

Chapter Opt 5

UNPROFESSIONAL CONDUCT

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History: Chapter Opt 7 as it existed on January 31, 1971 was repealed, and a new chapter Opt 7 was created, Register, January, 1971, No. 181, effective 2-1-71; chapter Opt 6, Issuance of License as it existed on August 31, 1985 was repealed and chapter Opt 7 was repealed and recreated as chapter Opt 6, Register, August, 1985, No. 356, effective 9-1-85; Chapter Opt 6 was renumbered Chapter Opt 5, effective April 1, 1989.

Opt 5.01 Intent. The intent of the board in adopting the rules in this chapter is to establish minimum standards of conduct for optometrists and to specify reasons for taking disciplinary action against a licensee.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; r. (1), renum. (2) to be Opt 5.01, Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.02 Definitions. As used in this chapter:

(1) "Contact lens prescription" means a prescription order for a contact lens that includes all of the following:

- (a) The specifications needed to adequately duplicate a contact lens.
- (b) The name, signature and license number of the prescribing optometrist.
- (c) The date of the prescription.
- (d) The date of expiration.
- (e) Provisions for a reasonable number of refills.

(2) "Extended-wear contact lenses" means contact lenses which have received federal food and drug administration approval for marketing for extended wear and are prescribed for use on an extended wear or overnight schedule.

Note: Extended-wear contact lenses require premarket approval under section 515 of the Federal Food, Drug and Cosmetic Act, 21 USC 360e (1985). A copy of this provision is available at the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(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.

(4) "Lens prescription" means a written or electronic order that contains the specifications for ophthalmic materials for a particular patient for the purpose of treating the refractive or functional abilities of the visual system or the enhancement of visual performance.

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

(6) "Signature" means a handwritten mark or an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; emerg. cr. (1), eff. 12-17-85; renum. (1) to (3) to be (2) to (4), cr. (1), Register, June, 1986, No. 366, eff. 7-1-86; renum. Register, March, 1989, No. 399, eff. 4-1-89; renum. (1), (3) and (4) to be Opt 1.02 (1), (4) and (5), (2) to be (1), cr. (2), Register, June, 1990, No. 414, eff.

7-1-90; cr. (intro.) and (1), renum. (1) to be (1m) and am., Register, September, 1997, No. 501, eff. 10-1-97; CR 01-060: renum (1), (1m) and (2) to be (2) to (4) and am. (4), cr. (1), Register December 2001 No. 552, eff. 1-1-02; CR 05-036: cr. (5) Register January 2006 No. 601, eff. 2-1-06; CR 06-116: cr. (6) Register May 2007 No. 617, eff. 6-1-07; **CR 13-017: am. (4) Register November 2013 No. 695, eff. 12-1-13.**

Opt 5.04 Improper use of title. It shall be unprofessional conduct for an optometrist to use 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 print in the same communication that he or she is an optometrist.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.05 Change of address. An optometrist shall inform the board of any change in address or change in location of practice. It shall be unprofessional conduct to fail to comply with this section.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89.

Opt 5.06 Inspection. It shall be unprofessional conduct for an optometrist to fail to furnish to the board upon request information concerning the mode and location of practice. Every optometrist shall permit the board or a board representative to inspect his or her office, equipment and records during regular office hours.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.07 Adequate equipment. It shall be unprofessional conduct for an optometrist to fail 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).

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1986, No. 366; renum. Register, March, 1989, No. 399, eff. 4-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1989, No. 399; am. Register, June, 1990, No. 414, eff. 7-1-90; am. Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.08 Performing minimum eye examination.

(1) Except as provided in sub. (2), it shall be unprofessional conduct for an optometrist to fail to perform the minimum eye examination at any of the following:

- (a) The patient's initial examination with the optometrist.
- (b) Any examination conducted more than one year after a minimum eye examination.
- (c) An examination for the fitting of contact lenses.

(2) It shall not be unprofessional conduct to fail to perform the minimum eye examination in the following instances:

- (a) Where the patient refuses or is unable to participate in any procedure of the minimum eye examination.

(b) 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.

(c) Where written verification of all examination findings has been received from a licensed optometrist or an ophthalmologist stating that he or she has performed a minimum eye examination, as defined in s. Opt 1.02 (5), for the patient within the 90 day period immediately preceding the date of the patient's visit.

(d) Where a limited eye screening is performed.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96; am. (1) (intro.), (b), (2) (intro.) and (a), cr. (2) (c), Register, September, 1997, No. 501, eff. 10-1-97; CR 05-036: cr. (2) (d) Register January 2006 No. 601, eff. 2-1-06.

Opt 5.09 Performing minimum examination for fitting of contact lenses. Except in cases where the patient is unable to participate, it shall be unprofessional conduct for an optometrist to fail to perform an examination as defined in s. Opt 1.02 (4) in the fitting of contact lenses for a patient.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1986, No. 366; renum. Register, March, 1989, No. 399, eff. 4-1-89; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1989, No. 399; am. Register, June, 1990, No. 414, eff. 7-1-90.

Opt 5.10 Patient records. (1) It shall be unprofessional conduct for an optometrist to fail to record and include in each patient's record the following information:

(a) Name and date of birth of the patient.

(b) Date of examination and examination findings, including a clear and legible record of the tests performed, the results obtained, the prescription ordered and the patient's far and near visual acuity obtained with the prescription ordered.

(c) Date of the prescription.

(d) Lens verification of lenses dispensed, including the date of verification and identification of the person verifying the lenses.

(e) Name, signature and license number of the examining optometrist.

(2) It shall be unprofessional conduct to fail to maintain patient records for at least 6 years.

(3) In any instance in which a lens prescription may have changed, is outdated or may become outdated it shall be unprofessional conduct for an optometrist to fail to print or stamp across the face of the prescription, "Warning: This lens prescription may be outdated and may not be relied upon for proper fit and correction" or, "Warning: This lens prescription expires on _____, and may not be relied upon after this date for a proper fit or correction" or, "Expired." A lens prescription order shall be signed by a licensed optometrist, and the words "lens prescription" written or typed on the face of the order.

Note: Federal Trade Commission Rules 16 CFR 315.3 and 16 CFR 456.2 (a) require the release of spectacle and contact lens prescriptions. Under s. Opt 5.16, it is unprofessional conduct for an optometrist to fail to release, 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.

(4) It shall be unprofessional conduct for an optometrist to fail to release a patient's records in accordance with s. 146.83, Stats. It shall also be unprofessional conduct to release the lens prescription specifications contained in the patient records without indicating that those specifications do not constitute a legal prescription and that lenses are not to be filled or dispensed from that record. This may be done by stamping or writing on the face of the record containing the lens prescription specifications, "This is NOT a prescription and shall not be used to dispense lenses."

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (3), cr. (4), Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (intro.) to (d), Register, September, 1997, No. 501, eff. 10-1-97; CR 01-060: am. (3), Register December 2001 No. 552, eff. 1-1-02.

Opt 5.11 Verification. (1) It shall be unprofessional conduct for an optometrist to fail to verify, or fail to ascertain that a delegate of the optometrist's verified, before delivery, the accu-

racy with which the prescription of the lenses dispensed by the optometrist or the optometrist's employer is compounded and to record the verification as required in s. Opt 5.10 (1) (d). In the case of contact lenses, it shall be unprofessional conduct to fail to include in the record the parameters and any available lot number.

(2) It shall be unprofessional conduct for an optometrist to deliver ophthalmic lenses if the lenses do not meet requirements set forth in Table 1, ANSI Z80.1-1995, requirements for first-quality prescription ophthalmic lenses, approved January 3, 1995, by the American national standards institute, inc.

Note: The standard incorporated above as reference may be obtained from the Standards Institute located at 11 West 42nd Street, New York, NY 10036. A copy of the Standard is on file at the board office.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (2), Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.12 Delegation and supervision of unlicensed persons. It shall be unprofessional conduct for an optometrist to do any of the following:

(1) Delegate 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.

(2) Delegate the performance of tasks related to the practice of optometry to an unlicensed person that exceed that person's competence, education, training, or experience.

(3) Fail to exercise supervision over an unlicensed person, as provided under s. Opt 1.03.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. Register, June, 1990, No. 414, eff. 7-1-90; CR 06-116: renum. Opt 5.12 to be Opt 5.12 (intro.) and am., cr. (1) to (3), Register May 2007 No. 617, eff. 6-1-07.

Opt 5.13 Unprofessional advertising. (1) Unprofessional advertising means any false, fraudulent, misleading, or deceptive statement made to the public by an optometrist, including statements that:

(a) Create false, fraudulent, or unjustified expectations of favorable results.

(b) Make comparisons with other optometrists which are false, fraudulent, misleading, or deceptive.

(c) Contain representations that would be likely to cause a reasonable person to misunderstand or be deceived.

(2) No licensed optometrist may:

(a) Seek to obtain patients by advertising or other forms of solicitation in a manner that is false, fraudulent, misleading, or deceptive;

(b) Maintain a professional relationship with any other person or firm advertising in a manner that is false, fraudulent, misleading, or deceptive.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85; renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (1) (a) and (b), Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.14 Disclosure. (1) It shall be unprofessional conduct for an optometrist to fail to 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."

(2) The disclosure shall in addition indicate that a regular schedule of cleaning and disinfection is necessary and indicate a

recommended schedule of follow-up appointments for evaluation of adaptation to contact lens wear.

(3) Information about replacement lenses, service agreements, warranties, refunds and other business items should not be part of the required disclosure. Instructions for proper lens care and recommended solutions should also be distributed separately.

(4) The disclosure shall be signed by the patient prior to the patient's receipt of the lenses. If the patient is a minor or incompetent, the patient's parent or legal guardian shall sign the disclosure. The patient or the patient's parent or legal guardian, if the patient is a minor or incompetent, shall be given a copy of the disclosure, and a signed copy of the disclosure shall be placed in the patient record of the individual for whom the lenses are dispensed.

(5) An optometrist may dispense replacement extended-wear lenses without providing the written disclosure required in sub. (1), if the patient for whom the lenses are dispensed already has a signed disclosure form in his or her patient file.

History: Emerg. cr. eff. 12-17-85; cr. Register, June, 1986, No. 366, eff. 7-1-86;

renum. Register, March, 1989, No. 399, eff. 4-1-89; am. (4), Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.15 Conduct. (1) It shall be unprofessional conduct for an optometrist to engage in any practice or conduct which constitutes a substantial danger to the health, welfare, or safety of a patient or the public.

(2) It shall be unprofessional conduct for an optometrist to engage in conduct in the practice of optometry which evidences a lack of knowledge or ability to apply professional principles or skills.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97.

Opt 5.16 Contact lens prescription release. It shall be unprofessional conduct for an optometrist to fail to release, 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.

History: CR 01-060: cr. Register December 2001 No. 552, eff. 1-1-02; CR 05-036: am. Register January 2006 No. 601, eff. 2-1-06.