

Clearinghouse Rule 21-005

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Optometry Examining Board to repeal Opt 1.02(2), (4), and (5), 5.03(23), 5.10(1)(d), 5.11 and 5.14; to amend Opt 5.03(16), 5.03(17)(a)3, 5.03(17)(b)3 and 5.10(1)(f); and to create Opt 5.02(5m), 5.03(17)(c) and (17m), and 5.045(3), relating to unprofessional conduct.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

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

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

Explanation of agency authority:

Section 15.08 (5) (b), Stats., states that the examining board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 449.25, Stats., provides that the examining board shall promulgate rules relating to informed consent, stating that, “[a]ny optometrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments....”

Related statute or rule:

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

Plain language analysis:

Section 1 removes the definitions of “fitting contact lenses”, “minimum examination for the fitting of contact lenses”, and “minimum eye examination” because each contain a

substantive procedure more appropriately placed under s. Opt 5.03 relating to unprofessional conduct. The terms are not used elsewhere in the chapter.

Section 2 adds the definition of a “minor” as provided in s. 990.01(20), Stats.

Section 3 updates cite references to amended and added provisions.

Section 4 creates provisions setting out the procedures for a minimum eye examination and a minimum contact lenses examination. The proposed rule clarifies that it is unprofessional conduct for an optometrist to fail to conduct certain procedures during a minimum eye examination and a minimum contact lenses examination.

Section 5 removes the provision that it is unprofessional conduct for an optometrist to fail to give a written disclosure to any patient receiving extended wear contact lenses under s. Opt 5.14.

Section 6 adds the provision that if a patient is a minor or is incompetent, treatment disclosures must be made to the patient’s parent or legal guardian.

Section 7 removes the requirement that optometrists make a notation in the patient file that ophthalmic lenses have been verified prior to dispensing under s. Opt. 5.11.

Section 8 requires optometrists to document in the file of a minor or an incompetent person, that informed consent was received from the patient’s parent or legal guardian prior to treatment.

Section 9 removes the requirement that optometrists verify that ophthalmic lenses meet an outdated American National Institute Standards, Inc. (ANSI) standard prior to dispensing.

Section 10 removes the requirement that optometrists provide a written disclosure to extended wear contact lens patients describing the risks associated with extended wear contact lenses. The language in the rule is outdated and rewriting the disclosure statement would place unnecessary administrative requirements on optometrists. The public is protected by s. 449.25(1), Stats., designating a “reasonable optometrist” standard requiring “...disclosure only of information that a reasonable optometrist would know and disclose under the circumstances.”

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

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

Comparison with rules in adjacent states:

Illinois:

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

Iowa:

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

Michigan:

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

Minnesota:

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

Summary of factual data and analytical methodologies:

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

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

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

Fiscal Estimate and Economic Impact Analysis:

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

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on March 25, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1: Opt 1.02(2), (4), and (5) are repealed.

SECTION 2: Opt 5.02(5m) is created to read:

Opt 5.02(5m) “Minor” has the meaning given in s. 990.01(20), Stats.

SECTION 3: Opt 5.03(16), 5.03(17)(a)3, and 5.03(17)(b)3 are amended to read:

Opt 5.03(16) Failing to have in good working order adequate equipment and instruments as are necessary to perform the minimum eye examination specified in s. ~~Opt 1.02(5)~~.
Opt 5.03(17)(c).

Opt 5.03(17)(a)3 An examination for the fitting of contact lenses ~~as defined in s. Opt 1.02(4)~~. under s. Opt 5.03(17m).

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

SECTION 4: Opt 5.03(17)(c) and (17m) are created to read:

Opt 5.03(17)(c) The minimum eye examination under sub. (a) shall include the performance of all the following procedures:

1. Recording a complete case history of the patient.
2. Measuring far and near visual acuity.
3. Conducting an internal and external examination of the eye and adnexa.
4. Measuring corneal curvature.
5. Obtaining objective measurement of refractive error.
6. Evaluating convergence and accommodation.
7. Obtaining far and near refraction.
8. Evaluating muscle balance.
9. Measuring intraocular pressure.
10. Recording spectacle prescription including far and near visual acuity.

Opt 5.03 (17m) When fitting contact lenses, failure to perform the minimum contact lenses examination. A minimum contact lenses examination shall include the performance of all the following:

- (a) Performing the minimum eye examination under s. 5.03(17)(c).
- (b) Determining whether a patient may safely and comfortably wear contact lenses.
- (c) Using a spectacle prescription as a basis for selecting, designing, manufacturing, or duplicating a contact lens.
- (d) Placing a trial contact lens upon the eye of a patient for diagnostic purposes.
- (e) Evaluating the physical fit of the trial contact lens.
- (f) Using a phoropter, hand-held lens or any automated instrument for the purposes of determining the prescription or change in prescription of a contact lens.
- (g) Determining contact lens specifications.
- (h) Counseling the patient on all the following:
 - 1. The proper care and use of the prescribed contact lenses.
 - 2. The appropriate contact lens wearing schedule.
 - 3. Contact lens replacement schedule.
- (i) When contact lenses are prescribed for extended wear, informing the patient of the potential risks or complications.
- (j) Performing progress evaluations and recording in the patient record the recommended date of the patient's next visit.

SECTION 5: Opt 5.03(23) is repealed.

SECTION 6: Opt 5.045(3) is created to read:

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

SECTION 7: Opt. 5.10(1)(d) is repealed.

SECTION 8: Opt 5.10(1)(f) is amended to read:

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

SECTION 9: Opt 5.11 is repealed.

SECTION 10: Opt 5.14 is repealed.

SECTION 11: 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)
