

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 05-036)

ORDER

An order of the Optometry Examining Board to repeal the Note following Opt 6.03 (2), the Note following Opt 6.04 (1), and Opt 6.05 (4); to renumber Opt 6.04 (2); to renumber and amend Opt 6.05 (6); to amend the Note following Opt 5.10 (3), Opt 5.16, 6.04 (1), 6.05 (2) (a) and (b) and the Note following Opt 6.05 (6); and to create Opt 5.02 (5), 5.08 (2) (d), 6.02 (intro.) and (3), 6.04 (2), (6) and (7) and 6.05 (6) (a) to (o), relating to conduct, examinations and continuing education.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Sections 449.01 (1), 449.08 and 449.18 (7), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 449.18 (7), Stats.

Explanation of agency authority:

The Optometry Examining Board is authorized under ss. 449.07 and 449.08, Stats., to discipline optometrists for unprofessional conduct and under s. 449.18 (7), Stats., to require applicants for renewal to attend continuing education courses approved by the board.

Related statute or rule:

There are no statutes or rules other than those listed above.

Plain language analysis:

SECTIONS 1 and 2. Under the current law, it is unprofessional conduct for an optometrist to fail to perform a minimum eye examination in certain instances. There are three exceptions to this provision in the current rules. In these rules, the board proposes to add a fourth exception which would permit an optometrist to perform a "limited eye screening" without having to

perform a minimum eye examination. The proposed rules also include a definition of the term "limited eye screening."

SECTIONS 3 and 4. Under the current law, it is unprofessional conduct for an optometrist to fail to release, upon request by a patient and at no cost to the patient, a copy of the patient's contact lens prescription following release of the patient from contact lens fitting and initial follow-up care. In these rules, the board proposes to remove the language from the rules that conditions the release of a contact lens prescription upon a patient's request. This change is consistent with regulations recently adopted by the Federal Trade Commission.

SECTION 5 creates an introduction to s. Opt 6.02.

SECTIONS 6 and 12. Under the current law, optometrists who hold certificates to use therapeutic pharmaceutical agents are required to complete 30 hours of continuing education biennially in order to renew their certifications. The current law does not limit the number of continuing education hours that may be obtained through alternative delivery methods such as home-study courses, self-study packages, computer courses, televideo conferencing, or other delivery methods. In these rules, the board proposes to limit the number of hours that may be obtained through alternative delivery methods to 6 hours per biennium. One exception to this limitation would be in instances where certificate holders submit evidence of "hardship." The proposed rules include a definition of the term "hardship."

SECTIONS 7 and 9 repeal Notes.

SECTION 8. Under the current rules, certificate holders are required to complete 30 hours of approved continuing education relating to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye in each biennial period. Seven of the 30 hours must be in the diagnosis and management of glaucoma and 2 of the 30 hours must relate to the responsible use of controlled substances and substance abuse concerns, new drugs used for ophthalmic therapeutic purposes which have been approved by the Federal Food and Drug Administration or other topics as designated by the board. The proposed rule will permit a certificate holder to claim credit for course work that covers one or more of the subject matters area identified in SECTION 11. In addition, the proposed rules removes the requirement that a certificate holder complete 2 hours of continuing education that relate to the responsible use of controlled substances and substance abuse concerns, new drugs used ophthalmic therapeutic purposes which have been approved by the Federal Food and Drug Administration or other topics designated by the board. This change is being made because of the lack of courses available to credential holders to take in order to fulfill the 2 hour requirement.

SECTION 10 renumbers a subsection.

SECTIONS 11 and 13. Under the current law, the 30 hours of continuing education that optometrists who hold certificates to use therapeutic pharmaceutical agents are required to complete biennially must relate to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye. In these rules, the

board proposes to expand the subject matter of continuing education course work to include areas of practice that relate to the “practice of the profession of optometry” as defined in s. 449.01, Stats. Note that the board also proposes to limit the number of hours to six that may be claimed for subject matter that is not specifically related to the diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye.

SECTION 14. Currently, under s. Opt 6.05 (4), if a continuing education course includes subject matter other than the subject matter identified under s. Opt 6.05 (2) (a), only the board approved portion of the course that relates to the areas identified under subsection qualify as continuing education course work required under ch. Opt 6. The proposed rules repeals s. Opt 6.05 (4). This change is being made because s. Opt 6.05 (2) is being revised to state that only course work pertinent to the practice of optometry will be approved by the board.

SECTIONS 15 and 16. Under the current law, the board accepts continuing education course work approved by the Council on Optometric Practitioner Education (COPE). The law does not specify the subject matter of COPE courses that may be taken to satisfy the continuing education requirements. In these proposed rules, the board proposes to specify the subject matter of the COPE courses that may be taken to satisfy the continuing education requirements.

SECTION 17 amends the address listed in the Note.

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

The Federal Trade Commission requires a prescriber to provide a patient with a copy of a contact lens prescription when the prescriber completes a contact lens fitting, regardless of whether or not the patient makes a request for a copy of the prescription.

Comparison with rules in adjacent states:

Minnesota:

The rules specify that an optometrist or physician must provide a copy of the patient’s prescription upon completion of the patient’s eye examination and fitting. An optometrist or physician may refuse to give a patient a copy of the patient’s prescription until after the patient has paid for the eye examination and fitting, but only if the optometrist or physician would have required immediate payment from that patient if the examination had revealed that no ophthalmic goods were required. (145.712 Requirements for contact lenses prescription, subdivision 1., copy of prescription)

The rules appear to be silent as to performing a “limited eye screening.”

The rules under CE requirements are silent as to any provision or exemptions regarding a “hardship,” credit hour limitations in any specific topic or courses approved by COPE. Minnesota does have provisions for acceptable CE requirements and limitations, including 40 hours of CE required in a biennium, 15 credits of CE courses from an alternative delivery

method, no more than 8 credits in a biennium allowed in an optometry related topic, and courses approved by COPE are accepted (Minnesota R 6500.0900 to 5400.1700).

More may be found at <http://www.revisor.leg.state.mn.us/arule/6500/>

Michigan:

The rules are silent as to performing a “limited eye screening” and the release of contact lens prescriptions.

The rules under CE requirements are silent as to any provision or exemptions regarding a “hardship” and CE courses received from an alternative delivery method. However, the rules do have provisions for acceptable CE requirements and limitations, including 40 hours of CE required in a biennium, no more than 8 credits in a biennium in an optometry related topic, and courses approved by COPE are accepted (Michigan R 338.256, 338.256a, 338.256b).

More may be found at

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num33800251&Dpt=CH&RngHigh=

Illinois:

The rules have a provision which is similar to that of the “limited eye screening” and is allowed under Illinois Rules Section 1320.1200:

Visual Screening is defined as a limited series of ocular observations, measurements or tests provided without a fee to determine if a complete eye examination, as described in Section 1320.90, by a licensed optometrist or a physician licensed to practice medicine in all of its branches, is recommended.

3) When a visual screening is performed, the recipient of the screening shall be clearly informed in writing and shall receive a copy of the following:

- A) Results and limitations of the screening;
- B) That the screening is not representative of or a substitute for an eye exam;
- C) That the screening will not result in a prescription for visual correction;
- D) That visual screening referral criteria for a complete eye examination must meet accepted optometric professional standards criteria; and
- E) The name and address of the charitable organization sponsoring the screening and the chairperson of the supervisory committee.

The rules appear to be silent as to the release of contact lens prescriptions.

The rules under CE requirements are silent regarding CE courses received from an alternative delivery method, courses offered by COPE (with the exception of out-of-state CE courses), and maximum CE credits per topic in a biennium. However, the rules do have provisions for

receiving a waiver for CE requirements in cases of hardship and 24 hours of CE are required in a biennium.

More may be found at

<http://www.ilga.gov/commission/jcar/admincode/068/06801320sections.html>.

Iowa:

The rules appear to be silent as to performing a “limited eye screening.”

The rules have a provision under Iowa Rules Chapter 182.3(2) for the release of contact lens prescription stating: After the contact lenses have been adequately adapted and the patient released from initial follow-up care by the prescribing practitioner, the prescribing practitioner shall, upon request of the patient, provide a copy of the contact lens prescription, at no cost, for the duplication of the original contact lens.

The rules under CE courses received from an alternative delivery method, and CE credit limits per topic, with the exception of Ocular Disease (20 hours per biennium). The rules do specify an exception for a hardship under Iowa’s Rule Chapters 645—181.9(154,272C) Continuing education exemption for disability or illness. The board may, in individual cases involving disability or illness, grant exemptions of the minimum continuing education requirements or extension of time within which to fulfill the same or make the required reports. Iowa also accepts courses approved by COPE.

More may be found at <http://www.idph.state.ia.us/licensure/laws.asp?board=opt>.

Summary of factual data and analytical methodologies:

No study resulting in the collection of factual data was used in reference to this rule-making effort. The primary methodology for revising the rule is the board’s ongoing analysis and determination that a rule change is necessary.

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

The proposed rule will have minimal impact on the department’s funds.

Anticipated costs incurred by private sector:

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

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of 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, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, 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 and deadline for submission:

Comments may be submitted to Pamela Haack at the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 89235, Madison, Wisconsin 53708-8935. Email to pamela.haack@drl.state.wi.us. Comments must be received on or before June 13, 2005 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 5.02 (5) is created to read:

Opt 5.02 (5) "Limited eye screening" means an event where no spectacle prescription, contact lens prescription or treatment or management plan is generated.

SECTION 2. Opt 5.08 (2) (d) is created to read:

Opt 5.08 (2) (d) Where a limited eye screening is performed.

SECTION 3. The Note following Opt 5.10 (3) is amended to read:

Note: Federal Trade Commission ~~Rule~~ Rules 16 CFR 315.3 and 16 CFR 456.2 (a) ~~requires~~ require the release of a spectacle ~~prescription~~ prescriptions but does not require the release of a and contact lens ~~prescription~~ prescriptions. Under s. Opt 5.16, it is unprofessional conduct for an optometrist to fail to release, ~~upon request by a patient and~~ at no cost to the patient, a copy of the patient's contact lens prescription following release of the patient from contact lens fitting and initial follow-up care.

SECTION 4. Opt 5.16 is amended to read:

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

SECTION 5. Opt 6.02 (intro.) is created to read:

Opt 6.02 Definitions. (intro.) In this chapter:

SECTION 6. Opt 6.02 (3) is created to read:

Opt 6.02 (3) “Hardship” means serious illness, as determined by a licensed health care provider, or some other personal adversity, as determined by the board.

SECTION 7. The Note following Opt 6.03 (2) is repealed.

SECTION 8. Opt 6.04 (1) is amended to read:

Opt 6.04 Continuing education. (1) A certificate holder shall complete 30 hours of approved continuing education ~~relating to diagnosis and management of eye disease or removal of superficial foreign bodies from the eye or from an appendage to the eye~~ in each biennial registration period. ~~Seven~~ A minimum of 7 of the 30 hours ~~must shall~~ be ~~in the diagnosis and management of approved glaucoma education,~~ and ~~2~~ of the 30 hours ~~must relate to the responsible use of controlled substances and substance abuse concerns, new drugs used for ophthalmic therapeutic purposes which have been approved by the federal food and drug administration or other topics as designated by the board.~~ Except as provided in sub. (2), approved continuing education hours 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.

SECTION 9. The Note following Opt 6.04 (1) is repealed.

SECTION 10. Opt 6.04 (2) is renumbered Opt 6.04 (2m).

SECTION 11. Opt 6.04 (2) is created to read:

Opt 6.04 (2) 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 – pediatrics.
- (c) General optometry.
- (d) Low vision.
- (e) Jurisprudence.
- (f) Practice management.

SECTION 12. Opt 6.04 (6) and (7) are created to read:

Opt 6.04 (6) Except as provided in sub. (7), 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 6.05 (5).

(7) 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.

SECTION 13. Opt 6.05 (2) (a) and (b) are amended to read:

Opt 6.05 (2) (a) The subject matter of the course pertains to ~~therapeutic pharmaceuticals, removal of superficial foreign bodies from the eye or from an appendage to the eye, responsible use of controlled substances and substance abuse concerns, new drugs used for ophthalmic therapeutic purposes which have been approved by the federal food and drug administration, or other topics as designated by the board~~ 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.

SECTION 14. Opt 6.05 (4) is repealed.

SECTION 15. Opt 6.05 (6) is renumbered Opt 6.05 (6) (intro.) and is amended to read:

Opt 6.05 (6) (intro.) A continuing education course approved by the ~~council on optometric practitioner education~~ Council on Optometric Practitioner Education (COPE) which satisfies the criteria established under sub. (2), and is included in one of the following categories established by COPE, may shall be approved by the board without receipt of a course approval application from the provider.;

SECTION 16. Opt 6.05 (6) (a) to (o) are created to read:

Opt 6.05 (6) (a) CL - Contact lens.

(b) FV - Functional vision – pediatrics.

(c) G – Glaucoma.

(d) GO - General optometry.

(e) JP – Jurisprudence.

(f) LV - Low vision.

- (g) NO - Neuro-optometry.
- (h) OS - Management of ophthalmic surgery.
- (i) PD - Principles of diagnosis.
- (j) PH – Pharmacology.
- (k) PM - Practice management.
- (L) RS - Refractive surgery management.
- (m) SD - Systemic disease.
- (n) TA - Treatment anterior segment.
- (o) TP - Treatment posterior segment.

SECTION 17. The Note following Opt 6.05 (6) is amended to read:

Note: The Council on Optometric Practitioner Education (COPE) is a committee of the International Association of Boards of Examiners in Optometry, Inc. (IAB). An application for course approval by COPE may be obtained at ~~4330 East West Highway, Suite 1117, Bethesda, Maryland 20814-4408~~ 1750 South Brentwood Boulevard, Suite 503, St. Louis, MO 63144-1341.

 (END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____

 Chairperson
 Optometry Examining Board