

<h1 style="text-align: center;">Regulatory Analysis Form</h1>		<p><b>This space for use by IRRC</b></p> <p>2004 JUL 26 12:11 PM '05</p> <p>REVIEW COMMISSION</p>
<p>(1) Agency</p> <p><b>Department of State, Bureau of Professional and Occupational Affairs, State Board of Optometry</b></p>		
<p>(2) LD. Number (Governor's Office Use)</p> <p><b>16A-5211</b></p>		<p><b>IRRC Number: 2354</b></p>
<p>(3) Short Title</p> <p><b>Glaucoma Certification</b></p>		
<p>(4) PA Code Cite</p> <p><b>49 Pa. Code § 23.82, 23.86, 23.91 and 23.205</b></p>	<p>(5) Agency Contacts &amp; Telephone Numbers</p> <p>Primary Contact: <b>Teresa Lazo-Miller, Counsel</b>  <b>State Board of Optometry (717) 783-7200</b></p> <p>Secondary Contact: <b>Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200</b></p>	
<p>(6) Type of Rulemaking (check one)</p> <p><input type="checkbox"/> Proposed Rulemaking</p> <p><input checked="" type="checkbox"/> Final Order Adopting Regulation</p> <p><input type="checkbox"/> Policy Statement</p>	<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p><input checked="" type="checkbox"/> No</p> <p>Yes: By the Attorney General</p> <p>Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and nontechnical language.</p> <p><b>The regulation provides for the application procedure for certification to treat glaucoma; pre-approves all continuing education courses offered by the American Academy of Ophthalmology and American Medical Association and their state affiliates, and ophthalmic-related Medical Board approved medical school continuing education and clarifies continuing education requirements for optometrists. In addition, preapproval is granted to COPE-approved courses (the national accrediting body for continuing education) and to the College of Optometrists in Vision Development.</b></p>		
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p><b>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 for optometrists.</b></p> <p><b>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."</b></p> <p><b>Section 4.2 of the act (63 P.S. § 244.4b), authorizes the Board to certify qualified optometrists to treat certain types of glaucoma.</b></p>		

### 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 statutory amendments.**

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

**The public interest is served by having the Board's regulations conform to the act. The public interest is served by providing an application and certification process to treat glaucoma.**

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

**Practitioners who do not meet the statutory requirements to treat glaucoma could practice outside their authorized scope of practice if the Board does not administer the certification to treat glaucoma. Practitioners who have not demonstrated they possess the qualifications may pose a risk to the public if they attempt to treat 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.)

**The general public will benefit from the proposed regulation, which ensures only qualified optometrists are certified to treat glaucoma.**

### 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 wish to become certified to treat glaucoma will be required to comply with the regulation. Approximately 1,545 optometrists currently hold therapeutic certification.**

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

**The Board received comments on its proposed rulemaking from the Pennsylvania Academy of Ophthalmology and IRRC.**

(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 minimal costs to the regulated community. The application fee will be \$25. The Pennsylvania College of Optometry will be offering an 18-hour glaucoma course to meet the statutory requirements for approximately \$ 500.**

### 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
<b>Total Savings</b>	NA	NA	NA	NA	NA	NA
<b>COSTS:</b>						
Regulated Community	412,500	300	300	0	0	0
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
<b>Total Costs</b>	NA	NA	NA	NA	NA	NA
<b>REVENUE LOSSES:</b>						
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
<b>Total Revenue Losses</b>	NA	NA	NA	NA	NA	NA

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

The estimates above assume most therapeutically certified optometrists who must complete 18 hours of continuing education to qualify for certification to treat glaucoma will do so in the current fiscal year. The estimated cost for the continuing education is \$250.00. The cost of application for certification is \$25. Estimating 1,500 of the approximately 1,545 eligible licensees will apply for certification in the first year,  $[(1500 \times 25) + (1500 \times 250)] = 412,500$ . Thereafter, for the next two years, estimate is for 25 licensees.

### 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
State Board of Optometry 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 costs of complying with the regulation are mandated by statute; therefore, a cost benefit analysis is not applicable. However, the minimal costs to the regulated community are clearly outweighed by the benefit of having properly trained optometrists certified to treat glaucoma.**

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

**The amendments are a response to statutory changes. 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.

**In response to comments received after proposed rulemaking, the Board considered amending its regulations to include a provision specifying the mandatory liability insurance minimums. The addition of this provision would impose additional costs on the Board. The Governor's Office, the Office of General Counsel, the Office of the Attorney General, the HPLC and IRRC, all of whom are involved in regulatory review. The Board concluded that the amendment would be redundant and unnecessary and would impose cost on the Board and state government.**

### 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 regulation is consistent with those of other states requiring continuing education for optometrists and will not place Pennsylvania at a competitive disadvantage. Some states have separate requirements for therapeutically certified optometrists, as does Pennsylvania. Pennsylvania is the 49<sup>th</sup> state to allow optometrists to treat certain types of glaucoma. Continuing education in therapeutics often relates to glaucoma. 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).**

(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 or other state agencies.**

(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](mailto: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 Board will maintain records of those optometrists who are certified to treat glaucoma.**

(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.**

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

**The Board meeting dates are available from the Board Administrator or through the Department of State's website [www.dos.state.pa.us](http://www.dos.state.pa.us).**



## STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

### Continuing Education, Fees, Certification to Treat Glaucoma

The State Board of Optometry (Board) proposes to amend §§ 23.82, 23.86 and 23.91 (relating to continuing education hour requirements; sources of continuing education hours; and fees) and to add § 23.205 (relating to application procedure) to read as set forth in Annex A.

#### *Effective Date*

This proposed rulemaking will 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." Section 4.2 of the act (63 P.S. § 244.4b) authorizes the Board to certify licensees to treat glaucoma.

#### *Background and Need for the Proposed Rulemaking*

The General Assembly amended the act to provide for therapeutically certified optometrists to be certified to treat certain types of glaucoma. As the State agency charged with approving the qualifications of optometrists, the Board proposes to adopt an application procedure for the certification to treat glaucoma. The proposed rulemaking would conform the Board's continuing education requirements to the continuing education requirements in section 4.2 of the act. In addition, the proposed rulemaking would add the American Academy of Ophthalmology and its state affiliates to the list of pre-approved providers of optometric continuing education and would provide for an application procedure and fee related to certification to treat certain types of glaucoma.

#### *Description of Proposed Rulemaking*

The act authorizes the Board to certify therapeutically-certified optometrists to treat certain types of glaucoma. Optometrists who obtained therapeutic certification under section 4.1(a)(2) of the act (63 P.S. § 244.4a(a)(2)) shall also complete 18 hours of continuing education in glaucoma to obtain certification to treat glaucoma. Proposed § 23.205 mirrors these statutory requirements.

The act also provided that, to continue to treat glaucoma, optometrists certified to treat glaucoma must obtain 4 hours in the study of the prescription and administration of pharmaceutical agents for the treatment of glaucoma biennially. Proposed § 23.82 mirrors this requirement. In addition, because continuing education in glaucoma is a subset of continuing education in therapeutics, the Board's proposed rulemaking clarifies that the 4 hours taken in the treatment of glaucoma may be applied toward the 6 hours required to maintain therapeutic certification. Finally, because 18 hours of continuing education are required of applicants who were therapeutically certified under section 4.1(a)(2) of the act, the Board's proposed rulemaking clarifies that those 18 hours shall apply to the 30-hour continuing education require-

ment for the biennial period in which the hours are completed, including the 6-hour requirement in therapeutics and the 4-hour requirement in glaucoma.

Proposed § 23.86 adds the American Academy of Ophthalmology and its state affiliates to the list of pre-approved providers of optometric continuing education because these organizations consistently offer high-quality continuing education courses relevant to the practice of optometry.

Proposed § 23.91 provides for the fee for administrative processing of the application for certification to treat glaucoma. The fee is based on actual staff time to process the application and provide for printing and mailing a license indicating the optometrist is certified to treat glaucoma.

Because the proposed rulemaking effectuates amendments to the act, the Board did not send the text of the proposed rulemaking to interested parties for the predraft comment. The proposed rulemaking was developed at an open meeting of the Board on December 17, 2002, and comments were received from the Executive Director of the Pennsylvania Optometric Association.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have only minimal fiscal impact on licensees, who will be required to pay an application fee and may be required to complete 18 hours of continuing education on glaucoma to obtain certification to treat glaucoma. There is no fiscal impact on the Board, the private sector, the general public or any political subdivisions. The proposed rulemaking will create only minimal additional paperwork for the Board in processing applications to treat glaucoma and will not create additional paperwork for 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 August 26, 2003, the Board submitted a copy of these proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees 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 comments, recommendations or objections regarding any portion of the proposed rulemaking, it will notify the Board approximately 30 days from the close of the public comment period. The notification will specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations and 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, recommendations or objections regarding this proposed rulemaking to Deborah Smith, Board Administrator, State Board of Optometry, P.O. Box 2649, Harrisburg, PA, 17105, within 30 days following publica-

tion of this proposed rulemaking in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,  
Chairperson

(Editor's Note: A proposal to amend § 23.82 remains outstanding at 33 Pa.B. 1118 (March 1, 2003).)

Fiscal Note: 16A-5211. 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)], regarding certification to prescribe and administer pharmaceutical agents for therapeutic purposes, at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. For licensees certified in accordance with section 4.2 of the act (63 P.S. § 244.4b), regarding additional requirements to prescribe and administer pharmaceutical agents for the treatment of certain types of glaucoma, at least 4 of the 30 hours shall concern the prescription and administration of pharmaceutical agents for the treatment of glaucoma. The 4 hours taken in the treatment of glaucoma may be applied toward the 6 hours required to maintain therapeutic certification; however, all licensees shall complete at least 30 total hours. Completion of a Board-approved course described in [§ 23.201(b)(1) (Reserved)] section 4.1(a)(2) of the act or continuing education described in section 4.2 of the act shall satisfy the continuing education requirement for the biennial renewal period in which it is completed including the 6-hour requirement in therapeutics and the 4-hour requirement in glaucoma.

\* \* \*

§ 23.86. Sources of continuing education hours.

(a) In addition to another provider which wishes to secure approval from the Board, the Board finds that the following providers have currently met the standards for provider approval for all acceptable courses of continuing

education; accordingly, the following providers have program approval in all allowable areas for continuing education: the American Optometric Association, The Pennsylvania Optometric Association, all Board-accredited schools and colleges of optometry, the Optometric Extension Program, [and] The American Academy of Optometry and its state affiliates and the American Academy of Ophthalmology and its state affiliates. The approval given to these providers is subject to reevaluation[; however a]. A rescission of provider or program approval will be made only in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

\* \* \*

FEEES

§ 23.91. Fees.

The following is the schedule of fees for services charged by the Board:

\* \* \*

Application for certification to treat glaucoma.....	\$25
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CERTIFICATION TO TREAT GLAUCOMA

§ 23.205. Application procedure.

An applicant for certification to treat glaucoma under section 4.2 of the act (63 P.S. § 244.4b) shall submit to the Board a completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees), and one of the following.

(1) A signed verification attesting that the licensee obtained therapeutic certification by passing the licensure examination to practice optometry. The examination shall include the prescription and administration of pharmaceutical agents for therapeutic purposes (the examination required for therapeutic certification under section 4.1(a)(1) of the act (63 P.S. § 244.4a(a)(1)). The verification shall state the month and year the licensee passed this examination.

(2) A signed verification attesting that the licensee obtained therapeutic certification by passing an examination on the prescription and administration of pharmaceutical agents for therapeutic purposes (the examination required for therapeutic certification under section 4.1(a)(2) of the act and certificates of attendance from Board-approved continuing education courses demonstrating at least 18 hours in glaucoma, completed since December 19, 2002.

[Pa.B. Doc. No. 03-1748. Filed for public inspection September 5, 2003, 9:00 a.m.]

CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

2004 MAY 26 11:17:17

REVIEW COMMISSION

#2354

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:

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to form and legality.  
Executive or Independent  
Agencies.

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Optometry  
(AGENCY)

BY: Tanya C. Gable

DOCUMENT/FISCAL NOTE NO. 16A-5211

DATE OF ADOPTION: \_\_\_\_\_

5/3/04  
DATE OF APPROVAL

DATE OF APPROVAL

BY: Steven Reto  
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.

FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF OPTOMETRY  
49 PA. CODE, SECTIONS 23.82, 23.86, 23.91 and 23.205  
CONTINUING EDUCATION, FEES, CERTIFICATION TO TREAT GLAUCOMA

The State Board of Optometry (Board) adopts amendments to §§ 23.82, 23.86 and 23.91 (relating to continuing education requirements; sources of continuing education hours; and fees) and adds § 23.205 (relating to application procedure for certification to treat glaucoma) to read as set forth in Annex A.

### **Response to Comments**

Proposed rulemaking was published on September 6, 2003 (33 Pa. B. 4464). Following publication, the Board received a comment from the Pennsylvania Academy of Ophthalmology (PAO). On September 30, 2003, the House Professional Licensure Committee (HPLC) voted to take no formal action until final rulemaking. On November 5, 2003, the Independent Regulatory Review Commission (IRRC) submitted comments to the Board.

PAO noted that section 4.2(b) of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.4b(b)), requires optometrists certified to treat glaucoma to maintain liability insurance of a minimum of \$1,000,000.00 per occurrence and \$3,000,000.00 per annual aggregate. PAO noted that the Board did not include in its rulemaking the insurance requirements for optometrists certified to treat glaucoma. Section 3(a)(2.5)(i) of the act (63 P.S. § 244.3(a)(2.5)(i)), added to the act by Act 130 of 1996, required all optometrists to have liability insurance in the minimum amount of \$200,000 per occurrence and \$600,000 per annual aggregate. Section 4.2(b) of the act (63 P.S. § 244.4b(b)) added to the act by Act 225 of 2002, required optometrists certified to treat glaucoma to have the higher minimum liability coverage.

IRRC's comment also related to the insurance coverage requirement. IRRC asked the Board why the rulemaking did not establish a procedure for optometrists applying for certification to treat glaucoma to demonstrate that they had obtained the required professional liability insurance. The Board indicated that the regulation did not establish a procedure because the Board implementing Act 130 of 1996 has required optometrists to verify their compliance with the insurance requirements. In its written comments, IRRC suggested: "To provide sufficient notice to prospective applicants, the final-form regulation should include the greater insurance requirements established by the Act."

If the Board were to place the specific statutory requirements in the regulations, as suggested by IRRC, the Board would have to amend its regulations whenever the statutory requirements change. To repeat the mandatory insurance requirement in regulation would be unnecessary and redundant, and could lead to confusion should the statutory minimum coverage change.

Since the amendments to the act by Act 130 of 1996, every applicant for licensure as an optometrist is required to verify, under penalty of prosecution for making unsworn falsification to

authorities (18 Pa. C.S. § 4904), that the applicant has obtained and will maintain the required liability insurance coverage, through the following statement on the application for licensure:

By my signature below, I verify that I have obtained and will obtain the minimum of \$200,000/occurrence and \$600,000/annual aggregate professional liability insurance. I further certify that I will notify the Board within 30 days of my failure to be covered by the required amount of insurance.

Similarly, consistent with Act 225 of 2002, in order to be granted certification to treat glaucoma, every applicant must verify that the applicant has obtained and will maintain the required liability insurance coverage through the following statement:

By my signature below, I verify that I have obtained and will obtain the minimum of \$1,000,000/occurrence and \$3,000,000/annual aggregate professional liability insurance required to treat glaucoma. I further certify that I will notify the Board within 30 days of my failure to be covered by the required amount of insurance.

In addition, every optometrist must re-verify, at biennial renewal, that he or she has maintained and will maintain the required liability coverage. The biennial renewal application for optometrists contains the following statement:

\_\_\_ I have the following liability insurance policy with the minimum of \$200,000/occurrence and \$600,000/annual aggregate:

Insurance co. name \_\_\_\_\_

Policy number \_\_\_\_\_

Expiration date \_\_\_/\_\_\_/\_\_\_

The biennial renewal application for certification to treat glaucoma will contain the following statement:

\_\_\_ I have the following liability insurance policy with the minimum of \$1,000,000/occurrence and \$3,000,000/annual aggregate:

Insurance co. name \_\_\_\_\_

Policy number \_\_\_\_\_

Expiration date \_\_\_/\_\_\_/\_\_\_

POA suggested that the Board "amend its regulations to establish a more formal process for optometrists to show satisfactory proof of required liability insurance that is at least as stringent as that which is outlined by the State Board of Medicine for its physicians." In addition, POA recommended that an optometrist should be required to demonstrate compliance with the statutory

insurance requirements prior to the Board granting the optometrist therapeutic certification or certification to treat glaucoma. As explained above, an optometrist is already required to demonstrate compliance with the insurance requirements prior to being granted therapeutic certification or certification to treat glaucoma. The process for verification of insurance coverage required of optometrists is already more stringent than that required of physicians.

The Board notes that its rulemaking is similar to that of the State Board of Medicine's regulations, which did, at one time, include the statutorily mandated amounts of liability insurance. The Medical Board amended its regulations so as not to unnecessarily duplicate provisions of the Medical Practice Act and Health Care Services Malpractice Act (now the Medical Care Availability and Reduction of Error Act or MCare) and to avoid the expense and confusion of periodically updating its regulations. See 30 Pa. B. 2474 (May 20, 2000).

The Board also added to its list of pre-approved continuing education providers the College of Optometrists in Vision Development, the Council on Optometric Practitioner Education (COPE), vision and eye-related courses offered by accredited medical colleges and vision and eye-related courses offered by the American Medical Association and its state affiliates. These providers consistently offer high-quality continuing education relevant to the practice of optometry. COPE approved courses are approved by every state board of optometry.

#### **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 (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." Section 4.2 of the act (63 P.S. § 244.4b) authorizes the Board to certify licensees to treat glaucoma.

#### **Fiscal Impact and Paperwork Requirements**

The amendments should have only minimal fiscal impact on licensees, who will be required to pay a \$25 application fee to obtain certification to treat glaucoma. There is minimal fiscal impact on the Board, associated with amending and printing application forms and biennial renewal forms, notifying licensees of the changes, and processing applications. There is no fiscal impact on the private sector, the general public or any political subdivisions. The amendments will create only minimal additional paperwork for the Board in processing applications to treat glaucoma and will not create additional paperwork for 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)), the Board submitted a copy of the Notice of Proposed Rulemaking, published at 33 Pa. B. 4464 (September 6, 2003), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure (HPLC) and the Senate Committee on Consumer Protection and Professional Licensure (SCP/PLC). In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided the Commission and the committees with copies of the comment 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 the comments received from the public and IRRC.

This final-form regulation was (deemed) approved by the HPLC on \_\_\_\_\_, 2004, and was deemed approved by the SCP/PLC on \_\_\_\_\_, 2004. IRRC met on \_\_\_\_\_, 2004, and (deemed) approved the regulation in accordance with section 5.1(e) of the Regulatory Review Act.

### **Additional Information**

Additional information regarding this rulemaking may be obtained from Deborah Smith, Board Administrator, State Board of Optometry, P.O. Box 2649, Harrisburg, PA, 17105.

### **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 sections 201 and 202 of the Commonwealth Documents Law, 45 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. 4464 (September 6, 2003).

**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 Annex A.
- (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)], regarding certification to prescribe and administer pharmaceutical agents for therapeutic purposes, at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. For licensees certified in accordance with section 4.2 of the act (63 P.S. § 244.4b), regarding additional requirements to

prescribe and administer pharmaceutical agents for the treatment of certain types of glaucoma, at least 4 of the 30 hours shall concern the prescription and administration of pharmaceutical agents for the treatment of glaucoma. The 4 hours taken in the treatment of glaucoma may be applied toward the 6 hours required to maintain therapeutic certification; however, all licensees shall complete at least 30 total hours. Completion of a Board-approved course described in [§ 23.201(b)(1)(Reserved)] section 4.1(a)(2) of the act or continuing education described in section 4.2 of the act shall satisfy the continuing education requirement for the biennial renewal period in which it is completed, including the 6-hour requirement in therapeutics and the 4-hour requirement in glaucoma.

\* \* \*

**§ 23.86. Sources of continuing education hours.**

(a) In addition to another provider which wishes to secure approval from the Board, the Board finds that the following providers have currently met the standards for provider approval for all acceptable courses of continuing education; accordingly, the following providers have program approval in all allowable areas for continuing education: the American Optometric Association, the Pennsylvania Optometric Association, all Board-accredited schools and colleges of optometry, THE COLLEGE OF OPTOMETRISTS IN VISION DEVELOPMENT (COVD), THE COUNCIL ON OPTOMETRIC PRACTITIONER EDUCATION (COPE), EYE AND VISION-RELATED CONTINUING EDUCATION COURSES OFFERED BY ACCREDITED MEDICAL COLLEGES, AS DEFINED IN SECTION 2 OF THE MEDICAL PRACTICE ACT

April 6, 2004

OF 1985 (63 P.S. § 422.2), the Optometric Extension Program, [and] the American Academy of Optometry and its state affiliates, ~~and the American Academy of Ophthalmology and its state affiliates,~~ AND EYE AND VISION-RELATED COURSES OFFERED BY THE AMERICAN MEDICAL ASSOCIATION AND ITS STATE AFFILIATES. The approval given to these providers is subject to reevaluation [however a]. A recision of provider or program approval will be made only in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

\* \* \*

## FEES

### § 23.91. Fees.

The following is the schedule of fees for services charged by the Board:

\* \* \*

Application for certification to treat glaucoma.....\$25

\* \* \*

## CERTIFICATION TO TREAT GLAUCOMA

**§ 23.205. Application procedure.**

An applicant for certification to treat glaucoma under section 4.2 of the act (63 P.S. § 244.4b) shall submit to the Board a completed application obtained from the Board together with the certification fee required by § 23.91 (relating to fees), and one of the following.

(1) A signed verification attesting that the licensee obtained therapeutic certification by passing the licensure examination to practice optometry. The examination shall HAVE included the prescription and administration of pharmaceutical agents for therapeutic purposes (the examination required for therapeutic certification under section 4.1(a)(1) of the act (63 P.S. § 244.4a(a)(1)). The verification shall state the month and year the licensee passed this examination.

(2) A signed verification attesting that the licensee obtained therapeutic certification by passing an examination on the prescription and administration of pharmaceutical agents for therapeutic purposes (the examination required for therapeutic certification under section 4.1(a)(2) of the act and certificates of attendance from Board-approved continuing education courses demonstrating at least 18 hours in glaucoma, completed since December 19, 2002.



**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**

May 26, 2004

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

Re: Final Regulation  
State Board of Optometry  
16A-5211: Continuing Education, Fees, Certification to Treat Glaucoma

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Optometry pertaining to continuing education, fees, and certification to treat glaucoma.

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, Chairperson  
State Board of Optometry

SJR/TLM/kmh

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Linda C. Barrett, 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-5211

**SUBJECT:** Continuing Education, Fees, Certification to Treat Glaucoma

**AGENCY:** DEPARTMENT OF STATE

# 2354

**TYPE OF REGULATION**

Proposed Regulation

☒ **Final Regulation**

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

**FILING OF REGULATION**

**DATE**

**SIGNATURE**

**DESIGNATION**

5/26/04

*Sandra J. Harper*

HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

5/26/04

*Mary Walmer*

SENATE COMMITTEE ON CONSUMER PROTECTION &  
PROFESSIONAL LICENSURE

5/26/04

*Joseph F. Alfano*

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 14, 2004