

Regulatory Analysis Form

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2012 FEB 12 PM 3:05
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, 23.83 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
 Final Order Adopting Regulation
 Policy Statement

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

No
Yes: By the Attorney General
Yes: By the Governor

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

The regulation updates the State Board of Optometry's provisions regarding continuing education and conforms the Board's regulations to the 1996 amendments to the Optometric Practice and Licensure Act and recent judicial interpretation.

(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), Act of June 6, 1980, P.L. 197, No. 57, as amended, 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."

Regulatory Analysis Form

(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).

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

Regarding continuing education requirements, the proposed 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.

(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.

Regulatory Analysis Form

(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. Providers of therapeutic continuing education courses will be issued course numbers with the suffix "T" to indicate a course is approved as a therapeutics course. Licensees will be required to provide the course number on their certificate of attendance.

(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.

Pursuant to Executive Order 1996-1, the Board sent the draft rulemaking to stakeholders for comment. No comments were received by the Board.

(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 course, thereby keeping the licensee from having to take additional courses to meet the continuing education requirement.

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.

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.

Regulatory Analysis Form

(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 proposed 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.

Regulatory Analysis Form

(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 proposed 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 annually. O.A.C. Ann. § 4725-9-01. Some states have separate requirements for therapeutically certified optometrists, as does Pennsylvania. For example, 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; 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.

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 regulation provides that the Board will assign a course number with the suffix "T" for continuing education providers offering therapeutic courses.

(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.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2002 FEB 12 PM 01:05
REVIEW COMMISSION

#2324

DO NOT WRITE IN THIS SPACE

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

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

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

[Signature]
BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Optometry
(AGENCY)

BY: *[Signature]*

DEC 04 2002

DOCUMENT/FISCAL NOTE NO. 16A-529

11/12/02
DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: *[Signature]*
Steven Reto, O.D.

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

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- 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, §§ 23.82, 23.83 AND 23.87
CONTINUING EDUCATION

The State Board of Optometry (Board) proposes to amend 49 Pa. Code §§ 23.82, 23.83 and 23.87 (relating to continuing education) as set forth in Annex A. The proposed regulation would update the Board's continuing education regulations and conform them to prior regulatory amendments.

Effective Date

The regulation 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), Act of June 6, 1980, P.L. 197, No. 57, as amended (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."

Background and Need for Amendment

The Board recently deleted its regulation at 49 Pa. Code § 23.201 (relating to qualifications for therapeutic certification) and amended its regulation at 49 Pa. Code § 23.202 (relating to the application procedure for certification in pharmaceutical agents for therapeutic purposes) by final 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 amendments 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 amendments clarify a licensee's duties in reporting continuing education courses to the Board. The proposed amendments conform the Board's continuing education regulations to the statute and prior regulatory amendments and thereby eliminate 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 at 49 Pa. Code §§ 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 §§ 23.201-23.202, 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 Administrative Agency Law) 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 the Administrative Agency Law and the Act must be followed before the Board may discipline a licensee. Therefore, the Board proposes to amend the regulation to provide that the Board may, in its discretion, and pursuant to 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, relating to continuing education subject matter, to reflect the changes made in the 1996 amendments to the Act, at 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 six hours in the administration and prescription of pharmaceutical agents for therapeutic purposes. The proposed amendment notifies optometrists that these courses must concern 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 pre-approved 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 must include at least six hours in therapeutic courses. In addition, the Board proposes to amend the requirements for documentation that must be submitted, upon request, to verify attendance at mandatory continuing education. The proposed amendment provides that optometrists

must include 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. However, 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.

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 and Pennsylvania College of Optometry.

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

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 Commission/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, 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)] section 4.1(a)(2) of the act (63 P.S. § 244.4a(a)(2)) (relating to qualifications for certification) 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 be disciplined in accordance with section 7(e) of the Act (63 P.S. § 244.7(e)). [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.]
- (c) The Board may waive the requirements of continuing education in cases of certified illness or undue hardship. It shall be the duty of each licensee seeking waiver to notify the Board in writing and request such waiver[,] prior to the end of the biennial renewal period for which the waiver is sought. The waiver [which] 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) must 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 pre-approved 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 they have met the continuing education requirements set forth in section 5(b) of the Act (63 P.S. § 244.5(b)) [continuing education requirements have been met and] by providing information [to document their certification,] which [information] shall include [but not be limited to] the following:

- (1) Dates attended.
- (2) Continuing education hours claimed.
- (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 must provide the Board with the course number.
- (4) School, clinical hospital, medical center, optometric center or organization sponsoring course, clinical conference, clinical rounds or preceptor training.
- (5) Instructor.
- (6) Location of course.



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-529: Continuing Education

Dear Chairman McGinley:

Enclosed is a copy of a proposed 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: 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-529
SUBJECT: State Board of Optometry - Continuing Education
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

RECEIVED
DEPARTMENT OF STATE
JAN 10 2003

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-12-03	Lou A Clark	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/12/03	May Walmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
2/12/03	Elena Pagan	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
7/12/03	C. Lee Brown	LEGISLATIVE REFERENCE BUREAU