Regulatory Analysis Form

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2004 JAN -6 AM 11:00

REVIEW COMMISSION

(1) Agency

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

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

16A-529

IRRC Number: 2324

(3) Short Title

Continuing Education

(4) PA Code Cite

49 Pa. Code, §§ 23.82 – 23.84 and 23.87

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Teresa Lazo-Miller, Counsel State Board of Optometry (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 amendment has a twofold purpose: (1) to update the Board's continuing education regulations to conform to the Board's current regulations by deleting a reference to § 23.201 which was declared invalid in Rand v. Commonwealth, State Board of Optometry, 762 A.2d 392 (Pa. Cmwlth. 2000), *petition for allowance of appeal denied*, 784 A.2d 121 (Pa. 2001), and (2) to conform the Board's continuing education regulations to Act 225 of 2002, which amended the Act to provide for the treatment of certain types of glaucoma by optometrists and to require optometrists certified to treat glaucoma to complete continuing education related to glaucoma and its treatment.

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

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 (63 P.S. § 244.3(b)(14)) authorizes the Board to "promulgate all rules and regulations necessary to carry out the purposes of this act."

(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 proposed amendments are not specifically mandated; however, the amendments are proposed to conform the Board's regulations to prior amendments to the Board's regulations. See 32 Pa. B. 2886 (June 15, 2002), the Commonwealth Court's decision striking § 23.201, and Act 225 of 2002 authorizing optometrists to treat certain types of glaucoma and mandating continuing education for optometrists certified to treat glaucoma.

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

Regarding continuing education requirements, the amendments conform the Board's regulations to the act. This consistency benefits licensees by eliminating confusion. The proposed amendments update the regulations to reflect that the Board does not take disciplinary action against licensees without abiding by the requirements of notice and hearing.

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

Nonregulation will not address the confusion that currently exists regarding courses that meet the statutory requirement for courses in the prescription and administration of pharmaceutical agents and in glaucoma.

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

Optometrists will benefit from the regulation by being able to better understand the continuing education requirements and how to meet them. They public will benefit by the optometrists being able to comply with the continuing education requirements.

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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 has identified no groups that will be adversely affected by the proposed regulation.

(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 who intend to renew their licenses will be required to comply with the regulation. Licensees will be required to provide the course number and designation as therapeutic or glaucoma, if either, on their certificate of attendance for courses offered by providers that are not on the preapproved list.

(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.

Under Executive Order 1996-1, the Board sent the draft rulemaking to stakeholders for input. The Board did not receive any response.

(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.

The Board anticipates no specific costs or savings to the regulated community associated with compliance. However, the regulation should make it easier for licensees to determine if a course qualifies for credit as a therapeutic or glaucoma course, thereby keeping the licensee from having to take additional courses to meet the continuing education requirement for their level of licensure.

(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.

The Board anticipates no costs or savings to local governments associated with the regulation.

(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.

The Board anticipates no costs or savings to state governments associated with 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:	$	$	$	$	$	$
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community						
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Costs	NA	NA	NA	NA	NA	NA
REVENUE LOSSES:						
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Revenue Losses	NA	NA	NA	NA	NA	NA

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

There are no costs or savings associated with the rulemaking.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
Board expenditures	**$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 minimal costs of the regulation cannot be easily quantified. The benefits of the regulation described above outweigh its minimal costs.

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

The amendments are, in part, a response to statutory changes and judicial interpretation which necessitated updating current regulatory provisions. Therefore, no nonregulatory alternatives were considered.

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

No alternative regulatory schemes were considered.

(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.

No federal standards apply.

(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 requiring continuing education for optometrists and will not place Pennsylvania at a competitive disadvantage. Ohio requires 15 hours of continuing education annually. O.A.C. Ann. § 4725-9-01. In Ohio, at least 5 hours of continuing education in the field of pharmacology is required for optometrists authorized to administer topical ocular pharmaceutical agents. O.A.C. Ann. §4725-15-03. Delaware requires 12 hours of general CE biennially and an additional 12 hours biennially in "therapeutics and management of ocular disease." C.D.R. 2402100(10.1). Similarly, New Jersey requires 50 hours biennially for license renewal. At least 25 of the 50 credits must be classified as therapeutic pharmaceutical agents (TPA) credits and shall be primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease. An applicant who initially obtains a certificate within the first year of a biennial period shall complete at least 25 of the minimum required credits of continuing professional optometric education. At least 12.5 of the 25 credits shall consist of courses or programs classified as TPA credits. for therapeutically certified optometrists, the requirement is 40 hours general CE plus 20 hours in "ocular pharmacology, ocular manifestation of systemic disease treatable by pharmacological agents or ocular pathology treatable by pharmacological agents." N.J.A.C. § 13:38-4.5. New York requires 36 hours triennially for optometrists who hold therapeutic certification, 8 N.Y.C.R.R. §§ 66.5(f)(1) and (2). All states surveyed subject licensees to discipline for failure to complete required CE. See, e.g., COMAR 10.28.02.03: "Failure to meet continuing education requirements or failure to substantiate credit hours submitted . . . may result in suspension, revocation or denial of licensure." Due process applies in all states. See, e.g., COMAR 10.28.02.04, which provides that the Maryland Board shall take formal disciplinary action to enforce CE requirements.

(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 existing or proposed regulations of the Board.

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

The Board welcomes comments by interested parties at its meetings. Interested parties wishing to address a regulatory matter may contact the Board Administrator, Deborah Smith, at optom@pados.state.pa.us or by calling 717-783-7155.

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(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 regulation will not significantly change existing reporting, record keeping or other paperwork requirements. Optometrists will submit slightly different information (their name rather than course location) on their certificates of attendance.

(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.

The Board has not identified any affected groups with particular needs.

(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 would be effective upon final publication in the Pennsylvania Bulletin. Because there are no substantive changes to the continuing education requirements, the Board finds that the regulation should become effective upon publication.

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

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-5807~~ 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-

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

#2324 DO NOT WRITE IN THIS SPACE

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

_____
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-529

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: _____

12/19/03
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.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY
49 PA. CODE, §§ 23.82, 23.83 AND 23.87
CONTINUING EDUCATION

The State Board of Optometry (Board) hereby amends §§ 23.82 – 23.84 and 23.87 to read as set forth in Annex A.

Notice of Proposed Rulemaking was published at 33 Pa. B. 1118 (March 1, 2003). Publication was followed by a 30-day public comment period during which the Board received one public comment. On April 30, 2003, the Independent Regulatory Review Commission (IRRC) submitted comments. No comments were submitted by the Senate Consumer Protection and Professional Licensure Committee or the House Professional Licensure Committee (HPLC).

Summary of Comments and Responses to Proposed Rulemaking

IRRC Comments

IRRC suggested that § 23.83(b) be revised. IRRC noted that the first sentence of subsection (b) relates to the title of § 23.83 (continuing education subject matter) and is appropriately placed, but that the remainder of subsection (b) relates to course approval, course numbers and reevaluation. IRRC suggested that these provisions would be more appropriately placed in § 23.84(relating to provider and program registration) or § 23.87 (relating to reporting of continuing education credit hours).

Upon review of IRRC's comments and concerns, the Board has determined that § 23.83(b) should be revised. The Board finds that subsection (b) should be moved to § 23.84(i) and has made this change in the final rulemaking. The Board has also amended the proposed language of § 23.83(b) now in § 23.84(i), to simplify the requirements and to include continuing education courses in glaucoma. This change is necessary to conform the Board's regulations to the Optometric Practice and Licensure Act (act), as amended by Act 225 of 2002. The amendments authorized properly certified optometrists to treat certain types of glaucoma and mandated continuing education in glaucoma for those optometrists. The Board also made changes to § 23.87(3) to reflect the addition of continuing education courses on glaucoma and to require licensees to ensure the credits are properly identified as therapeutic or glaucoma. The Board added language related to the subject matter of continuing education courses in the area of glaucoma, and indicated that approved subject matter would include courses on the treatment and management of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma. These are the three types of glaucoma optometrists are authorized to treat under section 2 of the act (63 P.S. § 244.2) in the definition of the practice of optometry.

Finally, the Board amended § 23.87(6), to require the licensee to place his or her name on the certificate of attendance rather than the course location. This change was intended to be made in proposed rulemaking but was inadvertently omitted. The Board believes that the location of a course

is immaterial. Requiring a licensee to place his or her name on the certificate of attendance ensures that the Board can verify a licensee's attendance at continuing education.

Public Comments

The Board received one comment from the public to its proposed rulemaking, from the Pennsylvania Optometric Association (POA). In its comment, POA noted its full support for the proposed regulations. The POA assents to the requirement of a minimum of 30 hours of continuing education, of which 6 hours must concern the prescription and administration of pharmaceutical agents for therapeutic purposes, for biennial license renewal or reactivation.

Statutory Authority

The regulation is authorized under section 3(b)(12) of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.3(b)(12)). Section 3(b)(14) of the act (63 P.S. § 244.3(b)(14)) authorizes the Board to "promulgate all rules and regulations necessary to carry out the purposes of this act."

Fiscal Impact and Paperwork Requirements

The regulation will have no fiscal impact on licensees, the Board, the private sector, the general public or on the Commonwealth or its political subdivisions. The regulation will create no additional paperwork for the Board or the private sector.

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 or compelling public interest and otherwise complies with Executive Order 1996-1.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of the Notice of Proposed Rulemaking, published at 33 Pa. B. 1118 (March 1, 2003), to the Independent Regulatory Review Commission and to the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In compliance with section 5(c) (71 P.S. § 745.5(c)), the Board also provided the

Commission and the committees with copies of all comments received, as well as other documents.

Publication of the Notice of Proposed Rulemaking was followed by a 30-day public comment period during which the Board received one comment from the public. The Board also received comments from IRRC. In preparing this final-form regulation, the Board has considered all comments received from IRRC and the public.

This final-form regulation was (deemed) approved by the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee on _____, 2003. IRRC met on _____, 2003 and (deemed) approved the regulation in accordance with section 5.1(e) of the Regulatory Review Act.

Additional Information

Individuals who need information about the regulation may contact Teresa Lazo-Miller, Counsel, State Board of Optometry, P.O. Box 2649, Harrisburg, PA 17105-2649.

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) That 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) That 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.

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

Steven J. Reto, O.D.
Chairperson, 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

* * *

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 proposes 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.~~

(C) COURSES THAT WILL MEET THE REQUIREMENTS FOR CERTIFICATION TO TREAT GLAUCOMA IN ACCORDANCE WITH SECTION 4.2 OF THE ACT (63 P.S. §244.4B) SHALL CONCERN THE TREATMENT AND MANAGEMENT OF PRIMARY OPEN ANGLE GLAUCOMA, EXFOLIATION GLAUCOMA AND PIGMENTARY GLAUCOMA.

§ 23.84. Provider and program registration.

*****

(I) PROGRAMS APPROVED TO GRANT CONTINUING EDUCATION HOURS IN THERAPEUTICS OR GLAUCOMA SHALL INDICATE THE NUMBER OF CREDITS APPROVED IN EACH AREA ON THE CERTIFICATE OF ATTENDANCE. PRE-APPROVED PROVIDERS SHALL ALSO INDICATE ON THE CERTIFICATE OF ATTENDANCE HOW MANY CREDITS WILL APPLY TOWARD THE REQUIREMENT FOR RENEWAL OF THERAPEUTIC OR GLAUCOMA 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

set forth 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 THERAPEUTIC OR GLAUCOMA certification ~~in the prescription and administration of pharmaceutical agents for therapeutic purposes~~, the licensee claiming credit ~~for the course must provide the Board with the course number~~ SHALL ENSURE THAT THE CERTIFICATE OF ATTENDANCE INCLUDES THE COURSE NUMBER AND NUMBER OF HOURS THAT APPLY TOWARD THE REQUIREMENT FOR THERAPEUTIC OR GLAUCOMA CERTIFICATION.

*****

(6) ~~Location of course.~~ NAME OF LICENSEE.

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

January 6, 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-529: Continuing Education

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Optometry pertaining to continuing education.

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: Basil L. Merenda, Acting Commissioner
Bureau of Professional and Occupational Affairs
Andrew Sislo, 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-529
SUBJECT:	Continuing Education - State Board of Optometry
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
1/6/04	Sandra J. Shapiro	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
1/6/04	Mary Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
1/6/04	Diana Rogers	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

December 22, 2003