, as the Board's delegate, to attend the 2016 Association of Regulatory Boards of Optometry (ARBO) Annual Meeting on June 26-28, 2016 in Boston, MA and to authorize travel. Motion carried unanimously.

CLOSED SESSION MOTION

MOTION: Mark Jenkins moved seconded by Ann Meier Carli, to convene to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 440.205, Stats.); to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and to confer with legal counsel (s. 19.85(1)(g), Stats.). Ann Meier Carli read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Ann Meier Carli- yes; Victor Connors-yes; Richard Foss-yes; Mark Jenkins-yes. Motion carried unanimously.

The Board convened into Closed Session at 10:52 a.m.

RECONVENE TO OPEN SESSION

MOTION: Ann Meier Carli moved, seconded by Richard Foss to reconvene in Open Session at 10:54 a.m. Motion carried unanimously.

VOTING ON ITEMS CONSIDERED OR DELIBERATED ON IN CLOSED SESSION

MOTION: Mark Jenkins moved, seconded by Victor Connors, to affirm all motions made in closed session. Motion carried unanimously.

DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

Case Closings

15 OPT 004 – J.S.

MOTION: Ann Meier Carli moved, seconded by Victor Connors, to close DLSC case number 15 OPT 004 (J.S.), for Insufficient Evidence. Motion carried unanimously.

ADJOURNMENT

MOTION: Victor Connors moved, seconded by Richard Foss, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:32 A.M.

DRAFT

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Amber Cardenas, Board Counsel		2) Date When Request Submitted: 10.4.2016 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections:			
4) Meeting Date:	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Board Member Recusal	
7) Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Review information regarding ethical and legal obligations to recuse on certain matters at meetings.			
11) Authorization			
Signature of person making this request		Date	
s/Amber Cardenas		10.4.2016	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Recusal

Board members are charged with making decisions that objectively represent the voice of the public, members of the profession, and those seeking entry into the profession. This means that as a board member you are not an advocate for a private interest group or professional association. As a public official, you are held to the highest standards of ethical and professional conduct, and should strive to avoid any relationship, activity or position that may influence the performance of your official duties as a board member.

It follows that you must recuse yourself from any conflict of interest that would compromise your neutrality in making decisions on the board. Ask yourself, “can I decide the issue, fairly and without bias, prejudice, or the impression or appearance of impropriety?” If not, you should recuse from the matter.

A conflict of interest is a type of interest that would result in some benefit, perceived benefit to you, or a bias or perceived bias in favor of or against a particular matter. Under any of the above circumstances, you may have an ethical duty to recuse. Factors to consider in deciding whether to recuse are whether the issue at hand involves a colleague, friend, family member or someone with a close business or social relationship. If yes, then it may be proper to recuse yourself from the matter. The more remote the relationship, professional association, or knowledge becomes, the further you may be removed from bias. You must consider whether you can render an impartial and unbiased decision.

Finally, when acting as a case advisor, you have a legal duty to recuse when the case involves a **contested matter** which is being deliberated and voted upon.

Examples include:

- Reviews of Administrative Warnings
- Petitions for Summary Suspension
- Complaints for Probable Cause (Med Board)
- Administrative Law Judge Proposed Decision and Orders (ALJ PDOs).

The Case Advisor **must** recuse him or herself and leave the room for any contested matter. Board Counsel should be present for contested cases to answer any legal questions and to provide information to the prosecutor should the case be remanded.

The Department of Safety and Professional Services greatly appreciates your willingness to serve the public and those in your profession. If there are any questions about whether a Board member should recuse, please contact Board Legal Counsel.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Sharon Henes Administrative Rules Coordinator		2) Date When Request Submitted: 17 October 2016 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date:</small> <ul style="list-style-type: none"> ▪ 8 business days before the meeting 	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 27 October 2016	5) Attachments: <input type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislation and Rule Matters – Discussion and Consideration 1. Adoption Order CR 15-079 Relating to Board Organization 2. Adoption Order CR 15-078 Relating to Exam, Unprofessional Conduct and Renewal 3. Proposal for Amending Opt 8 Relating to Continuing Education 4. Update on Pending and Possible Rulemaking Projects	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) Authorization			
<i>Sharon Henes</i>		<i>17 October 2016</i>	
<hr/> Signature of person making this request		<hr/> Date	
<hr/> Supervisor (if required)		<hr/> Date	
<hr/> Executive Director signature (indicates approval to add post agenda deadline item to agenda)		<hr/> Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 15-079)

ORDER

An order of the Optometry Examining Board to repeal ch. Opt 2 relating to organization of the board.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 15.08(5)(b), Stats.

Statutory authority: s. 15.08(5)(b), Stats.

Explanation of agency authority:

Under 15.08(5)(b), Stats, each 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.

Related statute or rule: N/A

Plain language analysis:

Section 1 repeals chapter Opt 2. Chapter Opt 2 was repealed and recreated in 1971. These rules for governing the board are now duplicative or obsolete. The statutes provide for frequency of meetings. The Board does not follow the latest copyright of Robert's Rules while conducting business. The board, specifically the secretary of the board, does not receive the voucher for membership in the international association of boards. The Board may send a delegate to a meeting without specifying in rule and the statute.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Conduct of business or parliamentary procedure is not addressed in statutes or rules. Membership in associations is not addressed in statutes or rules.

Iowa: Conduct of business or parliamentary procedure is not addressed in statutes or rules. Iowa statutes allow each board to maintain a membership in the national organization of the regulatory boards of its profession to be paid from board funds.

Michigan: Conduct of business or parliamentary procedure is not addressed in statutes or rules. Membership in associations is not addressed in statutes or rules.

Minnesota: Conduct of business or parliamentary procedure is not addressed in statutes or rules. Membership in associations is not addressed in statutes or rules.

Summary of factual data and analytical methodologies:

In reviewing the rules, the Board determined this chapter is obsolete or duplicative. The chapter was created in 1971.

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

The rule was posted for economic comments and none were received. This rule only impacts the operation of the Board and does not have any economic effect.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is 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 Jeff.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

TEXT OF RULE

SECTION 1. Chapter Opt 2 is repealed.

SECTION 2. 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)

Dated _____

Agency _____

Member of the Board
Optometry Examining Board

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 15-078)

ORDER

An order of the Optometry Examining Board to repeal Opt 3.03, 3.04, 3.05, 3.06, 3.09, 3.10, 3.11, 3.12, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10 (3) and (4), 5.11 (1), 5.12, 5.13, 5.15 and 5.16; to consolidate, renumber and amend Opt 7.03 and 7.04; to amend Opt 5.01, 5.02 (3), 5.10 (1) (intro), 5.10 (2) and 5.14 (1); to repeal and recreate Opt 3.02, 3.07 and 7.05; and to create Opt 5.03, 5.045, 5.10 (1) (f), and 7.06, relating to licensure applications, renewals, reinstatements, unprofessional conduct and informed consent.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 449.04, 449.06, 449.07, 449.08

Statutory authority: ss. 15.08 (5) (b), 440.071, 440.08 (3) (b) and 449.25 (2)

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular profession. s. 15.08 (5) (b)

The credentialing board may not require a person to complete any postsecondary education or other program before the person is eligible to take an examination for a credential the credentialing board grants or issues. s. 440.071(1), Wis. Stats.

The 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, in addition to the applicable requirements for renewal under ch. 449, that the examining board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the examination requirements that must be completed in order to obtain an initial credential from the examining board. s. 440.08 (3) (b), Wis. Stats.

The board shall promulgate rules implementing informed consent standard. s. 449.25 (2), Wis. Stats.

Related statute or rule: N/A

Plain language analysis:

This proposed rule updates the Opt 3 and Opt 5 chapters

Section 2 indicates the requirements for an application rather than the requirements for examination. The change is necessitated by 2013 Act 114 which prohibits a postsecondary education or other program be completed before the person is eligible to take an examination.

Section 3 repeals examination provisions which are redundant or obsolete.

Section 4 repeals and recreates the passing scores provision in order to be more precise. The passing score on each examination is determined by the board and the board may adopt the recommended passing score.

Section 5 repeals examination provisions which are obsolete or redundant.

Section 6 amends the intent of the chapter to specify the actions the board may take against a licensee.

Section 7 clarifies grossly incompetent includes the failure to have working equipment to do a minimum eye exam.

Section 8 creates a numeration of items which constitute unprofessional conduct in a clear, concise and updated manner. As a result, Sections 9, 11, 15, 16, 17 and 19 repeal provisions which are included in the new Opt 5.03.

Section 10 creates the informed consent reasonable optometrist standard required under 2013 Act 345.

Sections 12, 13 and 14 update the recordkeeping requirements. These sections are primarily clean-up language with the exception of the creation of a provision to reflect that documentation of obtaining informed consent is required in the patient's records.

Section 18 cleans-up language resulting from the new Opt 5.03.

Section 20 consolidates Opt 7.03 and 7.04 and updates the language to reflect that the renewal fee is no longer listed in statutes but determined by a statutory process.

Section 21 recreates the late renewal provisions to clarify the different requirements based upon whether the late renewal occurs within or after 5 years. Renewal within 5 years requires payment of the fees (renewal and late) and attesting to completion of the continuing education requirements. Renewal after 5 years requires payment of the renewal and late fees, and either proof of an active license in another state or passing the national and state exams and completion of 30 hours of approved continuing education to ensure competency.

Section 22 creates a new provision relating to reinstatement of a credential. This provision pertains to a person who has not renewed their license for more than 5 years with unmet requirements from a previous disciplinary action or the license has been surrendered or revoked. A person may apply to have the credential reinstated by submitting evidence of completion of any applicable disciplinary requirements, rehabilitation or change in circumstances warranting reinstatement and if the person has not held a license in more than 5 years completion of the requirements for late renewal after 5 years.

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

The only federal regulation related to this rule is the Federal Trade Commission Rules 16 CFR 315.3 and CFR 456.02 requires the release of spectacle and contact lens prescriptions to the patient at no cost.

Comparison with rules in adjacent states:

Illinois: Illinois lists the requirements for licensure (and not the requirements for examination). Illinois lists grounds for discipline including conviction, misrepresentation, professional incompetence or gross negligence, fraud, addiction to alcohol or drugs, discipline by another state, practice outside the scope, immoral conduct, failure to perform a minimum eye examination, gross and willful overcharging for professional services, and misleading advertising. Renewal of a license after three years requires payment of fees, proof of current certification in cardiopulmonary resuscitation, completion of continuing education requirements, evidence of education or experience of fitness to practice or passage of Part III of the national examination.

Iowa: Iowa lists the requirements for licensure (and not the requirements for examination). Iowa lists the grounds for discipline including fraud, professional incompetency, practice outside the scope of the profession, misleading advertising, habitual intoxication or addiction, diversion of drugs, falsification of records, negligence, conviction of a crime related to the profession, disciplinary action in another state; violation of board orders, and unethical conduct. A late renewal for five years or less requires verification of license in other jurisdictions and completion of 50 of continuing education within 2 years preceding renewal. A late renewal more than 5 years requires verification of license in other jurisdiction, completion of 100 hours of continuing education with 2 years of renewal or current CELMO certification and 50 hours of continuing education within 2 years of renewal. A license which has been revoked, suspended or surrendered must meet any unmet disciplinary requirements, provide evidence of facts sufficient to enable the board to determine that the basis no longer exists and it is in the public interest for the license to be reinstated.

Michigan: Michigan lists the requirements for licensure (and not the requirements for examination). Michigan does not list unprofessional conduct activities. After a license has lapse, it can be renewed with the submission of fees, 40 hours of continuing education completed within the 2 year period immediately preceding renewal and a minimum score of 75 on the Michigan laws and rules.

Minnesota: Minnesota lists the requirements for licensure (and not the requirements for examination). Minnesota does not list unprofessional conduct activities. Reinstatement of an expired license (late renewal) requires payment of renewal and penalty fees and proof of completion of continuing education. Reinstatement of a revoked or suspended license requires evidence of full rehabilitation from the offense and complies with all other reasonable conditions imposed by the board.

Summary of factual data and analytical methodologies:

The Board reviewed, updated and reorganized the chapters to remove obsolete provisions, reflect current practices and technologies and clarify provisions. In addition, the Board implemented 2013 Act 114 and 2013 Act 345.

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

Economic impact comments were solicited by posting the proposed rule for 14 days and no comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is 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 Jeff.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

TEXT OF RULE

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

EXAMINATION FOR LICENSURE

SECTION 2. Opt 3.02 is repealed and recreated:

Opt 3.02 Application. An applicant for licensure as an optometrist shall submit all of the following:

- (1) An application and required fee under s. 440.05, Stats.
- (2) Official documentation of graduation from a program accredited by the Accreditation Council on Optometric Education (ACOE).
- (3) Verification of passing parts I, II and III of the National Board of Examiners in Optometry examination.
- (4) Verification of passing the examination assessing knowledge of state laws and administrative rules regarding the practice of optometry.
- (5) If the applicant has an arrest or conviction record, documentation necessary for the board to determine whether the circumstances substantially relate to the practice of optometry, subject to ss. 111.321, 111.322 and 111.335, Stats.

SECTION 3. Opt 3.03, 3.04, 3.05, and 3.06 are repealed.

SECTION 4. Opt 3.07 is repealed and recreated to read:

Opt 3.07. Passing scores. The passing score on each examination is determined by the board to represent minimum competence. The board may adopt the recommended passing score of the examination provider.

SECTION 5. Opt 3.09, 3.10, 3.11 and 3.12 are repealed.

SECTION 6. Opt 5.01 is amended to read:

Opt 5.01 Intent. The intent of the board in adopting the rules in this chapter is to establish minimum standards of conduct for optometrist and to specify reasons ~~for taking disciplinary action against a licensee~~ the board may reprimand, deny, limit, suspend or revoke any license or certificate of registration.

SECTION 7. Opt 5.02 (3) is amended to read:

Opt 5.02(3) “Grossly incompetent” ~~as that term is used in s. 449.07(1)(b), Stats.,~~ means the failure of a licensee or certificate holder to exercise that degree of care and skill which is exercised by the average practitioner who holds the same type of license or certificate, acting in the same or similar circumstances. Grossly incompetent specifically includes ~~the inability to proficiently operate equipment and instruments described in s. Opt 5.07~~ the failure to have in good working order adequate equipment and instruments as are necessary to perform the minimum eye examination.

SECTION 8. Opt 5.03 is created to read:

Opt 5.03 Unprofessional Conduct. Unprofessional conduct by an optometrist includes any of the following:

- (1) Engaging in any practice which constitutes a danger to health, welfare, or safety of a patient or the public.
- (2) Engaging in conduct in the practice of optometry which evidences a lack of knowledge or ability to apply professional principles or skills.
- (3) Practicing or attempting to practice beyond the scope of practice.

- (4) Practicing in a manner which demonstrates the optometrist is grossly incompetent.
- (5) Obtaining a license through fraud.
- (6) Obtaining or attempting to obtain anything of value by fraudulent representation in the practice of optometry.
- (7) Practicing or attempting to practice while the ability to perform services is impaired by physical, mental or emotional disorder, drugs, or alcohol.
- (8) Practicing while knowingly having an infectious or contagious disease.
- (9) Any conduct of a character likely to deceive or defraud the public.
- (10) Loaning of an optometric license or certificate to anyone.
- (11) Splitting or dividing any fee for optometric service with any person, except an associate licensed optometrist.
- (12) Using the title "Doctor", or the initials "Dr.", in printed form unless the optometrist has been granted the title of doctor of optometry by an optometric college and unless the optometrist indicates in printing in the same communication that he or she is an optometrist.
- (13) Failing to notify the board of any change in address or change in location of practice within 30 days.
- (14) Failing to furnish to the board upon request information concerning the mode and location of practice.
- (15) Failing to permit the board or a board representative to inspect his or her office, equipment and records during regular office hours.
- (16) Failing to have in good working order adequate equipment and instruments as are necessary to perform the minimum eye examination specified in s. Opt. 1.02 (5).
- (17) (a) Except as provided in par. (b), failing to perform the minimum eye examination at any of the following:
 1. The patient's initial examination with the optometrist.
 2. Any examination conducted more than one year after a minimum eye examination.
 3. An examination for the fitting of contact lenses as defined in s. Opt. 1.02 (4).(b) It shall not be unprofessional conduct to fail to perform the minimum eye examination in any of the following instances:
 1. Where the patient refuses or is unable to participate in any procedure of the minimum eye examination.
 2. At an examination for the diagnosis and management of eye disease or for the removal of superficial foreign bodies from an eye or from an appendage to the eye.
 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), has been performed for the patient within the 6 month period immediately preceding the date of the patient's visit.
 4. Where a limited eye screening is performed.
- (18) Advertising in a manner that is false, fraudulent, misleading, or deceptive including any of the following:
 - (a) Statements creating false, fraudulent, or unjustified expectations of favorable results including advertising professional superiority or the performance of professional services in a superior manner.
 - (b) Making comparisons with other optometrists which are false, fraudulent, misleading or deceptive.

- (c) Statements containing representations that would be likely to cause a reasonable person to misunderstand or be deceived.
 - (d) Seeking to obtain patients by advertising or other forms of solicitation in a manner that is false, fraudulent, misleading, or deceptive.
- (19) Delegating the prescribing of pharmaceutical agents or the removal of foreign bodies from an eye or from an appendage to the eye, to an unlicensed person.
- (20) Delegating the performance of tasks related to the practice of optometry to an unlicensed person that exceeds that person's competence, education, training, or experience.
- (21) Failing to exercise supervision over an unlicensed person, as provided under s. Opt 1.03.
- (22) Failing to record and include in each patient's record the information required under s. Opt 5.10.
- (23) Failing to provide a written disclosure to any patient receiving extended-wear contact lenses as required under s. Opt 5.14.
- (24) Failing to release, at no cost to the patient, a copy of the patient's spectacle lens prescription or contact lens prescription following release of the patient from contact lens fitting and initial follow-up care.
- Note: Federal Trade Commission Rules 16 CFR 315.3 and CFR 456.2 require the release of spectacle and contact lens prescriptions.
- (25) Failing to release a patient's records in accordance with s. 146.83, Stats.
- (26) Failing to obtain informed consent under s. Opt 5.045.
- (27) Violating any provision of ch. 449, Stats., or any rule of the board.

SECTION 9. Opt 5.04 is repealed.

SECTION 10. Opt 5.045 is created to read:

- Opt 5.045. 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.
- (2) 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.

SECTION 11. Opt 5.05, 5.06, 5.07, 5.08, and 5.09 are repealed.

SECTION 12. Opt 5.10 (1) (intro) is amended to read:

Opt 5.10 (1) (intro) ~~It shall be unprofessional conduct for an~~ An optometrist ~~to fail to~~ shall record and include in each patient's record all of the following information:

SECTION 13. Opt 5.10(1)(f) is created to read:

Opt 5.10 (1) (f) Documentation that alternate modes of treatment have been communicated to the patient and that informed consent has been obtained from the patient.

SECTION 14. Opt 5.10 (2) is amended to read:

Opt 5.10 (2) ~~It shall be unprofessional conduct to fail to maintain patient~~ Patient records shall be maintained for at least 6 years.

SECTION 15. Opt 5.10 (3) and (4) are repealed:

SECTION 16. Opt 5.11 (1) is repealed.

SECTION 17. Opt 5.12 and 5.13 are repealed.

SECTION 18. Opt 5.14 (1) is amended to read:

Opt 5.14 (1) ~~It shall be unprofessional conduct for an~~ An optometrist ~~to fail to~~ shall provide to any patient receiving extended-wear contact lenses a separate, written disclosure in not less than 12 point type, which includes the following language: “As with any drug or device, the use of extended-wear contact lenses is not without risk. A small, but significant, percentage of individuals wearing extended-wear lenses develop potentially serious complications which can lead to permanent eye damage. If you have any unexplained eye pain or redness, watering of the eye or discharge, cloudy or foggy vision, decrease in vision or sensitivity to light, remove your lenses and make arrangements to see your eye-care professional before wearing your lenses again. Regular inspection by a licensed eye-care professional is important to evaluate your eyes' tolerance of extended wear lenses.”

SECTION 19. Opt 5.15 and 5.16 are repealed.

SECTION 20. Opt 7.03 and 7.04 are consolidated, renumbered Opt 7.03, and amended to read:

Opt 7.03 Renewal of certificate of registration. Persons practicing optometry shall on or before December 15 of each odd-numbered year renew their certificates of registration by registering with the department, certifying completion of the continuing education hours required under s. Opt 8.02 and paying the renewal fee ~~specified in s. 440.08(2)(a), Stats.~~ determined by the department under s. 440.03(9)(a), Stats. ~~Opt 7.04 Failure to renew.~~ An optometrist who fails to renew a certificate of registration ~~by the renewal date~~ in accordance with this section may not practice optometry until the certificate is renewed under s. Opt 7.05.

SECTION 21. Opt 7.05 is repealed and recreated:

Opt 7.05. Late Renewal. (1) RENEWAL WITHIN 5 YEARS. A person may renew his or her certificate of registration by paying the renewal fee determined by the department under s. 440.03(9)(a), Stats., pay a late renewal fee under s. 440.08 (3), Stats. and attesting to completion of the continuing education required under Opt 8.02.

(2) RENEWAL AFTER 5 YEARS. A person who failed to renew a certificate of registration within 5 years after the renewal date holds an expired license and may not reapply for the license using the initial application process. This subsection does not apply to license holders who have unmet disciplinary requirements or whose license or certificate has been surrendered or revoked. A certificate of registration may be renewed after 5 years by complying with all of the following:

(a) Payment of the renewal fee required under s. 440.03(9)(a) and the late renewal fee.

(b) Evidence of one of the following:

1. Holding an active license in good standing in another state.
2. Verification of all of the following occurring within the last 2 years:
 - a. Passing parts I, II and III of the National Board of Examiners in Optometry examination.
 - b. Passing the examination assessing knowledge of state laws and administrative rules regarding the practice of optometry.
 - c. 30 hours of approved continuing education.

SECTION 22. Opt 7.06 is created to read:

Opt 7.06 Reinstatement. A license holder who has unmet disciplinary requirements and failed to renew the certificate of registration within 5 years or whose license or certificate has been surrendered or revoked may apply to have the license or certificate reinstated in accordance with all of the following:

(1) Evidence of completion of the requirements in Opt 7.05 (2) if the license has not been active within 5 years.

(2) Evidence of completion of the disciplinary requirements, if applicable.

(3) Evidence of rehabilitation or change in circumstances warranting reinstatement.

SECTION 23. 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)

Dated _____

Agency _____

Member of the Board
Optometry Examining Board

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)

PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 8.02 (2), (3), (4), (8), (9) and (10); to amend Opt 8.02 (1); to repeal and recreate Opt 8.03; and to create Opt 8.02 (1m) relating to continuing education

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 449.06 (2m)

Statutory authority: ss. 15.08 (5) (b) and 449.06 (2m)

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular profession.[s. 15.08 (5) (b)]

The examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2 year period immediate 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 form an eye or from an appendage to the eye under s. 449.18.

Related statute or rule:

Plain language analysis:

Section 1 modifies the designated continuing education topics from 7 hours of glaucoma education to 20 hours which relate to ocular disease and management. This change simplifies the subject matter designation and incorporates requirements in provisions which this rule repeals.

Section 2 indicates that at least 20 hours must be completed in person allowing for an increase to 10 hours which may be completed in alternative methods. Any course which is not in person must be approved by the Council on Optometric Practitioner Education (COPE). This provision does allow for additional hours to be completed by methods other than in person for cases of hardship.

Section 3 repeals provisions relating to topics of continuing education which are now encompassed in the overall topic of ocular disease and management in the amended Opt 8.02 (1). It also repeals the section requiring optometrists who are licensed in the middle of a biennium to prorate their continuing education which is confusing to stakeholders. Lastly the provisions related to alternative methods are repealed as it is now addressed in the newly created Opt 8.02 (1m).

Section 4 lists the organizations which provide approved continuing education. If a continuing education course is sponsored by an organization not on the approved list then the Optometry Examining Board will consider the course for approval based upon an application which includes the title of the course, date offered, description and outline, name and qualifications of the instructor and the organization sponsoring the course.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Illinois requires 30 hours of continuing education every two years. At least 12 hours of credit shall be certified by an approved optometry college, osteopathic or medical college or pharmacy college. The remaining continuing education may be earned through papers published, teaching students at an optometry school, and self-instruction or video teleconferencing that is sponsored by any approved optometry college, institution or national or state optometry association. A program sponsor requesting approval shall submit an application with a list of all courses and programs offered, including a description, location, date and time the course is offered. [Section 1320.80, Illinois Admin Code]

Iowa: Iowa requires 50 hours of continuing education every two years. Only 10 hours of credit is allowed for correspondence or local study group programs. There is also a limit on the number of credit hours in the following topics: practice management courses (limit of 6 hours); dependent adult abuse and child abuse identification (limit of 2 hours) and postgraduate study courses (limit of 20 hours). Continuing education may be taken through programs sponsored by COPE, associations, and optometry schools. [Chapter 181, Iowa Admin. Rules]

Michigan: Michigan requires 40 hours of continuing education every two years. A licensee who holds a certification to administer topic ocular diagnostic pharmaceutical agents or certification to administer and prescribe therapeutic pharmaceutical agents or both shall complete 20 hours of board approved continuing education in pharmacological management of ocular conditions. Each licensee is required to complete at least 1 hour of continuing education in pain and symptom management. Board approved continuing education includes courses from an optometry school or board approved sponsor or presentation of continuing education. A program

sponsor requesting approval shall submit an application with the program content, instructor credentials, number of lecture hours, and attendance monitoring plan. [R 338.256a, Mich. Admin. Code]

Minnesota: Minnesota requires 40 continuing education credits every two years. Licensees may acquire 15 hours through home study. Licensees may also obtain continuing education credits for presentation of a lecture, preparation of articles and for participation in organized volunteer programs helping underserved people by providing medical eye care and eyeglasses. A program sponsor requesting approval from the Board must submit a program, schedule and course description to the Board. [Minnesota Rules Parts 6500.0900 to 6500.1700]

Summary of factual data and analytical methodologies:

The Optometry Examining Board reviewed and updated the rule.

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is 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 Jeffrey.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before * to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 8.02 (1) is amended to read:

Opt 8.02 (1) A licensee shall complete 30 hours of approved continuing education in each biennial registration period. A minimum of ~~7~~ 20 of the 30 hours shall ~~be approved glaucoma education~~ relate to ocular disease and management.

SECTION 2. Opt 8.02 (1m) is created to read:

Opt 8.02 (1m) Except in cases of hardship, at least 20 hours of approved continuing education shall be completed by attending courses in person. Any courses not completed in person shall be COPE approved courses.

SECTION 3. Opt 8.02 (2), (3), (4), (8), (9) and (10) are repealed.

SECTION 4. Opt 8.03 is repealed and recreated:

Opt 8.03 Approved continuing education. (1) The board shall approve all continuing education programs and courses relevant to the practice of optometry sponsored by an organization approved by one of the following:

- (a) COPE.
- (b) American Optometric Association.
- (c) American Academy of Optometry.
- (d) Optometric Extension Program.
- (e) Neuro-Optometric Rehabilitation Association.
- (f) College of Optometrists in Vision Development.
- (g) National Board of Examiners in Optometry.
- (h) A state optometric association.
- (i) An accredited school or college of optometry.

(2) The board may approve a continuing education course sponsored by an organization not listed in sub. (2) by submitting an application to the board including all of the following:

- (a) A continuing education approval application.
- (b) Title of the course.
- (c) Date.
- (d) General description and outline of the course.
- (e) Name and qualifications of the instructor.
- (f) Sponsoring organization of the course.

SECTION 5. 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)

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Nilajah Hardin, Bureau Assistant on behalf of Tom Ryan, Executive Director		2) Date When Request Submitted: April 22, 2016 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 6/02/16	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? National Transportation Safety Board (NTSB) Safety Recommendations for Prescribing Controlled Substances – Discussion and Consideration	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Please review the attached materials.			
11) Authorization			
<i>Nilajah D. Hardin</i>		<i>04/22/16</i>	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



March 28, 2016

Mr. Jeffrey Marcus, Safety Recommendation Specialist
National Transportation Safety Board
correspondence@ntsb.gov

Dear Mr. Marcus:

Recently, Chairman Christopher Hart sent a letter dated November 12, 2015 to Governor Scott Walker requesting information on several recommendations made by the National Transportation Safety Board (NTSB) regarding the use of controlled substances.

Regarding recommendation I-14-1, the Wisconsin State Legislature passed a law, effective March 19, 2016, allowing the Medical Examining Board, Podiatry Affiliated Credentialing Board, Dentistry Examining Board, Board of Nursing and Optometry Examining Board to each write guidelines regarding best practices in prescribing controlled substances. The NTSB Safety Recommendations will be made available to the boards as they develop guidelines for practitioners authorized to prescribe.

Regarding recommendation I-14-2, a link will be established on the Department website so that prescribers and dispensers in Wisconsin have access to the NTSB Safety Recommendations and are reminded of the importance of routinely discussing the effects of prescribed medications.

Thank you for your interest in this matter.

Sincerely,

Greg Gasper
Administrator, Division of Policy Development

cc: Michael Berndt, Chief Legal Counsel
Tom Ryan, Executive Director
Dan Williams, Executive Director
Brittany Lewin, Executive Director



Office of the Chairman

National Transportation Safety Board

Washington, DC 20594

November 12, 2015

The Honorable Scott Walker
Governor of Wisconsin
Office of the Governor
115 East Capitol
Madison, WI 53702

Dear Governor Walker:

The National Transportation Safety Board (NTSB) is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation—railroad, highway, marine, and pipeline. We determine the probable cause of the accidents and issue safety recommendations aimed at preventing future accidents. In addition, we conduct special studies concerning transportation safety and coordinate the resources of the federal government and other organizations to provide assistance to victims and their family members impacted by major transportation disasters.

This letter addresses NTSB Safety Recommendations I-14-1 and -2. We issued these recommendations to the state of Wisconsin on September 23, 2014, as a result of our safety study *Drug Use Trends in Aviation: Assessing the Risk of Pilot Impairment*, SS 14/01, available at <http://www.nts.gov/safety/safety-studies/Documents/SS1401.pdf>. For your convenience, the background and bases for the recommendations may be found on pages 36-38 of the report.

I-14-1

Include in all state guidelines regarding prescribing controlled substances for pain a recommendation that health care providers discuss with patients the effect their medical condition and medication use may have on their ability to safely operate a vehicle in any mode of transportation.

I-14-2

Use existing newsletters or other routine forms of communication with licensed health care providers and pharmacists to highlight the importance of routinely discussing with patients the effect their diagnosed medical conditions or recommended drugs may have on their ability to safely operate a vehicle in any mode of transportation.

We are interested in knowing whether and how our recommendations are implemented, both to ensure that the traveling public is provided the highest level of safety and to identify creative solutions that might be shared with others, and we normally expect actions to address our recommendations to be completed within 3 to 5 years. As we issued this recommendation more than a year ago and we have yet to hear from you regarding it, we would appreciate receiving a response within 90 days indicating actions you have taken or plan to take to implement it. In the meantime, the recommendation will retain its current classification of “Open—Await Response.”

Please reply at correspondence@ntsb.gov. If your response, including attachments, exceeds 10 megabytes, please e-mail us at the same address for instructions. Please do not submit both an electronic and a hard copy of the same response.

If you have any questions, please contact Mr. Jeffrey Marcus, Safety Recommendation Specialist, at marcusj@ntsb.gov.

Thank you for your assistance in this matter.

Sincerely,

cc: Mr. Thomas Ryan
Executive Director
Wisconsin Medical Examining Board
thomas.ryan@wisconsin.gov

Mr. Dan Williams
Bureau Director
Wisconsin Department of Safety and
Professional Services
dsps@wisconsin.gov

Mr. Dan Williams
Executive Director
Wisconsin Pharmacy Examining Board
dsps@wisconsin.gov

State of Wisconsin



2015 Assembly Bill 660

Date of enactment: **March 17, 2016**

Date of publication*: **March 18, 2016**

2015 WISCONSIN ACT 269

AN ACT *to repeal* 448.05 (6) (at); *to renumber* 440.035; *to amend* 440.035 (title), 448.05 (6) (a), 448.07 (1) (b) and 452.12 (4); and *to create* 227.01 (13) (zk) and 440.035 (2m) of the statutes; **relating to:** guidelines for prescribing controlled substances and the examination authority of the Medical Examining Board.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 227.01 (13) (zk) of the statutes is created to read:

227.01 (13) (zk) Are guidelines issued under s. 440.035 (2m).

SECTION 2. 440.035 (title) of the statutes is amended to read:

440.035 (title) General duties and powers of examining boards and affiliated credentialing boards.

SECTION 3. 440.035 of the statutes is renumbered 440.035 (1m).

SECTION 4. 440.035 (2m) of the statutes is created to read:

440.035 (2m) The medical examining board, the podiatry affiliated credentialing board, the board of nursing, the dentistry examining board, or the optometry examining board may issue guidelines regarding best practices in prescribing controlled substances, as defined in s. 961.01 (4), for persons credentialed by that board who are authorized to prescribe controlled substances.

SECTION 5. 448.05 (6) (a) of the statutes, as affected by 2013 Wisconsin Act 240, is amended to read:

448.05 (6) (a) Except as provided in pars. (am), and (ar), ~~and (at)~~, the board shall examine each applicant it

finds eligible under this section in such subject matters as the board deems applicable to the class of license or certificate which the applicant seeks to have granted. Examinations may be both written and oral. In lieu of its own examinations, in whole or in part, the board may make such use as it deems appropriate of examinations prepared, administered, and scored by national examining agencies, or by other licensing jurisdictions of the United States or Canada. The board shall specify passing grades for any and all examinations required.

SECTION 6. 448.05 (6) (at) of the statutes, as created by 2013 Wisconsin Act 240, is repealed.

SECTION 7. 448.07 (1) (b) of the statutes is amended to read:

448.07 (1) (b) The board shall maintain the register required by s. 440.035 (4) (1m) (d), which shall be divided according to the activity for which the registrant is licensed or certified. The board shall make copies available for purchase at cost.

SECTION 8. 452.12 (4) of the statutes is amended to read:

452.12 (4) REGISTER OF BROKERS AND SALESPERSONS. The board shall include in the register the board maintains under s. 440.035 (4) (1m) (d) the names of all brokers and salespersons whose licenses were revoked

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

within the past 2 years. The register shall be available for purchase at cost.

ARBO Annual Meeting Boston, Massachusetts June 2016

Thank you for the opportunity to attend the NBEO/ARBO Annual Meeting in Boston this past June 26-28, 2015.

35 states plus the District of Columbia, 4 Canadian Provinces, Australia and New Zealand were in attendance this year. Presentations from NBEO (National Board of Examiners in Optometry), COPE (Council on Optometric Education), ACOE (Accreditation Council on Optometric Education), AOSA (American Student Optometric Association), OETracker Report (Optometric Education Tracker), as well as numerous committee reports were given during this conference. I have tried to condense some of the most pertinent and interesting information in this report.

Opternative

US FDA has not approved Opternative's test - or any other online eye exam. They offer these "exams" in 34 states. Optometrist Steven Lee and entrepreneur Aaron Dallek founded Opternative in 2012. At the time of this ARBO meeting in June, six states had passed legislation banning Opternative from operating. As of September the number of states had risen to 12. This includes Alabama, Georgia, Indiana, Ohio, Oklahoma, Maine, Michigan, Mississippi, Nebraska, Rhode Island, South Carolina and West Virginia. On March 21st, Indiana Governor, Mike Pence signed a bill preventing providers from issuing prescriptions via telehealth for glasses or contact lenses. That portion of the law went into effect July 1st. Some states cite that Opternative violates the states Eye Care Consumer and Protection Law; others cite that it violates the states Optometric Practice Act and Medical Protection Act.

The AOA has taken a stance against existing online tests while the American Academy of Ophthalmology has a different opinion. "As long as its not interfering with patient safety we really felt it was not appropriate to limit technology", as quoted by the senior secretary for advocacy at the organization, Dr. Dan Briceland. He compared this "new" technology to the use of ultrasound in cataract surgery. Apparently, this used to raise concerns but is now widely accepted.

The AOA submitted to the FDA this past April 4th; a complaint arguing that Opternative's continued marketing to consumers without federal approval is in violation of the Food, Drug and Cosmetic Act. As a result, AOA argues that the device should be taken off the market until such time the FDA reviews the products claims, safety and efficiency.

Dr. Steven A. Loomis, AOA president stated that he and his patients- and those of other doctors alike, are very worried that personalized, in-person, high-quality health care is increasingly under attack “by corporate equivalents of snake oil salesman promoting unproven products and shortcuts that lower the bar on quality care standards and put patients at risk.” He further went on to state, “ Instead of apps or devices of the moment that promise everything but deliver inadequate or incomplete information, Americans want new health care technologies, like those incorporated into...optometry practices across the country, that strengthen the doctor-patient relationship and help make people healthier.” He went further saying, “ In this era of rapid health care change, our AOA and state associations are on the leading edge of the fight for very basic health and safety standards and a future in which health care efficiency is based on gains in quality and improved patient outcomes.”

Per FCDA requirements, a new device must receive premarket approval (PMA) prior to marketing unless that device has been cleared as substantially equivalent to an already marketed device or has otherwise been determined by FDA not to require a PMA. There is no record of them having done this and the AOA therefore contends the device is being marketed unlawfully. Opternative’s position is that its app is substantially equivalent to a visual acuity chart and color vision tester even though they have modified the acuity chart and all this is done without the involvement of a knowledgeable eye doctor who can detect vision disorders and other diseases in the patient. Even in Opternative’s patent filing in March 2014, it is suggestive that even they recognize their device is not substantially similar to any pre-existing device (and therefore, a PMA would be necessary.)

Action Point: OEB needs to consider telehealth rules for the profession to protect its citizens. Do we want to wait until another health board promulgates rules for us? Not only online refractions, but contact lens “exams”, diabetic eye “exams”, interpretation of retinal photography online... How do we as a Board ensure the safety and welfare of the citizens of Wisconsin?

Dale J. Atkinson, General Council for ARBO

As is the case in past meetings, Dale outlined some of the legal cases that may have some applicability to our profession or health care in general. One such case involves alleged violation of the Federal American with Disabilities Act with website content. Website inaccessibility as it relates to the visually impaired and hearing-impaired has resulted in “demand letters” being sent out to realty companies. At issue is the Department of Justice’s release of long-awaited guidance on the standards that commercial websites must meet to be compliant with the ADA. The DOJ has postponed this guidance until 2018. Attorneys for the plaintiffs in such cases insist that the Justice Department has made clear that owners of websites need to base their modifications on a widely-recognized Web Content Accessibility Guidelines standard published by the World Wide Web Consortium. These same lawyers assert that all commercial websites should be adhering to this guideline in the absence of further direction from the DOJ.

Action point: Is this something we as a Board need to address?

In California, Senate Bill 622 would expand the scope of practice for OD's who undergo extensive additional training and education. But even though both Republicans and Democrats support the measure, it was stalled by lawmakers too afraid to go against special interests and unaware of the enormous improvement the measure would make in helping meet doctor shortages. This bill would also allow OD's to administer flu, pneumonia and shingles vaccines. Pharmacists also supported this bill.

New Legislation

House Bill 1359, July 2015 in Illinois. This law makes any healthcare worker found guilty of insurance or health care fraud able to have their license suspended automatically and indefinitely.

Senate Bill 76, July 2015 in Montana. This law authorizes administrative suspension by a licensing board or the Department of Labor and Industry of a professional or occupational license in routine matters as an alternative to disciplinary proceedings.

- Grounds include: noncompliance with continuing education; failure to respond to a board audit; or if there are reasonable grounds that licensee did not possess qualifications for initial licensure; or insufficient funds to pay board fees/fines.
- 60 day cure period
- If failure to cure, no hearing and no additional notice

Ireland expanded its Scope of Practice in November 2015

- Now regulated by health professions board, not opticians board
- New CE regulations
- Now allowed to diagnose and treat conditions

Fallout from North Carolina State Board of Dental examiners VS. FTC

22 States have enacted or proposed legislation or executive orders in response to this antitrust case. Deregulating certain professions, adding another level of review for boards, creation of a task force for oversight of health care professions, giving agency directors more authority to reject/rescind board decisions to extend antitrust immunity, adding more public members, providing board members with legal indemnification and antitrust training are all ways states are trying to avoid any antitrust issues.

Of note, it appears the North Carolina Dental decision turns on the principle that a state board is a group of private actors, not a subordinate state agency, when "a controlling number of decision makers are active market participants in the occupation the board regulates."

Action Point: OEB needs to fill the vacant public member seat!

The three questions posed by ARBO this year were:

1. Does your Board have a policy or rule regarding telehealth/telemedicine?
2. Does your Board have a policy or rule on license mobility/licensure by endorsement?
3. Does your Board have a policy or rule regarding social media use by your licenses?

Alabama, Connecticut Idaho, Ohio, Texas are states that currently have a telehealth law. New Zealand, Australia, Alberta, and Ontario have some form of telehealth legislation already. Eleven states (Alabama, Georgia, Mississippi, Nebraska, Rhode Island, South Carolina and West Virginia) have passed some form of legislation that prohibits patients from receiving a refraction from an online business in lieu of an initial in-person examination. Each state's law is slightly different, but all prohibit online refractive prescribing. Of note, West Virginia's law specifically defines "direct supervision" to mean supervision that occurs when a licensee is actually present in the building.

It was pointed out by a number of states, most specifically Idaho and Connecticut, that the term *telehealth*, as opposed to telemedicine more accurately described this mode of delivering health care or other health services by various health care providers, from physicians to physical therapists with many other providers included.

The license mobility licensure or licensure by endorsement question showed an almost unanimous consensus that some sort of licensure by endorsement pathway was available throughout the United States and Canadian Provinces. New Zealand and Australia have a mutual recognition agreement that establishes that certain occupations are equivalent in both jurisdictions, including optometry.

Regulation regarding social media use by licenses was almost non-existent in the States. Any disciplinary action from misuse by social media was usually considered "unprofessional practice" and handled as such. Texas does require one hour of an annual "Professional Responsibility" course that also discusses the use of social media. Ontario, British Columbia, and Australia have extensive policies regarding their licensee's use of social media including e-learning modules.

Minnesota Background Check Program

Minnesota is requiring that all 15 of its Health Licensing Boards complete a criminal Background check on all licensees starting January 1, 2018. They are expecting the complete plan on how to implement this process to be put before their Legislature this January 1, 2017. This entire plan has been in the works since 2015. It has been an arduous process to get all those in the State working with this program to have the proper education, training and security clearances.

The Health Licensing Board determines when to do the Criminal Background Check and sends out the fingerprint kit to the applicant/licensee. A fingerprint packet and instructions are sent out. Once this is done, the fingerprints are sent to the State Crime Bureau and on to the FBI and a criminal history report is sent back for Board use. The applicant/licensee pays an additional \$35.00 for this CBC. They are also looking into a “Rap Back” service to obtain these Criminal Background Checks. This service will send the fingerprints to the FBI for them to keep “on file”. The Licensing agency then “subscribes” to “future events”. If the fingerprints link to a future “triggering event”, then a report is sent to the Licensing agency.

Marijuana: Washington’s Story

In 1998, voter Initiative 692 approved “medical” use. You could have only a “60-day supply”. It wasn’t until 2007 that this “60-day” supply was defined. In 2010, the ability to “prescribe” was expanded to Physician Assistants, Advanced Nurse Practitioners, and naturopaths. This is when the “medical” use of marijuana really escalated.

Voter Initiative 502 approved the use of “recreational” marijuana in 2012. Adults 21 years and older could legally have one ounce of marijuana obtained from a state-licensed system of private producers, processors, and retail stores. Finally in 2015, seed-to-sale tracking, consistent taxation, specific requirements for those under 18, consistent testing, labeling, and product standards were put into law with Senate Bill 5052, and House Bill 2136.

To put some perspective to the various states that have marijuana laws, Washington State have over 7 million people. Minnesota has over 5 million people. Minnesota is also 11,000 square miles bigger than Washington. BUT, Washington has over 1,100 dispensaries while Minnesota has 8! The presenter cautioned several things based on the lessons learned from Washington’s saga. States should legislate before voter initiatives are passed to allow for rules to be promulgated first. She also encouraged the use of marijuana within the confines of mainstream medicine rather than creating a specialty market. Careful consideration of the implications of rescheduling was also advised.

Again, I appreciate the opportunity to attend this important meeting in Boston this past summer. The next ARBO Annual Meeting is in Washington D. C. June 18-20, 2017. It is my hope that the State of Wisconsin can again send someone to this very important meeting.

Respectfully Submitted,

Ann Meier Carli, O.D.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Nilajah Hardin, Bureau Assistant on behalf of Tom Ryan, Executive Director		2) Date When Request Submitted: 9/30/2016 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Optometry Examining Board			
4) Meeting Date: 10/27/2016	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? A. Speaking Engagement(s), Travel, or Public Relation Request(s) – Discussion and Consideration 1) Travel Report from Association of Regulatory Boards of Optometry (ARBO) Annual Meeting - June 26-28, 2016 - Boston, MA a) ARBO Letter to Members	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: Please review the attached information.			
11) Authorization			
<i>Nilajah D. Hardin</i>		9/30/16	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			



September 13, 2016

ARBO Member Boards:

During the ARBO Annual Meeting in Boston, a motion was passed directing ARBO to maintain leadership of CE accreditation while continuing dialogue with stakeholders. For those of you who may not have been at the meeting, or those who are newer members, I want to give you a brief background so that we are all on the same page of this evolutionary process.

COPE Background

COPE was created by ARBO to accredit continuing education on behalf of optometric licensing boards. Continuing education is the primary method used by optometric regulatory boards to promote the continuing competence of licensed optometrists.

COPE's Mission is: To assist member boards in the accreditation of optometric continuing education.

COPE's Objectives are:

- To accredit optometric continuing education providers and activities for the public welfare;
- To monitor programs to help assure the quality and independence of continuing education in appropriate settings with adequate administration;
- To reduce duplication of effort by member boards;
- To create a uniform method of recording continuing education activities;
- To be the reference source for member boards for information about continuing education providers and activities utilized by licensed optometrists to fulfill their continuing education requirements.

COPE's Evolution

Historically, COPE has accredited continuing education courses and events. At the 2012 ARBO Annual Meeting, a resolution was passed for COPE to implement alternative methods of accrediting continuing education similar to those used by other organizations, including the Accreditation Council on Continuing Medical Education (ACCME) provider model of accredited continuing medical education. In 2014, another resolution was passed supporting COPE in continuing to improve its own accreditation processes, including pursuing joint inter-professional accreditation of continuing education with other health care professions.

COPE has spent the past four years researching the accreditation processes of other healthcare professions including medicine, pharmacy and nursing, and developing a new accreditation process that is equivalent to the other professions. New accreditation criteria have been adopted by COPE which matches the ACCME's accreditation criteria for CME. A provider accreditation process is also being implemented starting in January 2017, while continuing to also accredit individual activities for smaller organizations that want to continue to utilize COPE.

Stakeholder Input

COPE seeks input from the profession to assist in improving its CE accreditation system through calls for comment and National Optometric CE Conferences (NOCEC). At the last NOCEC in 2013, the key outcomes were to develop a provider accreditation model and to move COPE towards equivalence and joint accreditation with other health care accreditors.

ARBO established the COPE Advisory Committee in 2014 to allow CE stakeholders to have input in the changes being made to the COPE accreditation process. The committee includes representatives from State Boards of Optometry, AOA, ASCO, ACOE and AAO. In 2015, representatives from two State Optometric Associations were added to the COPE Advisory Committee to bring the perspective of smaller CE providers.

Over the past two months the ARBO Board of Directors has issued two invitations to pursue your directive. The first went to the American Optometric Association (AOA), Association of Schools and Colleges of Optometry (ASCO) and American Academy of Optometry (AAO) to participate on COPE's Accreditation Review Committee (ARC). The ARC will be responsible for reviewing accreditation applications and documentation, and making accreditation decisions based on compliance or noncompliance with COPE's accreditation criteria. The ARC decisions will be ratified by the ARBO Board of Directors keeping in line with your direction to maintain authority over the CE accreditation process in the interest of public protection. We are currently waiting to hear back from those organizations on this.

The second invitation went from the ARBO Board of Directors offering the AOA to participate on a task force to discuss additional representation of CE stakeholders on COPE. The purpose of the task force is to work out the details for adding representatives to COPE which will be presented to both ARBO's and AOA's membership at their next annual meetings in June 2017. We are currently waiting to hear back from the AOA on this.

As health care moves towards greater interprofessional collaboration, the patients, state and federal legislative processes, physician learners, and other concerned entities, will put more pressure on CE providers to prove they are providing meaningful outcomes that serve to protect the public. The quality and integrity of optometric CE should never be, or give the appearance of being, compromised. We will continue the conversation, but only if it allows COPE CE to continue to be beyond reproach with the regulatory authority that is needed while also giving a voice to stakeholders who understand the value in maintaining the integrity of the process.

We will keep you updated as new information is available. If you have any questions, please feel free to contact me at GregoryMoore@upike.edu or my cell (304)549-2015.

Best Regards,



Gregory S. Moore
President