Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Optometry

(2) I.D. Number (Governor's Office Use)

16A-528

IRRC Number: 2323

(3) Short Title

General Revisions

(4) PA Code Cite

49 Pa. Code, §§ 23.1, 23.3, 23.33-23.35, 23.42, 23.64, 23.71 and § 23.72.

(5) Agency Contacts & Telephone Numbers

Primary Contact: Teresa Lazo-Miller, Counsel State Board of (717) 783-7200

Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200

(6) **Type of Rulemaking (check one)**

___Proposed Rulemaking
_X_Final Order Adopting Regulation
___Policy Statement

(7) **Is a 120-Day Emergency Certification Attached?**

_X_No
___Yes: By the Attorney General
___Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The final regulation updates the Board's regulations to comply with the mandate of the act of Oct. 30, 1996 (P.L. 721, No. 130) (63 P.S. § 244.3(a) (2.1)), which directed the Board to determine the means and methods optometrists could use to examine, diagnose and treat conditions of the visual system; updates the list of equipment in an optometric office, updates the practice locations of optometrists to conform to the current practice of the profession, updates the filing of information with the Board and Corporation Bureau, and conforms the Board's regulations to the Federal Fairness to Contact Lens Consumers Act.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The final regulation is authorized by sections 3(a)(2.1), 3(a)(3), 3(b)(9) and 3(b)(14) of the Optometric Practice and Licensure Act (63 P.S. §§ 244.3(a)(2.1), 3(a)(3), 3(b)(9) and 3(b)(14)).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The addition of a definition of the means and methods for the examination, diagnosis and treatment of the visual system is mandated by Act 130, which created a new duty for the Board. The amendments regarding the provision of a contact lens prescription is mandated by the Federal Fairness to Contact Lens Consumers Act (15 U.S.C.A. §§ 7601-7610).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation serves the public interest by clarifying the means and methods optometrists may use to examine, diagnose and treat conditions of the visual system. Adding this definition clarifies the current state of practice in the Commonwealth; however, none of the means and methods listed conflict with the scope of practice defined in the Act.

The regulation also clarifies the contents of a contact lens prescription and conforms the Board's regulations to the Federal Fairness to Contact Lens Consumers Act (15 U.S.C.A. §§ 7601-7610). Finally, the regulation provides for an expiration date for contact lens prescriptions, as mandated by 15 U.S.C.A. § 7604.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Failing to regulate may undermine the public health because if optometrists are unaware of the means and methods they may use, they may either inadvertently exceed their authorized scope of practice or may fail to perform indicated diagnostic tests which may ease patient disease by allowing patients to begin earlier treatment.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The general public will benefit from the regulation as described in #12, above.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board can identify no persons or groups who will be adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All licensed optometrists practicing in the Commonwealth will be required to comply with the regulation. There are currently approximately 2480 licensees of the Board.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Board carefully considered extensive comments on proposed rulemaking, which are addressed in the preamble to final rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to the regulated community associated with compliance.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with compliance.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings to state government associated with the implementation of the regulation.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	**$ NA**	**$ NA**	**$ NA**	**$ NA**	**$ NA**	**$ NA**
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	**NA**	**NA**	**NA**	**NA**	**NA**	**NA**
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

NA

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY 98-99	FY 99-00	FY 00-01	FY 01-02 Budgeted
State Board of Optometry	**$146,081.25**	**$155,997.70**	**$153,960.42**	**$176,000.00**

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The general public will benefit as described in numbers 11 and 12 above, outweighing any cost of the regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Because Act 130 of 1996 requires the Board to determine the means and methods optometrists may employ for the examination, diagnosis and treatment of conditions of the visual system, and the Board may only speak through regulations or adjudications, no nonregulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

A wide variety of alternative regulatory schemes were considered after consulting the July 2001 testimony at the public hearing held by the Board. The Pennsylvania College of Optometry, the Pennsylvania Optometric Association and the Pennsylvania Academy of Ophthalmology offered testimony at the hearing.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The final regulation is consistent with federal standards. The Federal Fairness to Contact Lens Consumers Act requires optometrists to release contact lens prescriptions which expire as determined by the states.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The final regulation is consistent with those of other states. For example, in Ohio, the practice of optometry "means the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures form the normal, measuring their functional powers, adapting optical accessories for the aid thereof, and detecting ocular abnormalities that may be evidence of disease, pathology or injury." OHIO REV. CODE ANN. § 4725.01(A)(1) (Anderson 1999). For optometrists who are therapeutically certified, the practice of optometry also includes "employing, applying, administering, and prescribing instruments, devices, procedures other than invasive procedures, and therapeutic pharmaceutical agents...." OHIO REV. CODE ANN. § 4725.01(A)(3) (Anderson 1999). Invasive procedures are those that "involve[] cutting or otherwise infiltrating human tissue by mechanical means including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, administering medication by injection, or the removal of intraocular foreign bodies." OHIO REV. CODE ANN. § 4725.01(E) (Anderson 1999). All of the practices specified in the proposed definition of the means and methods for the examination, diagnosis and treatment of conditions of the human visual system would be within the scope of optometry as defined in Ohio. In Maryland, optometrists are authorized to "use any means known in the science of optics or eye care, except surgery to detect, diagnose and treat any optical or diseased condition in the human eye." MD. CODE ANN., [Health Occ.] § 11-101(g)(1). Maryland regulations provide that "A licensee shall perform all necessary tests, evaluations, and observations... to ensure appropriate optometric management of the patient's ocular, systemic, visual, and psychosocial conditions." MD. REGS. CODE tit. 10, § 28:06-01. Thus, optometrists in Maryland can perform all of the diagnostic tests indicated in the Board's proposed regulation. In Delaware, the practice of optometry specifically includes diagnosis and treatment of the lacrimal system. See DEL. CODE ANN. § 2101(a). This is also consistent with the Board's proposed regulation.

The provisions related to equipment, records and content of a prescription are consistent with provisions in New Jersey. See N.J. ADMIN. CODE tit. 13, §§ 38-2.2, 2.3 and 2.4. The provision related to a one-year expiration date on contact lens prescriptions is consistent with the one-year expiration date for contact lenses under Ohio law. See OHIO REV. CODE ANN. § 4725.07.06(B). Ohio also provides for a two year expiration period for spectacles. See OHIO REV. CODE ANN. § 4725.07.06(C).

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect any existing or proposed regulations known to the Board.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

A public hearing was held in July 2001. The Board reviews its regulations and comments received at its meetings, which are open to the public. Meeting dates are available on the Department of State's website, www.dos.state.pa.us.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The final regulation will not create additional reporting or other paperwork requirements. Section 23.71(19) adds the requirement that optometrists note any pharmaceutical agents used or prescribed in the patient's medical records; however, the Board does not view this as an "additional" record keeping requirement because standard medical practice would dictate such conduct even in absence of the regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No particular affected groups or persons were identified.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon publication of final-form rulemaking in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Board monitors its regulations at its meetings. The Board meeting dates are available on the Department of State's website, www.dos.state.pa.us.

(v) At least one-third of all classes of voting membership at any one time shall be owned by an individual licensed under the laws of any state to practice architecture.

§ 9.163. Prior approval by the Board.

The practice of architecture may not be conducted in one of the business forms specified **[at]** in § 9.162 (relating to firm practice) without first receiving the written approval of the Board. Written approval shall be sought by **[filing] submitting a completed application on forms provided by the Board along with** the following documents **[with the Board]**:

* * * * *

§ 9.164. Exception for two owners.

Section 9.162 (relating to firm practice) will not be construed to prevent the practice of architecture in a business form which is wholly owned by only two persons. The partnership, professional association, professional corporation, **limited liability company, limited liability partnership** or business corporation shall have at least one owner who is a licensee of the Board, and who owns at least 50% of the business.

[Pa.B. Doc. No. 03-349. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Continuing Education

The State Board of Optometry (Board) proposes to amend §§ 23.82, 23.83 and 23.87 (relating to continuing education hour requirements; continuing education subject matter; and reporting of continuing education credit hours) to read as set forth in Annex A. The proposed amendments would update the Board's continuing education regulations and conform them to prior regulatory amendments.

Effective Date

These proposed amendments would be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* and would apply to continuing education credits earned during the 2002—2004 biennial renewal period.

Statutory Authority

Section 3(b)(12) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(b)(12)) authorizes the Board to approve continuing education. Section 3(b)(14) of the act authorizes the Board to "promulgate all rules and regulations necessary to carry out the purposes of this act."

Background and Need for the Amendments

The Board recently deleted § 23.201 and amended § 23.202 (relating to the application procedure for certification in pharmaceutical agents for therapeutic purposes) by final-form rulemaking published at 32 Pa.B. 2886 (June 15, 2002). The Board's continuing education regulations refer to §§ 23.201 and 23.202, and these references must be updated to conform with the prior regulatory amendments. In addition, the Board's proposed rulemaking to its continuing education regulations will clarify the subject matter acceptable to the Board for continuing education in pharmaceutical agents for therapeutic purposes. Finally, the proposed rulemaking clarifies a licensee's duties in reporting continuing education courses to the Board. The proposed rulemaking conforms the Board's continuing education regulations to the statute and prior regulatory amendments and thereby eliminates confusion regarding the acceptable subject matter for continuing education courses related to pharmaceutical agents for therapeutic purposes.

Description of Proposed Amendments

§ 23.82. Continuing education hour requirements.

The Board proposes to amend § 23.82(a) by deleting the references to the Board's regulations in §§ 23.201 and 23.202 and replacing them with references to section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2)). This proposed amendment conforms the regulations to the Board's June 15, 2002, amendments of §§ 23.201 and 23.202, which deleted § 23.201 and amended § 23.202.

The Board proposes to amend § 23.82(b) to reflect the right to a hearing before discipline is imposed as provided in 2 Pa.C.S. § 504 (relating to hearing and record) and section 7(e) of the Optometric Practice and Licensure Act (63 P. S. § 244.7(e)). The Board may not unilaterally place a license on "inactive status" for failure to complete mandatory continuing education. The failure to complete mandatory continuing education is a violation of the act and regulations of the Board and the notice and hearing procedures of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and the act must be followed before the Board may discipline a licensee. The Board proposes to amend the regulation to provide that the Board may under notice and opportunity for a hearing, impose discipline on a licensee for failing to complete mandatory continuing education in accordance with section 7(3) of the act (63 P. S. § 244.7(c)).

§ 23.83. Continuing education subject matter.

The Board proposes to amend this section to reflect the changes made in the 1996 amendments to the act, in section 5(b) of the act (63 P. S. § 244.5(b)), which require optometrists who are certified to administer and prescribe pharmaceutical agents for therapeutic purposes (optometrists holding therapeutic certification) to complete at least 6 hours in the administration and prescription of pharmaceutical agents for therapeutic purposes. The proposed amendment notifies optometrists that these courses shall provide instruction regarding the treatment and management of ocular or oculo-systemic disease. The proposed amendment also notifies optometrists that Board-approved courses of therapeutic content will be designated with a course number with the suffix "T." In addition, the proposed amendment instructs course providers that the Board will notify the provider of approval of a course. Finally, the proposed amendment requests that preapproved course providers indicate on the certificate of attendance that the course is a therapeutic course.

§ 23.87. Reporting of continuing education hours.

The Board proposes to amend § 23.87 to conform the regulation to the current statutory requirement for biennial continuing education, 30 hours, and to note that providers with therapeutic certification shall include at least 6 hours in therapeutic courses. In addition, the Board proposes to amend the requirements for documentation that shall be submitted, upon request, to verify attendance at mandatory continuing education. The proposed amendment provides that optometrists shall in-

clude the course approval number to the Board when submitting documentation of continuing education compliance. The Board provides this number to the course provider. The course provider generally provides the course number on the certificate of attendance. If the course provider does not provide the course number on the certificate of attendance, the proposed amendment places the burden of obtaining the course number from the provider on the optometrist.

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The proposed amendments should not create additional paperwork for the Board or the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, the SCP/PLC and the HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, State Board of Optometry, P. O. Box 2649, Harrisburg, PA, 17105, www.dos.state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,
Chairperson

Fiscal Note: 16A-529. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY

CONTINUING EDUCATION

§ 23.82. Continuing education hour requirements.

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2 years preceding renewal or reactivation, a minimum of 30 hours of continuing education. For licensees certified in accordance with section 4.1 of the act (63 P. S. § 244.4a) **[and §§ 23.201 and 23.202 (relating to qualifications for certification; and application procedure)]**, at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. Completion of a **Board-approved** course described in **[§ 23.201(b)(1) (Reserved)] section 4.1(a)(2) of the act (63 P. S. § 244.4a(a)(2))** shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.

(b) Persons failing to meet the continuing education requirements for any biennial renewal period will **[have their licenses placed in an inactive status and will be prohibited from the practice of optometry until such time as educational criteria are met, license is renewed, and any fees and penalties are properly paid] be disciplined in accordance with section 7(e) of the act (63 P. S. § 244.7(e))**.

(c) The Board may waive the requirements of continuing education in cases of certified illness or undue hardship. It **[shall be]** is the duty of each licensee seeking waiver to notify the Board in writing and request **[such]** the waiver**[, which] prior to the end of the biennial renewal period for which the waiver is sought. The waiver will be granted, denied[,]** or granted in part.

§ 23.83. Continuing education subject matter.

(a) Acceptable courses of study are limited to those pertaining to the use of means or methods for examination, diagnosis**[,]** and treatment of conditions of the human visual system and may include examination for and adapting and fitting of all types of lenses. The Board will not accept courses of study which do not relate to the actual practice of optometry such as studies in office management and financial procedures.

(b) Courses that will meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes in accordance with section 4.1 of the act (63 P. S. § 244.4a) shall concern the treatment and management of ocular or oculo-systemic disease. Course providers will receive notification of approval from the Board. Courses approved to meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes will be given a course number with the suffix "T." Approval as a therapeutic course is subject to reevaluation by the Board. When courses in the prescription and administration of pharmaceutical agents for therapeutic purposes are provided by preapproved providers who do not receive a specific course number from the Board, course sponsors must indicate on the certificate of attendance that the course is offered to meet the requirements for certification.

§ 23.87. Reporting of continuing education credit hours.

Applicants for a license or license renewal shall provide, at a time prescribed and on forms approved by the Board, a signed statement certifying that **[continuing education requirements have been met and]** they have met the continuing education requirements in

section 5(b) of the act (63 P. S. § 244.5(b)) by providing information [to document their certification,] which [information] shall include [but not be limited to] the following:

* * * * *

(3) Title of course, **including the course number assigned by the Board, if applicable,** and description of content. **For those courses which are approved to meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes, the licensee claiming credit for the course shall provide the Board with the course number.**

* * * * *

[Pa.B. Doc. No. 03-350. Filed for public inspection February 28, 2003, 9:00 a.m.]

[49 PA. CODE CH. 23]
General Revisions

The State Board of Optometry (Board) proposes to amend §§ 23.1, 23.33—23.35, 23.42, 23.64 and 23.71 and to add § 23.72 to read as set forth in Annex A. The proposed rulemaking would generally update the Board's regulations to reflect current practices in the profession and to simplify the formation of professional corporations.

Effective Date

The proposed rulemaking would be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3(a)(2.1) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(a)(2.1)), added by the act of October 30, 1996 (P. L. 721, No. 130) (Act 130) provides that the Board shall have the duty "[t]o determine, in accordance with optometric education, training, professional competence and skill, the means and methods for examination, diagnosis and treatment of conditions of the visual system." Section 3(a)(3) of the act requires the Board "[t]o record all licenses in its office." Section 3(b)(9) of the act authorizes the Board "[t]o establish and administer a records system which records shall be open to public inspection during the regular business hours of the Board." Finally, section 3(b)(14) of the act authorizes the Board "[t]o promulgate all rules and regulations necessary to carry out the purposes of this act."

Background and Need for the Proposed Amendments

The Board's current regulations were promulgated prior to the amendments made by Act 130 and do not address the means and methods for the examination, diagnosis and treatment of conditions of the visual system. Act 130 placed additional duties on the Board. In addition, the Board routinely receives numerous requests for information regarding whether optometrists are permitted to perform specific procedures. Act 130 defines the practice of optometry very broadly. Act 130 specifies that the Board has the duty to address the more specific means and methods that optometrists may employ. This proposed rulemaking addresses both public inquiry and the amendments made by Act 130.

The Board's current regulations are outdated in that they do not set minimum requirements that optometrists shall follow in writing prescriptions and do not require optometrists to record the pharmaceutical agents used in a patient's medical record (optometrists were granted use of limited pharmaceutical agents by Act 130). In addition, the Board's regulations do not reflect the Board's current recordkeeping system. These proposed amendments are necessary to bring the Board's regulations into compliance with the amendments made in Act 130.

Following numerous meetings of the Board's regulations committee and consideration by the entire Board, an exposure draft was sent to the Pennsylvania Optometric Association (Association), the Pennsylvania College of Optometry (College) and the Pennsylvania Academy of Ophthalmology (Academy). Following this solicitation of input from stakeholders, the Board placed notices of a public hearing in major newspapers of this Commonwealth inviting the general public to a public hearing on July 12, 2001. The Association, College and Academy sent representatives to the public hearing. No members of the general public attended the meeting. After considering the input received, the Board now proposes the amendments as set forth in Annex A.

Description of the Proposed Amendments

§ 23.1 (relating to definitions)

In accordance with the mandate of Act 130, the Board proposes to amend § 23.1 to define "means and methods for the examination, diagnosis and treatment of condifitions of the visual system." In formulating the provisions of the proposal, the Board considered extensive comments from the College, Academy and Association at its public hearing held on July 12, 2001. The Board's proposal includes diagnostic and treatment procedures that have been performed by optometrists for up to 25 years as well as newer technologies that have only become a standard part of optometric practice in the past few years.

The proposed amendment provides that optometrists may employ the following diagnostic techniques: the use of any computerized or automatic refracting device, visual field testing, ophthalmoscopy, anterior and posterior segment photography, provocative tests, electrodiagnostic tests, the use of lasers for diagnostic purposes, ultrasound examination of the eye and orbit and diagnostic tests to determine the patency of the lacrimal system. In addition, the proposed amendments provide that optometrists may order radiographs, computer assisted tomography scans, magnetic resonance imaging scans and laboratory work. Finally, the proposed amendments provide that optometrists may order, interpret and report on angiographic studies. The proposed amendments also address means and methods of treatment. The amendments provide that optometrists may employ vision therapy or orthoptics, low vision rehabilitation, epilation of lashes and may treat the lacrimal system including using punctal plugs. The specific procedures are authorized by Act 130 and are consistent with the practice of optometry in all states surrounding this Commonwealth.

§ 23.33 (relating to practice)

The Board proposes to amend § 23.33 to conform to current practice in the field of optometry. Subsection (a) of the current regulation restricts an optometrist to practice in a room used exclusively for the practice of optometry. The Board proposes to amend subsection (a) to clarify that this restriction applies only when the optometrist is practicing in his own office. The reality of today's

practice is that optometrists practice in health care facilities as well as their offices and cannot, therefore, always practice in a room used exclusively for the practice of optometry.

The Board also proposes to amend subsection (b) to further define the practice of an optometrist in a licensed health care facility. The proposed amendment merely reflects the current state of practice of the profession, defining "licensed health care facility" to include "in-patient or out-patient hospitals and emergency rooms, nursing homes and long term care facilities, or any facility with the need for optometric services."

Finally, the Board proposes to amend § 23.33 by adding a subsection (e) to permit optometrists to provide visual screenings at any location, public or private, within this Commonwealth. Optometrists are frequently asked to perform simple visual screenings, which do not require the facilities of the optometric office or health care facility, at various events and locations. The amendment would permit optometrists to perform these screenings. The provision of vision screening services is a great benefit to the citizens of this Commonwealth.

§§ 23.34 and 23.35 (relating to professional corporations; and fictitious names)

The Board proposes to amend §§ 23.34 and 23.35 to reflect current optometric practice and to reflect the current recordkeeping procedures of the Board administrative office and the Department of State Corporation Bureau (Bureau). The Board proposes to amend § 23.34(a) to permit optometrists to incorporate with other health care professionals if authorized by the Commonwealth's laws pertaining to incorporation. The Board proposes to amend §§ 23.34 and 23.35 by deleting the requirements that optometrists file articles of incorporation or fictitious name registrations with the Board for approval prior to filing with the Bureau. Departmental practice is for the Bureau to send copies of all optometric filings to the Board for review. Because the Bureau is essentially a filing office and is not staffed to ensure compliance with the current §§ 23.34 and 23.35, there is no way to enforce the current provisions. In addition, the Board has found no public benefit to the current requirements of these sections.

§ 23.42 (relating to equipment)

The Board proposes to amend § 23.42 first by clarifying that the equipment listed in the section is the minimum required for performing a basic, rather than "complete" optometric examination. In addition, the Board proposes to replace the equipment ophthalmometer with the equipment keratometer. This change reflects current practice.

§ 23.64 (relating to professional conduct)

The Board proposes to add subsection (c) to § 23.64. Subsection (c) would allow an optometrist to terminate his care of a patient who is not adhering to appropriate regimens of care and follow-up. The proposed subsection would require the optometrist to notify the patient in writing and explain why the optometrist was terminating his care of the patient. Finally, the proposed subsection would require the optometrist to copy the patient's record and give the record either to the patient or to the subsequent treating optometrist.

§ 23.71 (relating to patient records)

The Board proposes to amend § 23.71 to reflect current practice. The changes reflect the current terms used ("uncorrected" vision instead of "naked" vision) and refer to the use of perimtery, which is the standard in visual field testing. In addition, the Board proposes to amend § 23.71 by adding subsection (a)(19) which requires the optometrist to record in the patient's medical record any pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable. The information updates the regulations in compliance with Act 130's grant of authority to use pharmaceutical agents and reflects proper medical practice in recordkeeping.

Finally, the Board proposes to amend § 23.71(c) by setting forth requirements for optometrists who provide a patient with a contact lens prescription. The current section provides that the optometrist has the discretion to determine whether to provide a patient with a contact lens prescription rather than dispensing the lens to the patient. Some optometrists have been reluctant to provide patients with a contact lens prescription, even when the patient requested the prescription, for fear of liability if the dispenser provides the patient with incorrect lenses. The proposed subsection (c)(1) requires the optometrist to determine all requirements for a satisfactory fit prior to providing a contact lens prescription. This provision protects the optometrist by clarifying the optometrist's responsibility in determining fit requirements for contact lenses. The proposed subsection (c)(2) provides that an optometrist shall consider all contact lenses used in determining the contact lens prescription to be diagnostic lenses. This provision protects the optometrist by clarifying that the optometrist has not determined the final prescription until the optometrist writes the prescription, because any trial lenses used are merely diagnostic.

§ 23.72 (relating to prescriptions)

The Board proposes to amend its regulations by adding requirements for prescriptions in § 23.72. Act 130 expanded the scope of practice of optometry to include "[t]he administration and prescription of legend and nonlegend drugs as approved by the Secretary of Health. . ." 63 P. S. § 244.2. Prior to 1996, optometrists only wrote prescriptions for contact lenses and spectacles, and the Board's regulations did not set requirements for these prescriptions. To standardize practice in this Commonwealth and ensure that all optometrists in this Commonwealth include information important to the patient on any prescription written, the Board proposes requirements on optometric prescriptions generally and proposes to set specific requirements for contact lens, spectacle and pharmaceutical prescriptions.

Proposed § 23.72 would require that all optometric prescriptions bear the name, address and license number of the optometrist, the name of the patient, date the prescription is issued and expiration date. Contact lens prescriptions would have to specify the lens type, all specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case greater than 1 year. These requirements are consistent with the generally accepted standard of optometric practice and ensure that the contact lens dispenser will dispense the proper lenses for the patient as determined by the optometrist. In addition, the maximum of 1 year expiration date ensures that contact lens wearing patients will be rechecked by the optometrist at least yearly, the maximum time period recommended by medical professionals. For spectacles, the maximum time period recommended for reexamination is 2 years. This time period is reflected in § 23.71(b).

Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The proposed amendments should not create additional paperwork for the Board or the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC and HPLC with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly and the Governor prior to publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,
Chairperson

Fiscal Note: 16A-528. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY

GENERAL PROVISIONS

§ 23.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Means and methods for the examination, diagnosis and treatment of conditions of the visual system—

(i) The means and methods for the examination, diagnosis and treatment of conditions of the visual system that may be employed by licensed optometrists include:

(A) The use of any computerized or automatic refracting device.

(B) Visual field testing such as manual or automated perimetry.

(C) Ophthalmoscopy, including ophthalmoscopy of a patient who has been anesthetized by a practitioner authorized to provide anesthesia services and in accordance with applicable law and regulation governing the anesthesia provider and facility, and with or without the use of diagnostic lenses including, any condensing lenses, gonioscopy lenses and fundus contact lenses.

(D) Anterior and posterior segment photography.

(E) Provocative tests for glaucoma and electrodiagnostic testing.

(F) The use of lasers for diagnostic purposes.

(G) The employment of vision therapy or orthoptics.

(H) Low vision rehabilitation.

(I) Treatment of the lacrimal system including the use of punctal plugs and diagnostic procedures to determine the patency of the lacrimal system.

(J) Epilation of lashes.

(K) Ultrasound examination of the eye and orbit, including A-scans with or without Intraocular Lens calculations and B-scans.

(L) Ordering of radiographs, computer assisted tomography scans ("CAT" scans), magnetic resonance imaging scans ("MRI" scans) and laboratory work.

(M) Ordering, interpretation and reporting of angiographic studies of ocular vasculature and blood flow.

(ii) The practice of optometry includes all levels of evaluation and management services and also includes, for those optometrists who are therapeutically certified, the administration and prescription of approved legend and nonlegend drugs.

* * * * *

BUSINESS PRACTICES

§ 23.33. Practice.

(a) An optometrist engaged in the active practice of optometry shall practice in a room used exclusively for the practice of optometry **when practicing in his office.** A change in this address, or the addition of places of practice, shall comply with §§ 23.43 and 23.44 (relating to offices; and additional practice locations).

(b) In compliance with § 23.36 (relating to consultant, advisor, staff or employe optometry), an optometrist may arrange the professional practice to include service to a licensed health care service facility, **including inpatient or out-patient hospitals and emergency rooms, nursing homes and long-term care facilities, or any facility with the need for optometric services.**

* * * * *

(e) An optometrist may provide visual screenings at any location, public or private, within this Commonwealth.

(f) * * *

§ 23.34. Professional corporations.

(a) An optometrist licensed by the Board may professionally incorporate with other optometrists, medical doctors, doctors of osteopathy, dentists, psychologists, podiatrists [and], chiropractors[,] and other health care professionals if this incorporation is authorized by Chapter 5, 17, 25, 29, 33 or 41.

(b) [The articles of incorporation and registry statement of the proposed corporation shall be filed with the Board for review and approval, prior to submission to the Corporation Bureau.

(c) The name of a professional corporation will be approved by the Board.] If a name is chosen for the professional corporation which does not contain the names of all the licensed professionals with an ownership interest in the practice, the Board shall be supplied with a list of these persons. [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing articles of incorporation.

(d)] An optometrist [incorporating] practicing under the terms of this section shall notify the Board of a change in the name or ownership of the [corporation, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure] business.

§ 23.35. Fictitious names.

* * * * *

(b) [A fictitious name registration shall be filed with the Board for approval, prior to submission to the Corporation Bureau.

(c) A fictitious name will be approved by the Board.] A list of the optometrists with an ownership interest in the practice shall be submitted to the Board concurrently with the fictitious name registration. [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing a fictitious name registration.

(d)] An optometrist practicing under the terms of this section shall notify the Board of changes in the name or ownership of the business[, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure].

OFFICE OF OPTOMETRIST

§ 23.42. Equipment

An office maintained for the practice of optometry shall be fully equipped for the making of a [complete] basic optometrical examination including[, but not limited to,] the following:

(1) [Ophthalmometer] Keratometer.

* * * * *

UNLAWFUL PRACTICES

§ 23.64. Professional conduct.

* * * * *

(c) An optometrist may terminate his or her optometric care of a patient who, in the professional opinion of the optometrist, is not adhering to appropriate regimens of care and follow-up.

(1) The optometrist shall notify the patient, in writing, that the optometrist is terminating the professional relationship and the reasons for the termination.

(2) In addition, the optometrist shall make a copy of the patient's medical record available to the patient or successor eye care provider designated by the patient, and may charge a reasonable fee for copying the record.

[RECORDS] PROFESSIONAL PRACTICE

§ 23.71. Patient records.

(a) An optometrist shall use professional judgment to determine what services are to be provided to his patients. Records of the actual services rendered shall be maintained for a minimum of 5 years after the last consultation with a patient. Records shall indicate when a referral has been made to a physician. An examination may include[, but is not limited to,] the following:

* * * * *

(2) [Naked] Uncorrected visual acuity.

* * * * *

(14) Visual fields [, central (after age 40)] including manual or automated perimetry.

* * * * *

(19) Pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable.

(b) An optometrist shall comply with a patient request for a copy of the patient's spectacle prescription, within 2 years of the patient's last eye examination. Requests for spectacle prescriptions from examinations over 2 years prior to the request[, or for contact lens prescriptions,] may be complied with at the discretion of the optometrist. Requests for contact lens prescriptions may be complied with at the discretion of the optometrist.

(c) [An optometrist's license number shall appear on each prescription written by that optometrist.] An optometrist who, in his discretion, provides a contact lens prescription, shall comply with the following:

(1) The optometrist shall determine the requirements for a satisfactory fit of a contact lens prior to providing a contact lens prescription.

(2) The optometrist shall consider the contact lenses used in determining the contact lens prescription to be diagnostic lenses.

§ 23.72. Prescriptions.

(a) Optometric prescriptions shall bear:

(1) The name, address and license number of the optometrist.

(2) The name of the patient.

(3) The date the prescription is issued by the licensed practitioner.

(4) The expiration date.

(b) Contact lens prescriptions shall specify the lens type, the specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case shall the expiration date be greater than 1 year. The prescription may include a statement of caution or a disclaimer if the statement or disclaimer is supported by appropriate findings and documented in the patient's medical record.

(c) Pharmaceutical prescriptions shall specify the name of the drug prescribed, quantity and potency prescribed, expiration date, number of refills allowed, instructions for use and any indicated precautionary statements.

(d) Spectacle prescriptions shall specify any information that would be relevant to manufacturing glasses including the dioptic value of the sphere, astigmatism, prism, slab off, add power and axis or orientation of the astigmatism correction.

[Pa.B. Doc. No. 03-351. Filed for public inspection February 28, 2003, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Branch Lots

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to add § 19.5 (relating to branch lots) to read as set forth in Annex A.

The proposed rulemaking would inform licensees of the conditions under which a licensed dealer may keep vehicles at an unlicensed location used only for storage purposes and the conditions under which a licensed dealer may exhibit a single vehicle at an unlicensed location.

Effective Date

The proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under section 4 of the Board of Vehicles Act (act) (63 P. S. § 818.4).

Background and Need for the Proposed Rulemaking

Storage of Vehicles

Section 5(e)(1)(ii) of the act (63 P. S. § 818.5(e)(1)(ii)) provides that "[a] branch lot shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles." As space to park vehicles has become a premium commodity, dealers have developed storage lots that are separate and apart from their dealership facilities. Licensees, the Pennsylvania Independent Automobile Dealers Association (PIADA) and law enforcement agents have asked the Board to promulgate a regulation further defining "used solely for the storage of vehicles" so that dealers may comply with the act and law enforcement agents may enforce the act. The Board's proposed rulemaking would define storage of vehicles in relation to engaging in the business of a vehicle dealer in a way that is consistent with public protection concerns that prohibit a dealer from conducting sales activity at an unlicensed location.

Single Vehicle Display

Individual licensees and PIADA have asked the Board to clarify whether the placement of a single vehicle at an unlicensed location is always the display of that vehicle for sale, and therefore prohibited, or whether the placement of a single vehicle at an unlicensed location may, under certain circumstances, be considered permissible activity. The licensees' concern arises because many shopping malls approach licensees to place automobiles in the shopping mall. PIADA has informed the Board that this type of vehicle display is permitted in states surrounding this Commonwealth and that Commonwealth dealers believe they are at a competitive disadvantage because the act requires vehicles to be displayed at licensed locations. Some surrounding states permit single vehicle displays at unlicensed locations provided the dealer is issued a special permit for the display. The Board proposes to make a distinction between display for sale which may only occur at a licensed location and other single vehicle display. This distinction will permit a licensed dealer to place a single vehicle at an unlicensed location.

Section 19(34) of the act (63 P. S. § 818.19(34)) authorizes the Board to discipline a dealer who "conducts its business . . . at any other location than that authorized by its license." Under section 2 of the act (63 P. S. § 818.2), a dealer is a person "who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles." Section 2 of the act also defines "buying, selling or exchanging" to "include listing, offering, auctioning, advertising, representing or soliciting, offering or attempting to solicit or negotiate on behalf of another a sale, purchase or exchange or any similar or related activity."

With those definitions in mind, clearly the General Assembly did not intend to prohibit all advertising at a location other than the licensed location; a ban would prohibit highway billboards, sideboard advertisements at sporting events and adboards on buses and subways. The General Assembly must have intended to prohibit only activities directly related to buying, selling or exchanging vehicles at locations other than the dealer's licensed location.

Section 19.18(a)(3) (relating to established place of business for dealers) defines a dealer's display area as a place "where the public is permitted and invited in the regular course of business to inspect or test drive . . . vehicles . . . offered for sale." Section 19.18(a)(3) goes on to describe what requirements a "display area" must meet. These requirements include, among other things: adequate space to display and show no fewer than five vehicles; grading, surface and lighting requirements; requirements that the area be separated from other businesses; and requirements that the area have a telephone line, a sign showing the licensed name of the dealer and conspicuously posted business hours. Clearly, places such as a mall or someone's front yard are not "display areas" under the Board's regulations. Proposed § 19.5(c) reinforces the distinction between "display ar-

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BY: _____
(DEPUTY ATTORNEY GENERAL)

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DATE OF APPROVAL

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Optometry
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-528

DATE OF ADOPTION: _____

BY: Steven Reto, O.D.
Steven Reto, O.D.

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: [redacted]

8.18.04
DATE OF APPROVAL

(Deputy General Counsel
(Chief Counsel,
Independent Agency
Strike inapplicable
title)

[ ] Check if applicable
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Objections attached.

[ ] Check if applicable. No Attorney General approval or objection within 30 day after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY
49 PA. CODE SECTIONS 23.1, 23.33 - 23.35, 23.42, 23.64, 23.71 AND 23.72
GENERAL REVISIONS

The State Board of Optometry (Board) amends §§ 23.1, 23.33-23.35, 23.42, 23.64 and 23.71 and adds §§ 23.3 and 23.72, to read as set forth in Annex A.

Response to Comments

Notice of proposed rulemaking was published on March 1, 2003 (33 Pa. B. 1118). Following publication, the Board received public comments from the Pennsylvania Optometric Association (POA), the Pennsylvania Medical Society (PMS), the Pennsylvania Academy of Ophthalmology (Academy), and John C. Maher, M.D. Additionally the State Board of Medicine (Medical Board) sent comments to the Board. On April 1, 2003, the House Professional Licensure Committee (HPLC) submitted comments. On April 30, 2003, IRRC submitted comments. The majority of the comments submitted related to the definition of the means and methods for the examination, diagnosis and treatment of conditions of the visual system that may be employed by optometrists.

The POA noted its full support for the proposed amendments related to the means and methods for the examination, diagnosis and treatment of conditions of the visual system that may be employed by optometrists. POA also approved of the proposed amendments related to practice in an office used exclusively for the practice of optometry, professional corporations and fictitious names, the equipment required for a basic ophthalmic examination, termination of patient care, recordkeeping, and contact lens, spectacle and pharmaceutical prescriptions.

IRRC suggested that the delineation of the means and methods for the examination, diagnosis and treatment of conditions of the visual system was a substantive provision that had been improperly placed in the regulation's definition section. IRRC suggested the provisions be relocated under the title "scope of practice." The Board has relocated the section by creating a new § 23.3 under the topic General Provisions. The Board has retained the title "means and methods for the examination, diagnosis and treatment of conditions of the visual system" to correlate with section 3(a)(2.1) of the act (63 P.S. § 244.3(a)(2.1)).

Ophthalmoscopy

Several comments related to subparagraph (i)(C), which provides for "[o]phthalmoscopy, including ophthalmoscopy of a patient who has been anesthetized by a practitioner authorized to provide anesthesia services and in accordance with applicable law and regulation governing the anesthesia provider and facility, and with or without the use of diagnostic lenses, including, but not limited to, any and all condensing lenses, gonioscopy lenses, and fundus contact lenses." The Academy commented that it believed the subsection would allow optometrists to order the administration of intravenous and inhalation anesthetic agents. The Medical Board commented that there "is no optometric need for an examination to be performed under anesthesia." Dr. Maher commented optometrists do not have the training to deal with the anesthetized patient.

The HPLC and IRRC commented that the subsection appeared to authorize optometric offices as facilities in which anesthesia may be administered.

The Board does not agree that the proposed definition would have authorized optometrists to order or administer anesthesia or that the subsection would have authorized the administration of anesthesia in optometric offices. The Board did not intend either to authorize optometrists to order intravenous or inhalation anesthetic agents or to provide for the administration of anesthesia in optometric offices. The reference to an anesthetized patient was included to encompass the practice of optometrists who work in a hospital setting and who may be asked to perform ophthalmoscopy on a patient who has been anesthetized under the order of, and under the care of, a physician. Because of the confusion generated by this subsection, the Board has determined that the subsection should be amended to eliminate any reference to anesthesia.

The Board amended the definition to refer to ophthalmoscopy generally and gonioscopy in renumbered § 23.3(a)(3). Gonioscopy is ophthalmoscopy with the use of a particular type of lens.

Tests for glaucoma and electrodiagnostic testing

Several commenters addressed subparagraph (i)(E) of this definition, which relates to provocative tests for glaucoma and electrodiagnostic testing. The Academy, the Medical Board and Dr. Maher commented that because optometrists were not authorized to treat acute glaucoma, they should not be authorized to provoke acute glaucoma attacks. IRRC asked the Board to address these comments. The Board recognizes that provocative tests for glaucoma have been performed for over 50 years and were performed more frequently in the past and that newer tests are used more frequently today. The Board included provocative tests because they have been utilized, although rarely, by some optometrists. An acute glaucoma attack may be provoked by entering a dark movie theater just as it may be provoked by placing a patient in a darkened room. An acute attack is unlikely to be provoked by an eye care professional because a provocative test would never be employed without first assessing the patient's drainage system through gonioscopy. Nevertheless, the Board has stricken the language referring to provocative tests. Optometrists have long performed other tests for glaucoma and are authorized to treat primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma. Therefore, the Board retained the general language related to testing for glaucoma, in the renumbered § 23.3(a)(5).

Use of Lasers for Diagnostic Purposes

Several commenters submitted remarks on subparagraph (i)(F), which relates to the use of lasers for diagnostic purposes. The PMS suggested the subsection would be clarified by being rewritten "the use of lasers for diagnostic imaging purpose." The Medical Board commented that the use of lasers is inherently dangerous and even in diagnostic applications has been known to cause anatomical changes to the eye. The HPLC noted the PMS's comment. The Board

considered the comments and amended the language of § 23.1(i)(F). The Board cannot adopt the language suggested by PMS because not all diagnostic tests commonly employed by optometrists and that utilize lasers produce images, for example, laser interferometry. Laser interferometry is used on children with a "lazy eye" diagnosis to determine the potential best vision after vision therapy. However, to clarify, the Board added the adjective "diagnostic" to lasers and, at the suggestion of the HPLC staff, referenced section 2 of the act that prohibits optometrists from performing surgery, including laser surgery, in the new § 23.3(a)(6).

Treatment of the Lacrimal System

Several commenters objected to subparagraph (i)(I). The PMS stated that the majority of the procedures for the treatment of the lacrimal system involve incision, excision, repair and probing, many of which require the administration of anesthesia. PMS suggested that subparagraph (i)(I) be deleted or modified to include only diagnostic and non-surgical treatment of the lacrimal system. The Academy commented that treatment of the lacrimal system requires the use of surgical procedures and suggested that subparagraph (i)(I) "would allow optometrists to pass a steel probe through the tear duct opening in the eyelid of a six-month old, down the entire length of the tear duct, perforating fleshy tissue on the way into the nose." The Academy also commented that "the bible of medical and surgical insurance coding" lists the placement of punctual plugs as a surgical procedure. Dr. Maher echoed the comments of the PMS. The Medical Board commented that subparagraph (i)(I) authorized probing of the lacrimal system and noted that lacrimal probing was a surgical procedure that, if not performed carefully, could result in the metal probe penetrating the brain.

Section 2 of the act authorizes optometrists to administer and prescribe legend and nonlegend drugs approved by the Secretary of Health for treatment of the lacrimal system by non-surgical means. In addition, section 2 of the act authorizes optometrists to employ any and all means for the examination and diagnosis of conditions of the human visual system. The use of punctual plugs is not a surgical procedure. Optometrists have been using punctual plugs and obtaining insurance reimbursement for the use of punctual plugs for approximately 20 years. The Board agrees that treatments involving incision, excision, surgical repair and probing the entire length of the tear duct with a steel probe would constitute surgery prohibited by section 2 of the act. Therefore, the Board has amended subparagraph (i)(I), renumbered § 23.3(a)(9), to clarify that an optometrist's treatment of the lacrimal system extends only to the use of punctual plugs, dilation of the punctum, and irrigation of the lacrimal system."

Diagnostic Radiology

Comments were also submitted on subparagraphs (i)(K), (i)(L) and (i)(M) of the proposed rulemaking. These sections were renumbered § 23.3(a)(11), 23.3(a)(12) and 23.3(a)(13). The Academy commented that although optometrists and technicians may perform ultrasound scans, only a surgeon can analyze data from an ultrasound scan to order a lens implant. In addition, the Medical Board stated that the purpose of the examinations is to determine whether there is a need for surgical intervention and "because the surgeon is

ultimately responsible for the surgical results, it is imperative that the responsibility for the measurements of the eye and the calculation of the implant power be vested in the surgeon." Dr. Maher objected to subparagraph (i)(K) because, he stated, "A scans are used to determine intraocular lenses and is pre-surgical." Dr. Maher reasoned that if optometrists are prohibited from performing surgery, they would also be prohibited from performing pre-surgical testing. The Academy stated that the ordering of CAT and MRI scans is the practice of medicine. The Academy stated that optometrists cannot administer intravenous injections and, therefore, should not be authorized to "order a nurse to administer intravenous contrast agents." The Academy suggested that section (i)(M) would allow an optometrist to order arteriograms of the carotid arteries. Dr. Maher commented that the purpose of ordering radiographs, MRIs or CAT scans was to evaluate medical issues or in the possible planning of surgery. Dr. Maher again reasoned that since the act does not allow optometrists to practice medicine or perform surgery, optometrists should not order diagnostic tests that may reveal a condition that would require medical intervention or surgery. Regarding angiographic studies, Dr. Maher also reasoned that because optometrist cannot perform injections, they cannot order others to perform injections. In addition, Dr. Maher noted that "it is not clear that this does not exclude angiography of the orbit, which is part of the ocular vasculature. According to Dr. Maher, arteriography carries a 10% mortality rate and optometrists do not have sufficient education and training to order arteriograms. The Medical Board commented that the performance of diagnostic scans is complex and involves systems of the human anatomy beyond the visual system. Regarding angiography, the Medical Board noted that such studies involve intravenous introduction of dyes and that some percentage of patients will have an adverse effect that can lead to death. The Medical Board stated that these are specialized tests that are usually performed by retinal specialists who maintain adequate emergency response measures. IRRC asked the Board to respond to the above comments.

The Board agrees with the Academy that optometrists, and even technicians, may perform ultrasound examinations of the eye. The Board also acknowledges that A-scans are currently used to calculate lens implant power prior to cataract surgery. However, A-scans are also used to measure anterior chamber depth for diagnostic purposes in managing certain glaucoma patients whom optometrists are authorized to treat. An optometrist may only rarely, if ever, be presented with a patient that requires utilization of a particular diagnostic test, for example an orbital radiograph for a child who has been hit in the eye area with a baseball. The same is true for MRI and CAT scans. However, an optometrist may only perform diagnostic tests for conditions that the optometrist can treat. For example, decades before optometrists were authorized by law to treat glaucoma, optometrists provided the majority of the population with testing for glaucoma. The General Assembly recognized the benefit of authorizing optometrists to perform diagnostic tests for conditions of the visual system while limiting the range of treatment options that may be employed by an optometrist.

In relation to the ordering and interpretation of angiographic studies, the act does not prohibit optometrists from performing injections for diagnostic purposes; the act provides that optometrists may not "use injections in the treatment of ocular disease." Nevertheless, the standard of practice in Pennsylvania requires an optometrist to utilize an angiographic specialist

to perform angiography. Therefore, on final rulemaking, the Board added the caveat that the means and methods for diagnosis by optometrists does not include the administration of intravenous materials. These angiographic specialists have been performing angiography for optometrists for years without incidence. To suggest that this longstanding collaboration has become dangerous and should now be disallowed does not recognize the history and record of the practice.

Ordering, interpreting and reporting on angiographic studies lies squarely within the diagnosis of conditions of the human visual system authorized by the act. Nothing in the Board's regulation contradicts the act, which limits optometrists to diagnosing and treating conditions of the visual system. Therefore, the Academy's suggestion that the Board's regulation would allow an optometrist to order arteriograms of the carotid arteries is incorrect.

Epilation of Lashes

The Medical Board commented on subparagraph (i)(J), related to epilation, or plucking, of eyelashes, stating that no matter how simple this procedure may seem, "it is a surgical procedure that can create serious risk of infection and other harm to the patients." In addition, the Medical Board expressed concern that plucking an eyelash without a medical examination may delay the proper diagnoses of medical conditions underlying the presenting symptomology of the patient. The Board disagrees. Epilation is a non-surgical treatment that has long been a part of the practice of optometric practice. The section was renumbered § 23.3(a)(10).

Levels of Management and Practice

Several commenters also submitted remarks on subparagraph (ii), related to levels of management and practice. The PMS commented that the section should be amended to limit performance of evaluation and management services to those based on focused problems related to the visual system. The Academy commented that the highest levels of codes required physical examination of the entire body along with a comprehensive medical history, which the Academy believed were only taught in medical school. Dr. Maher commented that the use of all levels of codes was not possible because level 4 and level 5 evaluation and management codes require a complete review of systems that are "well beyond any optometrist." The Medical Board commented that this subsection "suggests the broad use of drugs by optometrists: and suggested the rulemaking "should clearly state that the use of drugs is limited to those approved for optometric care." The HPLC noted these comments and asked the Board to explain its reasoning.

The use of evaluation and management codes requires certain criteria, which are the same for all health care providers. Optometrists are trained to review systems required for the use of all code levels. Insurance companies recognize the use of these codes by optometrists and reimburse optometrists who use the codes. Subparagraph (ii) has been renumbered § 23.3(b).

Other Comments

IRRC commented that § 23.33(a) should be amended to make the subsection gender neutral. In drafting the final rulemaking, the Board conformed to § 6.10(b) (relating to gender) of the Pennsylvania Code and Bulletin Style Manual.

Regarding § 23.33(b), IRRC asked if the Board intended to allow optometrists to provide services in facilities other than licensed health care facilities. The Board intended to provide for the practice of optometry in all facilities in which there is a need for optometric services. The most common facilities that are not licensed health care facilities where optometrists are asked to provide optometric services, particularly visual screening, are schools, prisons, fire halls and township buildings. Some optometrists operate mobile practices. IRRC also commented that the phrase "optometric services" was vague and asked if an optometrist could provide the full range of optometric services in other facilities. The Board intended to allow optometrist to perform the full range of optometric practice. Just as some ophthalmologists perform laser surgery by transporting equipment in a mobile van, an optometrist can transport diagnostic equipment and perform any testing enabled by that equipment. The Board has amended § 23.21 to require an optometrist to display his or her license wherever the optometrist practices. IRRC also asked the Board to define "visual screening" as used in § 23.33(e). The Board has added the definition to § 23.1. Regarding § 23.44, IRRC questioned with what other health care professionals an optometrist could incorporate. The regulation allows incorporation with other optometrists, medical doctors, doctors of osteopathy, dentists, psychologists, podiatrists, chiropractors and other health care professionals if the incorporation is authorized by the practice acts of the respective professions and the Professional Corporation Law, Act 160 of 1970, as amended (15 Pa. C.S. §§ 2901-2907).

IRRC next commented on § 23.71(b). IRRC asked why a patient's request for a contact lens prescription was at the discretion of the optometrist. The Board's regulations currently provide that a patient's request for a contact lens prescription is at the discretion of the patient's optometrist. The Board's intent was to maintain this provision which was consistent with Federal law. However, the United States Congress recently enacted the Fairness to Contact Lens Consumers Act (15 U.S. CA §§ 7601 – 7610) which became effective in early February 2004. The Board has amended its rulemaking to conform to the new federal statute. The Board also amended the requirement related to release of a spectacle prescription to conform to regulations of the Federal Trade Commission. (16 C.F.R. §§ 456.1-456.4).

IRRC also commented that § 23.71(c) included the phrase "in his discretion" and stated that the Board should amend this phrase to make it gender neutral. On final rulemaking, the Board deleted § 23.71(c).

IRRC commented on § 23.72. IRRC suggested that an optometric prescription include the optometrist's telephone number in § 23.72(a). To conform to the new federal law, the Board has added both the telephone number and facsimile number to its regulation.

Finally, regarding § 23.72(b), IRRC asked if the 1-year expiration date referred to the date of the patient's examination or the date when the optometrist wrote the prescription. The Fairness to Contact Lens Consumers Act (15 U.S.C.A. §§ 7601-7610) provides that an optometrist must provide a patient with a copy of the patient's contact lens prescription when the contact lens fitting is complete. The 1-year expiration date would run from the date the prescription is issued.

Statutory Authority

Section 3(a)(2.1) of the Optometric Practice and Licensure Act (63 P.S. § 244.3(a)(2.1)) (act) provides that the Board shall have the duty "[t]o determine, in accordance with optometric education, training, professional competence and skill, the means and methods for examination, diagnosis and treatment of conditions of the visual system." Section 3(a)(3) of the act (63 P.S. 244.3(a)(3)), requires the Board "[t]o record all licenses in its office." Section 3(b)(9) of the act (63 P.S. § 244.3(b)(9)), authorizes the Board "[t]o establish and administer a records system which records shall be open to public inspection during the regular business hours of the Board." Finally, section 3(b)(14) of the act (63 P.S. § 244.3(b)(14)), authorizes the Board "[t]o promulgate all rules and regulations necessary to carry out the purposes of this act."

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1. This final-form rulemaking addresses a compelling public interest and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The amendments should have no fiscal impact on licensees, the Board, the private sector, the general public or any political subdivisions. The regulation should not create additional paperwork for the Board or the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board/Commission submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1120, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee(SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board/Commission has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Additional Information

Persons who would like additional information regarding this rulemaking should contact Deborah Smith, Board Administrator, P.O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us.

Findings

The State Board of Optometry finds:

(1) That public notice of intention to adopt a regulation at 49 Pa. Code, Chapter 23, was given under section 201 and 202 of the Commonwealth Documents Law, 48 P.S. §§ 1201-1202, and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1-7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) That the regulation of the State Board of Optometry is necessary and appropriate for the administration of the Optometric Practice and Licensure Act.

(4) The amendments to this final rulemaking do not enlarge the original purpose of the proposed regulation published at 33 Pa. B. 1118.

Order

The Board therefore ORDERS that:

(A) The regulations of the State Board of Optometry, 49 Pa. Code Chapter 23, are amended to read as set forth in the attached Annex.

(B) The Board shall submit the Order and a copy of the Annex to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(C) The Board shall certify this Order and Annex and shall deposit them with the Legislative Reference Bureau as required by law.

This Order and regulation shall take effect upon publication in the Pennsylvania Bulletin.

Steven J. Reto, O.D.
Chairman, State Board of Optometry

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY

GENERAL PROVISIONS

§ 23.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicated otherwise:

* * * * *

~~*Means and methods for the examination, diagnosis and treatment of conditions of the visual system*~~

~~(i) The means and methods for the examination, diagnosis and treatment of conditions of the visual system that may be employed by licensed optometrists include:~~

~~(A) The use of any computerized or automatic refracting device.~~

~~(B) Visual field testing such as manual or automatic perimetry.~~

~~(C) Ophthalmoscopy, including ophthalmoscopy of a patient who has been anesthetized by a practitioner authorized to provide anesthetized by a practitioner authorized to provide anesthesia services and in accordance with applicable law and regulation governing the anesthesia provider and facility, and with or without the use of~~

~~diagnostic lenses including, any condensing lenses, gonioscopy lenses and fundus contact lenses.~~

~~(D) Anterior and posterior segment photography.~~

~~(E) Provocative tests for glaucoma and electrodiagnostic testing.~~

~~(F) The use of lasers for diagnostic purposes.~~

~~(G) The employment of vision therapy or orthoptics.~~

~~(H) Low vision rehabilitation.~~

~~(I) Treatment of the lacrimal system including the use of punctal plugs and diagnostic procedures to determine the patency of the lacrimal system.~~

~~(J) Epilation of lashes.~~

~~(K) Ultrasound examination of the eye and orbit, including A scans with or without Intraocular Lens calculations and B scans.~~

~~(L) Ordering of radiographs, computer assisted tomography scans ("CAT" scans), magnetic resonance imaging scans ("MRI" scans) and laboratory work.~~

~~(M) Ordering, interpretation and reporting of angiographic studies of ocular vasculature and blood flow.~~

~~(ii) The practice of optometry includes all levels of evaluation and management services and also includes, for those optometrists who are therapeutically certified, the administration and prescription of approved legend and nonlegend drugs.~~

* * * * *

VISION THERAPY – A TERM MEANING ANY OF THE FOLLOWING:

(I) TREATMENT PLANS FOR PROBLEMS OF EYE TEAMING, FOCUSING, TRACKING, SENSORY ADAPTATION AND VISUAL INFORMATION PROCESSING.

(II) THE USE AND PRESCRIPTION OF DEVICES AND PROCEDURES THAT MODIFY THE OCULOMOTOR AND SENSORY ASPECTS OF THE VISUAL PROCESS.

(III) ORTHOPTICS.

VISUAL REHABILITATION – A TERM MEANING ANY OF THE FOLLOWING:

(I) DIAGNOSIS OF A VISUAL IMPAIRMENT.

(II) PRESCRIPTION OF LENSES, PRISMS, FILTERS, OCCLUDERS, MIRRORS, AND OPTICAL AND ELECTROOPTICAL MAGNIFICATION.

(III) DESIGN OF TREATMENT PLANS TO COMPENSATE FOR CENTRAL AND PERIPHERAL VISUAL FIELD DEFECTS.

* * * * *

§ 23.3. MEANS AND METHODS FOR THE EXAMINATION, DIAGNOSIS AND TREATMENT OF CONDITIONS OF THE VISUAL SYSTEM.

(a) THE MEANS AND METHODS FOR THE EXAMINATION, DIAGNOSIS AND TREATMENT OF CONDITIONS OF THE VISUAL SYSTEM THAT MAY BE EMPLOYED BY LICENSED OPTOMETRISTS INCLUDE:

(1) THE USE OF ANY COMPUTERIZED OR AUTOMATIC REFRACTING DEVICE.

(2) VISUAL FIELD TESTING SUCH AS MANUAL OR AUTOMATIC PERIMETRY.

(3) OPHTHALMOSCOPY AND GONIOSCOPY.

(4) ANTERIOR AND POSTERIOR SEGMENT PHOTOGRAPHY.

(5) TESTING FOR GLAUCOMA AND ELECTRODIAGNOSTIC TESTING.

(6) THE USE OF DIAGNOSTIC LASERS FOR DIAGNOSTIC PURPOSES CONSISTENT WITH SECTION 2 OF THE ACT (63 P.S. § 244.2), WHICH EXCLUDES THE USE OF THERAPEUTIC LASERS AND LASER SURGERY.

(7) THE EMPLOYMENT OF VISION THERAPY.

(8) VISUAL REHABILITATION.

(9) TREATMENT OF THE LACRIMAL SYSTEM INCLUDING THE USE OF PUNCTAL PLUGS, DILATION OF THE PUNCTUM AND IRRIGATION OF THE LACRIMAL SYSTEM.

(10) EPILATION OF LASHES.

(11) ULTRASOUND EXAMINATION OF THE EYE AND ORBIT INCLUDING A-SCANS, WITH OR WITHOUT INTRAOCULAR LENS CALCULATIONS, AND B-SCANS.

(12) ORDERING OF RADIOGRAPHS, COMPUTER ASSISTED TOMOGRAPHY SCANS ("CAT" SCANS), MAGNETIC RESONANCE IMAGING SCANS ("MRI" SCANS) AND LABORATORY WORK.

(13) ORDERING, INTERPRETATION AND REPORTING OF ANGIOGRAPHIC STUDIES OF OCULAR VASCULATURE AND

BLOOD FLOW, BUT EXCLUDING THE ADMINISTRATION OF INTRAVENOUS MATERIALS.

(b) THE PRACTICE OF OPTOMETRY MAY INCLUDE ALL LEVELS OF EVALUATION AND MANAGEMENT SERVICES AND ALSO INCLUDES, FOR THOSE OPTOMETRISTS WHO HOLD THERAPEUTIC OR GLAUCOMA CERTIFICATION, THE ADMINISTRATION AND PRESCRIPTION OF APPROVED LEGEND AND NONLEGEND DRUGS.

* * *

BUSINESS PRACTICES

§ 23.33. Practice.

(a) An optometrist engaged in the active practice of optometry shall practice in a room used exclusively for the practice of optometry when practicing in his office. A change in this address, or the addition of places of practice, shall comply with §§ 23.43 and 23.44 (relating to offices; and additional practice locations).

(b) In compliance with § 23.36 (relating to consultant, advisor, staff or employe optometry), an optometrist may arrange the professional practice to include service to a licensed health care service facility, including in-patient or out-

patient hospitals and emergency rooms, nursing homes and long-term care facilities, or any facility with the need for optometric services.

* * *

(e) An optometrist may provide visual screenings at any location, public or private, within this Commonwealth.

(f) * * *

§ 23.34. Professional corporations.

~~(a)~~ An optometrist licensed by the Board may professionally incorporate with other optometrists, medical doctors, doctors of osteopathy, dentists, psychologists, podiatrists[and], chiropractors[,] and other health care professionals if this incorporation is authorized by ~~Chapter 5, 17, 25, 29, 33 or 41.~~ THE PRACTICE ACTS OF THE RELEVANT PROFESSIONS.

~~(b)~~ [The articles of incorporation and registry statement of the proposed corporation shall be filed with the Board for review and approval, prior to submission to the Corporation Bureau.

(c) The name of a professional corporation will be approved by the Board.] ~~If a name is chosen for the professional corporation which does not contain the names of all the licensed professionals with an ownership interest in the practice, the Board shall be supplied with a list of these persons.~~ [The Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing articles of incorporation.

(d)] ~~An optometrist [incorporating]~~ practicing ~~under the terms of this section shall notify the Board of a change in the name or ownership of the~~ [corporation, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure] ~~business~~.

§ 23.35. Fictitious names.

~~(a)~~ An optometrist practicing as a sole proprietor, ~~or~~ in association with other optometrists, OR in a business form other than a professional corporation, may do business under a fictitious name.

~~(b)~~ [A fictitious name registration shall be filed with the Board for approval, prior to submission to the Corporation Bureau.

(c) A fictitious name will be approved by the Board.] ~~A list of the optometrists with an ownership interest in the practice shall be submitted to the Board concurrently with the fictitious name registration.~~ [The

Board will notify the optometrist of its approval, or disapproval, and this notice shall be submitted to the Corporation Bureau, together with the documents and fees required by that agency for filing a fictitious name registration.

(d)] ~~An optometrist practicing under the terms of this section shall notify the Board of changes in the name or ownership of the business~~[, and shall seek Board approval of these changes prior to practicing under a new name or ownership structure]~~.~~

* * *

OFFICE OF OPTOMETRIST

§ 23.42. Equipment

An office maintained for the practice of optometry shall be fully equipped for the making of a [complete] basic optometrical examination including [, but not limited to,] the following:

(1) [Ophthalmometer] Keratometer.

* * *

UNLAWFUL PRACTICES

* * *

§ 23.64. Professional conduct.

* * *

(c) An optometrist may terminate his or her optometric care of a patient who, in the professional opinion of the optometrist, is not adhering to appropriate regimens of care and follow-up.

(1) The optometrist shall notify the patient, in writing, that the optometrist is terminating the professional relationship and the reasons for the termination.

(2) In addition, the optometrist shall make a copy of the patient's medical record available to the patient or successor eye care provider designated by the patient, and may charge a reasonable fee for copying the record.

* * *

[RECORDS] PROFESSIONAL PRACTICE

§ 23.71. Patient records.

(a) An optometrist shall use professional judgment to determine what services are to be provided to his patients. Records of the actual services rendered shall be maintained for a minimum of 5 years after the last consultation with a patient. Records shall indicate when a referral has been made to a physician. An examination may include[, but is not limited to,] the following:

* * *

(2) [Naked] Uncorrected visual acuity.

* * *

(14) Visual fields [,central (after age 40)] including manual or automated perimetry.

* * *

(19) Pharmaceutical agents used or prescribed, including strength, dosage, number of refills and adverse reaction, if applicable.

(b) ~~An optometrist shall comply with a patient request for a copy of the patient's spectacle prescriptions, within 2 years of the patient's last eye examination. Requests for spectacle prescriptions from examinations over 2 years prior to the request [, or for contact lens prescriptions,] may be complied with at the discretion of the optometrist. Requests for contact lens prescriptions may be complied with at the discretion of the optometrist.~~

AN OPTOMETRIST SHALL PROVIDE A PATIENT WITH A COPY OF THE PATIENT'S CONTACT LENS PRESCRIPTION IN ACCORDANCE WITH THE FAIRNESS TO CONTACT LENS CONSUMERS ACT (15 U.S.C.A. §§ 7601-7610). AN OPTOMETRIST SHALL PROVIDE A PATIENT WITH A COPY OF THE PATIENT'S SPECTACLE PRESCRIPTION IN ACCORDANCE WITH THE FEDERAL TRADE COMMISSION OPHTHALMIC PRACTICE RULES (16 C.F.R. §§ 456.1-456.4).

~~(c) [An optometrist's license number shall appear on each prescription written by that optometrist.] An optometrist who, in his discretion, provides a contact lens prescription, shall comply with the following:~~

~~(1) The optometrist shall determine the requirements for a satisfactory fit of a contact lens prior to providing a contact lens prescription.~~

(2) ~~The optometrist shall consider the contact lenses used in determining the contact lens prescription to be diagnostic lenses.~~

§ 23.72. Prescriptions.

(a) Optometric prescriptions shall bear: (1) The name, address, TELEPHONE NUMBER, FACSIMILE TELEPHONE NUMBER and license number of the optometrist. (2) The name of the patient. (3) The date the prescription is issued by the licensed practitioner. (4) The expiration date.

(b) Contact lens prescriptions shall specify the lens type, the specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case shall the expiration date be greater than 1 year. The prescription may include a statement of caution ~~or a disclaimer~~ if such statement ~~or disclaimer~~ is supported by appropriate findings and documented in the patient's medical record.

(c) Pharmaceutical prescriptions shall specify the name of the drug prescribed, quantity and potency prescribed, expiration date, number of refills allowed, instructions for use and any indicated precautionary statements.

(d) Spectacle prescriptions shall specify any information that would be relevant to manufacturing glasses including the dioptic value of the sphere, astigmatism, prism, slab off, add power and axis or orientation of the astigmatism correction. THE EXPIRATION DATE OF A SPECTACLE PRESCRIPTION MAY NOT BE GREATER THAN 2 YEARS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7155

October 1, 2004

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Optometry
16A-528: General Revisions

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Optometry pertaining to general revisions.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

Steven J. Reto, O.D., Chairperson
State Board of Optometry

SJR/TLM/kmh
Enclosure
cc: Linda C. Barrett, Chief Counsel
Department of State
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Teresa Lazo-Miller, Counsel
State Board of Optometry
State Board of Optometry

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER:	16A-528
SUBJECT:	State Board of Optometry - General Revisions
AGENCY:	DEPARTMENT OF STATE

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/1/04	Sandra J. Thayer	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
10/1/04	Mary Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
10/1/04	Gayle J. Hoffman	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)