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: 2393

(3) Short Title

General Revisions

(4) PA Code Cite

49 Pa. Code, §§ 23.1, 23.33, 23.34, 23.35, 23.42, 23.64 and 23.71 and adds new § 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)

_X_ Proposed Rulemaking
___ 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 proposed 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, and updates the filing of information with the Board and Corporation Bureau.

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

The proposed regulation is authorized by section 3(a)(2.1) of Act 130 of 1996 and sections 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).

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(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.

(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 sets prerequisites for an optometrist who provides patients with a prescription rather than dispensing lenses. These portions of the regulation should serve to facilitate the provision of contact lens prescriptions, which many members of the public have requested.

(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.

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(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 solicited predraft comment from the Pennsylvania College of Optometry, the Pennsylvania Optometric Association and the Pennsylvania Academy of Ophthalmology. In addition, the general public was invited to a hearing held in July, 2001.

(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.

Regulatory Analysis Form

(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.

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(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

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(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	**$128,946.11**	**$139,491.37**	**$150,396.01**	**$142,000.00**

(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 the Board was updating its regulations to conform to current practice and implementing Act 130 of 1996, 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 in consulting the testimony provided by the College, Association and Academy.

(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 proposed regulation is consistent with federal standards. The Federal Trade Commission regulation at 16 C.F.R. 456, known as the Prescription Release Rule, requires optometrists to provide a patient with a copy of the patient's spectacle prescription but does not require an optometrist to release a contact lens prescription. There are no federal regulations relevant to the remaining provisions of the proposed regulation.

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

The proposed 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 proposed 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 proposed 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).

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(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 so far as are 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.**

Regulatory Analysis Form

(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 proposed 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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

#2323 DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: (DEPUTY ATTORNEY GENERAL)

NOV 13 2002
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:

10/17/02
DATE OF APPROVAL

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

[ ] Check if applicable
Copy not approved.
Objections attached.

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

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY
49 PA. CODE, CHAPTER 23
GENERAL REVISIONS

The State Board of Optometry (Board) proposes to amend 49 Pa. Code §§ 23.1, 23.33, 23.34, 23.35, 23.42, 23.64, 23.71, and to add § 23.72 as set forth in Annex A. The proposed regulation 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 regulation would be effective upon publication of the final form rulemaking in the Pennsylvania Bulletin.

Statutory Authority

Section 3(a)(2.1) of the Act of October 30, 1996 (P.L. 721, No. 130) (63 P.S. § 244.3(a)(2.1)) (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 Optometric Practice and Licensure Act (63 P.S. 244.3(a)(3))(Act), 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."

Background and Need for Amendment

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. The Act 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 regulation 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 must 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 record-keeping system. These proposed amendments are necessary to bring the Board's regulations into compliance with the 1996 amendments to the Act.

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 Pennsylvania newspapers 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 Proposed Amendments

§ 23.1 *Definition of Means and Methods for the Examination, Diagnosis and Treatment of Conditions of the Visual System.*

In accordance with the mandate of Act 130, the Board proposes to amend 49 Pa. Code § 23.1 to define the means and methods for the examination, diagnosis and treatment 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 amendment provides that optometrists may order radiographs, computer assisted tomography scans, magnetic resonance imaging scans and laboratory work. Finally, the proposed amendment provides that optometrists may order, interpret and report on angiographic studies. The proposed amendment also addresses means and methods of treatment. The amendment provides 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 the Act and are consistent with the practice of optometry in all states surrounding Pennsylvania.

§ 23.33 *Practice*

The Board proposes to amend 49 Pa. Code § 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 or her 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 new subsection (e) to permit optometrists to provide visual screenings at any location, public or private, within the 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 the Commonwealth.

§§ 23.34 and 2.35 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 record-keeping procedures of the Board administrative office and the Department of State Corporation 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 Corporation Bureau. Departmental practice is for the Corporation Bureau to send copies of all optometric filings to the Board for review. However, because the Corporation 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 Office of Optometrist – Equipment

The Board proposes to amend § 23.42 first by clarifying that the equipment listed in the regulation 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 Professional Conduct

The Board proposes to add a new subsection (c) at § 23.64. Subsection (c) would allow an optometrist to terminate his or her 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 or her 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 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 a new 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. Such information updates the regulations in compliance with Act 130's grant of authority to use pharmaceutical agents and reflects proper medical practice in record keeping.

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 regulation 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 should the dispenser provide 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 Prescriptions

The Board proposes to amend its regulations by adding requirements for prescriptions at 49 Pa. Code § 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. In order to standardize practice in the Commonwealth and ensure that all Pennsylvania optometrists 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.

The 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 one 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 one year expiration date ensures that contact lens wearing patients will be re-checked by the optometrist at least yearly, the maximum time period recommended by medical professionals. For spectacles, the maximum time period recommended for re-examination is two years. This time period is reflected in the Board's regulation at 49 Pa. Code § 23.71(b).

Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board sent the text of the proposed regulation to interested parties, including the Pennsylvania Optometric Association, Pennsylvania College of Optometry and Pennsylvania Academy of Ophthalmology. In addition, the Board invited the general public to a hearing held in July 2001.

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 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

Pursuant to section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of this proposed regulation on February 12, 2003, 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 in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." 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 10 days of the close of the SCP/PLC and HPLC review 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.
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.

* * *

Means and methods for the examination, diagnosis and treatment of conditions of the visual system - 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 automated perimetry;

(3) 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, but not limited to, any and all condensing lenses, gonioscopy lenses, and fundus contact lenses;

(4) anterior and posterior segment photography;

(5) provocative tests for glaucoma and electrodiagnostic testing;

(6) the use of lasers for diagnostic purposes;

(7) the employment of vision therapy or orthoptics;

(8) low vision rehabilitation;

(9) treatment of the lacrimal system including the use of punctal plugs and diagnostic procedures to determine the patency 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 and

(13) ordering, interpretation and reporting of angiographic studies of ocular vasculature and blood flow.

(14) 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 or her 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, but not limited to, 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 the Commonwealth.

(f) An optometrist shall carry his wallet renewal card on his person as proof of current licensure, for presentation on demand, whenever rendering optometric services outside of his regular practice location.

§ 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, 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 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].

§ 23.35. Fictitious names.

(a) An optometrist practicing as a sole proprietor, or in association with other optometrists, 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. The optometrist shall notify the patient, in writing, that the optometrist is terminating the professional relationship and the reasons for the termination. 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.

* * *

PROFESSIONAL PRACTICE [RECORDS]

§ 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:

(1) Complete history.

(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 may be complied with at the discretion of the optometrist. [, or for contact lens prescriptions,] 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 or her discretion, provides a contact lens prescription, shall comply with the following:

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

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

§ 23.72. Prescriptions.

(a) Optometric prescriptions shall bear the name, address and license number of the optometrist, the name of the patient, date the prescription is issued by the licensed practitioner, and expiration date.

(b) Contact lens prescriptions shall 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 shall the expiration date be greater than one 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, but not limited to, the dioptic value of the sphere, astigmatism, prism, slab off, add power and axis or orientation of the astigmatism correction.

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

February 12, 2003

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

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

Dear Chairman McGinley:

Enclosed is a copy of a proposed 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: W. Raymond Ketner, Acting Deputy Commissioner
Bureau of Professional and Occupational Affairs
John T. Henderson, Jr., Chief Counsel
Department of State
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 Provisions
AGENCY:	DEPARTMENT OF STATE

TYPE OF REGULATION

X Proposed Regulation

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
2-12-03	Lori A. Clark	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
2/12/03	Mary Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
2/12/03	Elena Vazquez	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
2/12/03	C. Lee Walker	LEGISLATIVE REFERENCE BUREAU