

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>FEB 26 2021</p> <p>Independent Regulatory Review Commission</p>	
<p>(1) Agency Department of State, Bureau of Professional and Occupational Affairs</p>			
<p>(2) Agency Number: 16A Identification Number: 16A-5213</p>		<p>IRRC Number: 3223</p>	
<p>(3) PA Code Cite: 49 Pa. Code §§ 23.1, 23.21, 23.82, 23.86, 23.87 and 23.91.</p>			
<p>(4) Short Title: General Revisions</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Ariel E. O'Malley, Board Counsel, State Board of Optometry, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251) aomallev@pa.gov . Secondary Contact: Jacqueline A. Wolfgang, Acting Senior Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) jawolfgang@pa.gov.</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> FINAL REGULATION <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The regulations define contact lenses to include lenses that correct vision conditions, act as a diagnostic or therapeutic device, or provide a cosmetic or decorative effect. Additionally, the regulations change its continuing education (CE) regulations to clarify continuing education requirements and the sources that may be utilized to obtain the requisite 30 hours of continuing education. The rulemaking revises the fee schedule to include fees for CE provider initial approval and renewal fees and clarifies the fee for retroactive approval. The Board also amends the reciprocity regulations to clarify that an applicant for licensure by reciprocity who is a graduate of an unaccredited school must comply with the requirements of § 23.14 (relating to graduates of unaccredited schools).</p>			

(8) State the statutory authority for the regulation. Include specific statutory citation.

The amendments are authorized under the Optometric Practice and Licensure Act (act) (63 P.S. §§ 244.1-244.12). Section 3(b)(14) of the act (63 P.S. § 244.3(b)(14)) gives the Board the authority to promulgate all rules and regulations necessary to carry out the purposes of the act. Under section 3(b)(12) of the act, the Board is authorized to establish and approve by rule and regulation courses of continuing professional optometric education. Section 6(c) of the act authorizes the Board to issue a license without an examination to applicants from other states.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This regulation is not mandated by any Federal or State law, court order or Federal regulation. However, to comply with Federal laws and regulations as well as State law, the Board would add a definition of contact lens at § 23.1 (relating to definitions). Under section 6(h)(2) of the act (63 P.S. § 244.6(h)(2)), a prescription of a licensed physician or optometrist is required for the fitting of a contact lens.

Under Federal law, decorative or cosmetic contact lenses, including non-corrective plano lenses, are considered "medical devices" under section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 321(h) and 360j(n)(1)). As medical devices, decorative contact lenses are subject to premarket approval by the Federal Food and Drug Administration (FDA) before they can be legally marketed under section 510(k) of the Food, Drug and Cosmetic Act (21 U.S.C. § 360(k)). All currently approved or cleared decorative contact lenses are legally marketed as prescription devices; therefore, a prescription is required. Furthermore, medical devices without premarket authorization by the FDA are considered adulterated or misbranded under the Food, Drug and Cosmetic Act (21 U.S.C. §§ 351(f)(1)(B) and 352(o)).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Board believes the contact lens definition will clarify that contact lenses are medical devices, which require a prescription, and include plano, zero-powered, cosmetic, and decorative lenses. The Board believes this regulation will help reduce damages to individuals' eyes, especially among young people during holidays such as Halloween and Christmas.

The Board also revises its CE regulations by: (1) addressing reporting, auditing and enforcement; (2) establishing CE requirements for current providers of CE, describing how additional organizations may provide CE, providing more precise details for licensees to obtain retroactive approval of CE, and setting forth the maximum credits available for a variety of options for licensees to obtain CE, thereby indirectly encouraging licensees to take more courses in a greater variety of subjects; and (3) allowing licensees to report CE electronically if they so desire. In conjunction with establishing regulations for CE providers, the Board establishes a new fee structure for CE providers and licensees seeking CE credit retroactively. Course providers could benefit by being able to apply for provider approval at a fee of \$135, instead of paying a \$45 fee for approval of each course. By making these changes to the CE that optometrists must take, this regulation will improve the education and training of licensed optometrists, thereby benefiting public health and safety. The regulation is also necessary

to clarify the reciprocity regulations so that applicants for licensure by reciprocity who are graduates of unaccredited schools understand that they must comply with the requirements of § 23.14 (relating to graduates of unaccredited schools).

(11) 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 regulations.

The regulations do not provide standards that are more stringent than Federal laws or regulations.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not adversely affect Pennsylvania's ability to compete with other states. There are other surrounding states that also have laws and regulations dealing with continuing education (CE).

In Delaware, all non-therapeutically-licensed optometrists must obtain 12 hours of CE during each biennial licensure period in which a maximum of 2 hours may be fulfilled by self-reported study. All therapeutically-licensed optometrists must obtain 30 hours of CE during each biennial licensure period, in which a maximum of 6 hours may be fulfilled by self-reported study. 20 of those 30 hours must include education in the areas of therapeutics and management of ocular disease. All therapeutically-licensed optometrists must also maintain current CPR certifications for both children and adults throughout the licensure period. Any new licensee is required to complete CE equivalent to one hour for each month between the date of licensure and the biennial renewal date. The first twelve 12 hours of pro-rated CE must be in the treatment and management of ocular disease. Licensees must maintain all proof of CE for at least two licensure periods. CE credit is awarded for courses through pre-approved providers listed in the regulations. In the alternative, course providers may submit an application and fee (\$40) for course approvals; however, there is no fee when licensees submit applications for course approval. There is no indication that retroactive course approval is permitted or prohibited. There is no mechanism to become a board-approved provider.

In Maryland, the CE required by the Board must be in courses approved by the Board. The Board requires non-therapeutically certified optometrists to complete 36 hours in any biennial licensing period. The Board requires therapeutically certified optometrists to attend at least 50 hours of CE in a licensing period. In each licensing period, a therapeutically certified optometrist shall attend 30 hours of CE on the use and management of therapeutic pharmaceutical agents. The 30 hours of CE required must be counted toward the total number of required hours of CE in a licensing period. Additionally, the Board requires a diagnostically certified optometrist to complete 36 hours of CE in a licensing period, 6 of which must be in diagnostics. At the time a licensee applies for license renewal, the licensee must submit a certification that the licensee has attended the required courses to the Board. CE credit is awarded for courses through pre-approved providers listed in the regulations. Course providers may submit applications for approval of continuing education. The Board does not have a fee for this application. There is no indication that retroactive course approval is permitted or prohibited. There is no mechanism to become a board-approved provider.

In New Jersey, an applicant for an active registration renewal certificate must complete, during the preceding biennial period, a minimum of 50 credits of continuing professional optometric education. At least 30 of the 50 credits shall consist of courses or programs classified as therapeutic pharmaceutical agent credits and shall be primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease. Of the credits, 10 of the 30 continuing professional optometric education credits shall be in oral therapeutic pharmaceutical agents (TPA) credits. The remaining 20 general continuing professional optometric education credits must be in content areas set forth in the regulations. 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 15 of the 25 credits shall consist of courses or programs classified as TPA credits. An applicant who initially obtains a certificate within the second year of a biennial period shall be exempt from completing continuing professional optometric credits for that biennial renewal period. A licensee who completes more than the required 50 credits in any biennial period may carry up to 20 credits into any succeeding biennial period. Any credits to be carried over must be earned in the last one year of the biennial renewal period and shall be applied to the general continuing professional optometric education requirements and not to the therapeutic pharmaceutical agent requirements. CE credit is awarded for courses through pre-approved providers listed in the regulations. In the alternative, course providers may submit an application for course approvals at no cost. Retroactive course approval is not permitted; however, upon an audit, if a course is not pre-approved, the board may grant CE credit if the board determines that the course has appropriate content. There is no mechanism to become a board-approved provider.

In New York, during each triennial registration period an applicant for registration must complete at least 36 hours of formal CE. At least 3/4 of the CE in a registration period should consist of live in-person instruction in a formal course of study. Up to 1/4 of such CE in a registration period may consist of live instruction in a formal course of study offered through audio, audio-visual, written, on-line, and other media, during which the student must be able to communicate and interact with the instructor. During each registration or certification period of less than 3 years, an applicant shall complete acceptable CE on a prorated basis at the rate of 1 hour of CE per month for the registration period. Acceptable education for CE must be in the area of ocular disease and pharmacology and may include both didactic and clinical components. CE credit is awarded for courses through pre-approved providers listed in the regulations. In the alternative, course providers may submit an application for course approvals at no cost. There is no indication that retroactive course approval is permitted or prohibited. There is no mechanism to become a board-approved provider.

In Ohio, each year all licensed optometrists, as a prerequisite for license renewal, must file proof of attendance for 25 clock hours to the Board. Those clock hours must include 10 clock hours of instruction in pharmacology of board approved CE during the study compliance year. Additionally, an optometrist may complete up to 10 clock hours in online courses, webinars or written content. The study compliance year shall extend from October 1 through September 30 for the subsequent license renewal year beginning January 1 and ending December 31. Credit will be allowed only for the study compliance year in which the educational course was actually attended. CE credit is awarded for courses through pre-approved providers listed in the regulations. In the alternative, course providers may submit an application for course approvals at no cost. There is no indication that retroactive course approval is permitted or prohibited. There is no mechanism to become a board-approved provider.

In Virginia, as a prerequisite to annual renewal of a license or reinstatement of a license, each optometrist is required to 20 hours in courses relating to optometry as approved by the Board. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 20 of the required hours must be completed in the areas of ocular and general pharmacology; diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents; new or advanced clinical devices, techniques, modalities or procedures; or pain management. At least 10 hours shall be obtained through real-time, interactive activities and licensee who completes more than 20 hours in the year may carry forward up to 10 hours for the next annual renewal cycle. Fulfillment of education requirements shall be certified to the Board and must be submitted by each licensed optometrist at the time they apply to the Board for the renewal of their license. CE credit is awarded for courses through pre-approved providers listed in the regulations. The board does not approve courses and does not have a mechanism to become a board-approved provider; therefore, there are no correlating fees.

In West Virginia, it is the responsibility of a licensed optometrist to maintain evidence of meeting the CE requirements for each license renewal to the Board. A licensee must complete a minimum of 43 hours of CE for each even numbered, 2-year cycle. Of the required 43 hours, the licensee must complete a minimum of 12 hours of study in pharmacology or therapeutics courses, a maximum of 6 hours of study in practice management, and a maximum of 10 hours of optometric study may be taken by correspondence, or via the Internet. Of the required 43 hours, a licensee who holds an oral pharmaceutical certificate shall complete at least 12 hours of instruction in ocular pathology and therapeutic pharmacological agents. Of the required 43 hours, a licensee who holds an Injectable Pharmaceutical Agents Certificate shall complete 2 hours of instruction in administering pharmaceutical agents by injection. CE credit is awarded for courses through pre-approved providers listed in the regulations. In the alternative, course providers may submit an application and fee (\$50) for course approvals. West Virginia prohibits retroactive approval of courses. There is no mechanism to become a board-approved provider.

In Connecticut, the Department requires a licensed optometrist to complete a minimum of 20 hours of continued education annually. A minimum of 6 of those 20 hours must be in the areas of pathology, detection of diabetes and ocular treatment. Additionally, an optometrist must complete a minimum of 6 hours in treatment as it applies to ocular agents – therapeutics. An optometrist can complete up to 6 hours through home study or other distance learning and complete no more than six hours in practice management. The Department does not approve continuing education courses, pre-approve specific coursework for individual licensees or maintain a list of continuing education courses. The Department also does not provide a mechanism to become a pre-approved provider.

In Massachusetts, the Board requires a licensed optometrist to complete 18 hours of continuing education annually. An optometrist can complete no more than 6 hours in the combination of the following areas: CPR, child abuse recognition, infection control, office procedures, record keeping, legislation or optometric statutes and regulations. Additionally, an optometrist can complete no more 6 hours in distance learning, such as a webinar or journal article. The Board provides a list of pre-approved providers, but does not provide a mechanism to become a pre-approved provider, nor does the Board provide for individual course approval.

In Maine, the Board requires a licensed optometrist to complete 25 hours of continuing education annually. A maximum of 2 hours in practice management may be applied toward the 25 hour requirement. At least 15 of the 25 hours must pertain to the diagnosis and treatment of ocular diseases for optometrist who hold an advanced therapeutics license. The Board has a list of pre-

approved providers, from whom licensees may obtain continuing education, but does not provide a mechanism to become an approved provider. The Board also provides for a course to be submitted for pre-approval by submitting an application, which does not require a fee.

New Hampshire requires an optometrist certified to use pharmaceutical agents to complete 50 hours of continuing education annually. A minimum of 20 of the 50 hours must be completed in participation in formal courses, while the remainder can be completed by independent study. An optometrist certified to treat glaucoma must complete at least 10 hours in glaucoma specific education. The Board has a list of pre-approved providers, from whom licensees may obtain continuing education, but does not provide a mechanism to become an approved provider. The Board does have a mechanism to seek pre-approval of a course, through the licensee's submission of certain information to the Board, regarding the course. There is no fee to obtain pre-approval of a course by a licensee.

In Rhode Island an optometrist with amplified therapeutic privileges must complete 20 hours of continuing education annually. At least 10 of those 20 hours must be obtained through approved courses in pharmacology for the treatment and management of the ocular conditions of the eye offered, sponsored or administered by a list of organizations provided in the Board's regulations. An optometrist without amplified therapeutic privileges must annually complete 16 hours of continuing education in optometry or other related health fields. The Board does not provide a mechanism to become a board approved provider, nor do the regulations discuss a mechanism for course approval.

In Vermont, an optometrist who is licensed to utilize therapeutic pharmaceutical agents must complete 40 hours of continuing education biennially. Of the 40 hours required, 20 must be in the use of therapeutic pharmaceutical agents, including treating possible complications arising from their use and the treatment of glaucoma. An optometrist who is not licensed to use therapeutic pharmaceutical agents must complete 20 hours of continuing education. For both license types, no more than 10 hours of continuing education may be taken as home study or online study. The Board provides the names of pre-approved providers in its regulations. The Board also allows for retroactive approval, so long as the submission is made within 30 days of the date the course was offered. An application can be submitted to become an approved provider, along with a \$100 fee. Additionally, an application can be submitted by an individual seeking course approval, along with a fee of \$45.

Based on these regulations from other States, this regulation will not place Pennsylvania at a competitive disadvantage. Because the regulation would set forth the maximum credits for a variety of CE options for Pennsylvania optometrists, the Board hopes it will indirectly encourage licensees to take more courses in a greater variety of CE methodologies.

The Board's retroactive application fee provides additional opportunity for those individuals who seek to obtain retroactive approval for courses or other creditable activities. The cost of the retroactive application is the same as the Board's prospective application. Similarly, prospective course approval fees in Delaware (\$40) and West Virginia (\$50) are comparable to the Board's fee for retroactive approval (\$45). Therefore, the retroactive application fee will not place Pennsylvania at a competitive disadvantage. Regarding the Board's board-approved provider fees, none of the above states allow for board-approved providers, with the exception of Vermont. In this regard, the Board's regulation may make Pennsylvania more competitive because providers will have an opportunity to become approved providers in Pennsylvania. As a board-approved provider, the

provider will not have to submit applications for every course, but rather, will only have to submit one application and one fee per biennium. Although some states do not charge for CE approval as required in this regulation, Pennsylvania has a low biennial renewal fee (\$135) as compared to other states. For example, Maryland's biennial fee is \$600 and New Jersey's biennial fee is \$250. Charging a fee for approval of CE courses and providers is preferable over charging licensees higher biennial fees because it allocates the fee to the specific service instead of raising the biennial fee for all licensees. Thus, the Board does not believe the board-approved provider fee or the retroactive fee will impact Pennsylvania's ability to compete with other states.

Additionally, the increase from 25% to 50% in the number of continuing education hours that can be obtained through correspondence programs, taped study programs, online or webinar programs, journal courses, and other individual study programs makes Pennsylvania more competitive with surrounding markets. For the states that specifically delineate how many hours may be obtained in these types of self-study programs, the quantity varies from 20% through 60%. All of the states, aside from New Hampshire, which allows for 60%, provide for 50% or less of the continuing education to be completed through self-study programs. Being on the upper end of this range allows Pennsylvania to be more competitive and provides Pennsylvania licensed optometrists with an opportunity to obtain CE credit for a wider range of courses.

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

The regulation will have no effect on other regulations of the Board or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses, and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board discussed this regulation package at public Board meetings. Representatives of the Pennsylvania Optometric Association (POA) and the Pennsylvania Academy of Ophthalmology (PAO) regularly attend these meetings. In addition, the Board released an exposure draft of the proposal to stakeholders and interested parties, with no opposition to the regulation. The Board published a notice of proposed rulemaking at 49 Pa. B 922 (March 2, 2019), for thirty days of public comment. The Board did not receive any comments from the public. As part of their review under the Regulatory Review Act the Independent Regulatory Review Commission (IRRC) submitted comments. The Board considered IRRC's comments in finalizing its final rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

There are approximately 2,830 individuals in this Commonwealth with current licenses. According to the Pennsylvania Department of Labor and Industry (L&I) in 2016, over half of the optometrists

(54%) work in offices of optometrists. 16% of optometrists work in offices of physicians. 14% work in health and personal care stores, 8% are self-employed, and 3% work in government.

For the business entities listed above, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR § 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where optometrists work, a small business in the categories of offices of optometrists and all other health and personal care stores are ones with \$8.0 million or less in average annual receipts. Offices of physicians are ones with \$12.0 million or less in average annual receipts.

In considering all of these small business thresholds set by NAICS for the businesses in which optometrists work, it is probable that most of the licensed optometrists work in small businesses. Optometrists are provided greater clarity regarding these requirements by the rulemaking. The Board does not anticipate any fiscal impact to the regulated community associated with the \$45 fee for retroactive approval of continuing education under § 23.86(e) and (h) because the Board currently charges \$45 for this service. The amendments to the fee schedule for this fee are meant to clarify the existing fee schedule and do not create a new fee. Regardless, the \$45 cost could be avoided by simply taking all continuing education through pre-approved providers and courses. Providers of continuing education courses could benefit from the new fee structure in that they could apply for provider approval and pay a \$135 fee, rather than pay a \$45 fee for each course offered.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All 2,830 currently licensed optometrists will be required to comply with the regulations, as will all continuing education providers who wish to offer approved courses to licensees.

The Board amends its CE regulations by: (1) addressing reporting, auditing and enforcement; (2) establishing CE requirements for current providers of CE, describing how additional organizations may provide CE, providing more precise details for licensees to obtain CE retroactively, and setting forth the maximum credits available for a variety of options for licensees to obtain CE; and (3) allowing licensees to report CE electronically if they so desire. Out of state applicants will be required to comply with this regulation to the extent they are graduates of an unaccredited school.

The Board would also establish new fees for CE providers and licensees seeking CE credit retroactively. Approximately 15 to 20 organizations listed under § 23.86(b) (relating to sources of continuing education hours) currently sponsor CE programs at a cost of \$45 for each course sponsored. The Board's administrative staff process approximately 50 to 60 CE applications per year. In 2020, the Board received only 1 request for applications to obtain CE retroactively and in years past has received 10 or less requests per year.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As noted in the answer to questions 7 and 10, the Board would define contact lenses to include decorative or cosmetic contact lenses because eye injuries have occurred when individuals wear contact lenses that are made for "one size fits all." This change would have no financial or economic impact in that it is simply a definition that is consistent with existing Federal law. The Board hopes that the new definition will have a positive social impact in that it will provide notice that even cosmetic or decorative contact lenses are available by prescription only and may reduce damages to individuals' eyes, especially among young people during holidays such as Halloween and Christmas.

The Board does not anticipate any fiscal impact to the regulated community associated with the \$45 fee for retroactive approval of continuing education under § 23.86(e) and (h) because the Board currently charges \$45 for this service. The amendments to the fee schedule for this fee are meant to clarify the existing fee schedule and do not create a new fee. Regardless, the \$45 cost could be avoided by simply taking all continuing education through pre-approved providers and courses. Providers of continuing education courses could benefit from the new fee structure in that they could apply for provider approval and pay a \$135 fee, rather than pay a \$45 fee for each course offered.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As noted in the answer to questions 7 and 10, the Board would define contact lenses to include decorative or cosmetic contact lenses because eye injuries have occurred when individuals wear contact lenses that are made for "one size fits all." The Board hopes that the new definition will reduce damages to individuals' eyes, especially among young people during holidays such as Halloween and Christmas. There are no costs associated with this change.

The Board would make three changes to its CE regulations by: (1) addressing reporting, auditing and enforcement; (2) establishing CE requirements for current providers of CE, describing how additional organizations may provide CE, providing more precise details for licensees to obtain retroactive approval of CE already completed, and setting forth the maximum credits available for a variety of options for licensees to obtain CE; and (3) allowing licensees to report CE electronically if they so desire. These changes have no fiscal impact, yet they provide greater clarity to the regulated community.

The Board would also establish new fees for CE providers and licensees seeking approval of CE retroactively. These fees are needed to cover the costs associated with processing applications for approval. The Board's licensees should not bear these costs. CE providers could actually benefit from the new fee structure in that they could simply apply for provider approval at a fee of \$135, rather than applying for approval of each individual course they offer at \$45 each. The Board does not anticipate any fiscal impact to the regulated community associated with the \$45 fee for retroactive approval of continuing education under § 23.86(e) and (h) because the Board currently charges \$45 for this service. The amendments to the fee schedule for this fee are meant to clarify the existing fee schedule and do not create a new fee. Regardless, licensees could avoid the fee for retroactive approval of a CE course or service as a teacher, preceptor, lecturer, or speaker and publications, articles, books and research by simply taking pre-approved courses.

(19) 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. Explain how the dollar estimates were derived.

There is no fiscal impact to the regulated community associated with the \$45 fee for retroactive approval of continuing education under § 23.86(e) and (h) because the Board currently charges \$45 for this service. The amendments to the fee schedule for this fee are meant to clarify the existing fee schedule and do not create a new fee. Regardless, the \$45 cost could be avoided by simply taking all continuing education through pre-approved providers and courses. Providers of continuing education courses could benefit from the new fee structure in that they could apply for provider approval and pay a \$135 fee, rather than pay a \$45 fee for each course offered.

If licensees take advantage of electronic tracking of the CE credits by using such programs as OE tracker as provided at § 23.87(b) (relating to reporting of continuing education hours), they will incur costs. For example, with regard to ARBO's OE Tracker, licensees pay \$20 annually for this voluntary program. Licensees may be willing to pay this fee in order to save time in retaining their own CE records. Because OE tracker or other electronic databases are voluntary, there are no required costs to licensees.

CE providers who are not pre-approved would now have the option of obtaining provider approval at a cost of \$135, or of obtaining course approval at \$45 per course (which is the current fee). If a provider offers more than three courses per biennium, it would be advantageous to seek provider approval and then renew in subsequent years for \$45.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs or savings to local governments associated with this rulemaking.

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

This rulemaking should have no fiscal impact on State government. Only minor paperwork requirements are imposed for the Board to develop a form for approval of providers of continuing education under § 23.86(b)(1) and a biennial renewal form for continuing education providers. The Board will also make minor modifications in other existing forms. The costs associated with processing this paperwork would be covered by the revised fee structure in § 23.91.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Only minor paperwork requirements are imposed for the Board to develop a form for approval of providers of continuing education under § 23.86(b)(1) and a biennial renewal form for continuing education providers. The Board will also make minor modifications in other existing forms.

(22a) Are forms required for implementation of the regulation? Yes.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

The Board has attached the forms required for implementation of the regulation. (See Attachment A.) including: the Application for Continuing Education Provider Approval, the Biennial Renewal Application for Continuing Education Provider Approval, the Optometrist Request for Continuing Education Approval, and the Application for Continuing Education Course/Program Approval.

The Bureau of Professional and Occupational Affairs uses an online platform for the submission of renewal applications through its Pennsylvania Licensing System (PALS). The Board has attached a copy of a biennial renewal form which reflects most of the information required by PALS, including the requirement to confirm completion of the requisite continuing education for renewal. Prior to submitting the biennial renewal form through PALS, the licensee must review the following statement: "I certify that the information provided in this application is true and correct to the best of my knowledge, information, and belief. I understand that submission of false information subjects me to penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)." The licensee then electronically signs the biennial renewal form and submits it for review.

The Board also attaches fee report forms that reflect the breakdown of costs for application fees. (See Attachment B.)

(23) 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 20-21	FY +1 21-22	FY +2 22-23	FY +3 23-24	FY +4 24-25	FY +5 25-26
SAVINGS:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	0	0	0	0	0	0
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A

REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 2017-2018	FY -2 2018-2019	FY -1 2019-2020 (Projected)	Current FY 2020-2021 (Budgeted)
State Board of Optometry	\$146,474.44	\$227,155.03	\$227,000	\$234,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
 - (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
 - (c) A statement of probable effect on impacted small businesses.
 - (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.
- (a) As noted above, this regulation will not have an adverse impact on small businesses. To the extent that small businesses may be impacted, as many as 2,830 small businesses could be subject to these regulations.
- (b) The only paperwork associated with the rulemaking are the applications for continuing education approval. No special skills are needed to complete these applications.
- (c) The probable effect on small businesses is positive. Providers of continuing education courses could benefit from the new fee structure in that they could apply for provider approval and pay a \$135 fee, rather than pay a \$45 fee for each course offered. There is no fiscal impact to the regulated community associated with the \$45 fee for retroactive approval of continuing education under § 23.86(e) and (h) because the Board currently charges \$45 for this service. The amendments to the fee schedule for this fee are meant to clarify the existing fee schedule and do not create a new fee. Regardless, the \$45 cost could be avoided by simply taking all continuing education through pre-approved providers and courses.
- (d) The Board could discern no less intrusive or less costly method of achieving the purpose of the regulation.

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

The Board has not identified a particular group for which special provisions are needed.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

- (a) The Board did not consider less stringent compliance or reporting requirements for small businesses.**
- (b) The Board did not consider less stringent schedules or deadlines for compliance or reporting requirements for small businesses.**
- (c) There are no compliance or reporting requirements that could be consolidated for small businesses.**
- (d) There are no design or operational standards that could be replaced with performing standards in the regulation.**
- (e) The Board did not consider exempting small businesses from all or any part of the requirements contained in the regulation. All continuing education providers must either apply for provider approval or for course approval. To exempt a small business from the fee associated with processing the application would be inconsistent with the Board's mandate to be self-funded. The fee must cover the costs of processing the application, regardless of the size of the business making application.**

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The rulemaking is not based on any data, studies, or references.

(29) Include a schedule for review of the regulation including:

- | | |
|---|--|
| A. The length of the public comment period: | 30 days |
| B. The date or dates on which public meetings or hearings will be held: | |
| | No public hearings were scheduled or held. The Board discusses its regulatory proposals at regularly scheduled meetings. This rulemaking was discussed at public board meetings in 2018, 2019 and 2020. |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Winter 2021 |
| D. The expected effective date of the final-form regulation: | Upon publication as final. |
| E. The date by which compliance with the final-form regulation will be required: | Upon publication as final. |
| F. The date by which required permits, licenses or other approvals must be obtained: | Upon publication as final. |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of their annual process pursuant to Executive Order 1996-1. The Board generally meets quarterly. The Board plans to meet on the following dates in 2021: February 4, May 13, August 26 and December 2. More information can be found on the Board's website: www.dos.pa.gov/optometry.

Attachment “A”

1. Application for Continuing Education Provider Approval
2. Biennial Renewal Application for Continuing Education Provider Approval
3. Optometrist Request for Continuing Education Approval
4. Application for Continuing Education Course/Program Approval
5. Optometry Renewal Application



STATE BOARD OF OPTOMETRY
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Harrisburg, PA 17105-2649

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E-Mail: st-optometry@pa.gov

Courier Address:
2601 North Third Street
Harrisburg, PA 17110

APPLICATION FOR CONTINUING EDUCATION PROVIDER APPROVAL

INFORMATION:

Preapproved providers listed in the Board's regulations at 49 Pa. Code § 23.86 are not required to complete this application.

Title 49. Professional and Vocational Standards
Part I. Department of State
Subpart A. Professional and Occupational Affairs
Chapter 23. State Board of Optometry

§ 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.

(c) Courses that will meet the requirements for certification to treat glaucoma in accordance with § 4.2 of the act (63 P.S. § 244.4(b) shall concern the treatment and management of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma.

INSTRUCTIONS:

- a. Applications cannot be considered unless all questions on the application are answered.
- b. Submit \$135.00 application fee. Make check or money order payable to "Commonwealth of PA." **Application fees are not refundable.** If you do not receive the Board's approval within one year from the date the application is received, you will be required to submit another application fee. A processing fee of \$20.00 will be charged for any check or money order returned unpaid by your bank, regardless of the reason for non-payment.
- c. Applications for provider approvals must be submitted to this Board at least 90 days in advance of the date the initial course is given.

VERSION: *May 2017*

- d. Providers may not offer any course for credit until the Board grants its approval as an approved provider.
- e. Please review the Board's continuing education regulations at 49 Pa. Code § 23.82-23.90, which can be accessed on the Board's website.
- f. Provider approval is valid for the 2-year biennial period, from the date the provider is approved. All Pennsylvania provider approvals expire November 30 of each even numbered year.
- g. If you wish to continue as a provider, the provider approval must be renewed each biennium.
- h. This form must be printed or typed only.

PLEASE NOTE: It is your responsibility to maintain a copy of this application and all documents submitted to, or received from the Board for your future reference.

STATE BOARD OPTOMETRY

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Harrisburg, PA 17110
Fax: (717) 787-7769

APPLICATION FOR CONTINUING EDUCATION PROVIDER APPROVAL

1. **Provider name:** _____

2. **Telephone number:** () _____

3. **Address:** _____

4. **Email address:** _____

5. **Professional Qualifications of Provider:** _____

6. **Background Information about Provider, including experience in optometric education:**

7. **Describe the method to be used to monitor attendance and satisfactory completion of programs:**

8. Methods of instruction (lecture, group dynamics, audiovisual aids, etc.):

9. Methods of evaluation (indicate methods to be used and how you will use evaluation findings. Attach copy of evaluation form, if available):

10. What means will be used to publicize or otherwise announce availability of programs to assure open attendance?

11. Describe the criteria for selecting and evaluating faculty instructors, subject matter, and instructional materials.

12. Describe the mechanism for measuring the quality of programs being offered.

13. Describe the criteria for evaluating programs to determine effectiveness.

14. Certificate of Attendance: Attach a sample of the Certificate of Attendance that will be given to each attendee. It must include the name of the sponsor, name of the licensee, title of the course, date of the course, number of credit hours, PA Board approval number, and signature of person authenticating attendance.

CERTIFICATION

I verify that the statements in this application are true and correct to the best of my knowledge, information, and belief. I understand that false statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities and may result in the suspension or revocation of my approval. I verify that this form is in the original format as supplied by the Department of State and has not been altered or otherwise modified in any way. I am aware of the criminal penalties for tampering with public records or information pursuant to 18 Pa.C.S. § 4911.

Signature of provider _____ Date _____

OFFICIAL BOARD USE ONLY

Provider Number _____

Board member reviewing _____

Date approved _____

Date disapproved and reason _____



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BIENNIAL RENEWAL APPLICATION FOR CONTINUING EDUCATION PROVIDER APPROVAL

INFORMATION:

Preapproved providers listed in the Board's regulations at 49 Pa. Code § 23.86 are not required to complete this application.

Title 49. Professional and Vocational Standards
Part I. Department of State
Subpart A. Professional and Occupational Affairs
Chapter 23. State Board of Optometry

§ 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.

(c) Courses that will meet the requirements for certification to treat glaucoma in accordance with § 4.2 of the act (63 P.S. § 244.4(b)) shall concern the treatment and management of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma.

INSTRUCTIONS:

- a. Applications cannot be considered unless all questions on the application are answered.
- b. Submit \$45.00 application fee. Make check or money order payable to "Commonwealth of PA." **Application fees are not refundable.** If you do not receive the Board's approval within one year from the date the application is received, you will be required to submit another application fee. A processing fee of \$20.00 will be charged for any check or money order returned unpaid by your bank, regardless of the reason for non-payment.

VERSION: *May 2017*

- c. Providers may not offer any course for credit until the Board grants its approval as an approved provider.
- d. Please review the Board's continuing education regulations at 49 Pa. Code § 23.82-23.90, which can be accessed on the Board's website.
- e. Provider approval is valid for the 2-year biennial period, from the date the provider is approved. All Pennsylvania provider approvals expire November 30 of each even numbered year.
- f. If you wish to continue as a provider, the provider approval must be renewed each biennium.
- g. This form must be printed or typed only.

PLEASE NOTE: It is your responsibility to maintain a copy of this application and all documents submitted to, or received from the Board for your future reference.

STATE BOARD OPTOMETRY

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Harrisburg, PA 17110
Fax: (717) 787-7769

BIENNIAL RENEWAL APPLICATION FOR CONTINUING EDUCATION PROVIDER APPROVAL

1. **Provider name:** _____

2. **Telephone number:** (____) _____

3. **Address:** _____

4. **Email address:** _____

5. **Professional Qualifications of Provider:** _____

6. **Background Information about Provider, including experience in optometric education:** _____

7. **Describe the method to be used to monitor attendance and satisfactory completion of programs:** _____

8. Methods of instruction (lecture, group dynamics, audiovisual aids, etc.):

9. Methods of evaluation (indicate methods to be used and how you will use evaluation findings. Attach copy of evaluation form, if available):

10. What means will be used to publicize or otherwise announce availability of programs to assure open attendance?

11. Describe the criteria for selecting and evaluating faculty instructors, subject matter, and instructional materials.

12. Describe the mechanism for measuring the quality of programs being offered.

13. Describe the criteria for evaluating programs to determine effectiveness.

14. **Certificate of Attendance:** Attach a sample of the Certificate of Attendance that will be given to each attendee. It must include the name of the sponsor, name of the licensee, title of the course, date of the course, number of credit hours, PA Board approval number, and signature of person authenticating attendance.

CERTIFICATION

I verify that the statements in this application are true and correct to the best of my knowledge, information, and belief. I understand that false statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities and may result in the suspension or revocation of my approval. I verify that this form is in the original format as supplied by the Department of State and has not been altered or otherwise modified in any way. I am aware of the criminal penalties for tampering with public records or information pursuant to 18 Pa.C.S. § 4911.

Signature of provider _____

Date _____

OFFICIAL BOARD USE ONLY

Provider Number _____

Board member reviewing _____

Date approved _____

Date disapproved and reason _____



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OPTOMETRIST REQUEST FOR CONTINUING EDUCATION APPROVAL

INSTRUCTIONS:

- a. NO practice management courses will be considered (please see regulation referenced below for acceptable courses of study).
- b. Submit one application for each continuing education activity. Please print or type.
- c. Applications cannot be considered unless all questions are answered.
- d. Submit \$45.00 application fee. Make check or money order payable to "Commonwealth of PA." **Application fees are not refundable.** If you do not receive the Board's approval of the continuing education activity within one year from the date the application is received, you will be required to submit another application fee. A processing fee of \$20.00 will be charged for any check or money order returned unpaid by your bank, regardless of the reason for non-payment.
- e. *Application deadline:* Please submit completed application to the Board within 60 days of attending a program, conducting a lecture or publishing. Applicants may seek retroactive approval on an individual basis for attendance at programs; however, licensees will only receive CE credit if the Board finds the course to be in compliance with Board regulations. Applicants must submit a \$45.00 application fee and must submit application within 60 days of attending the program.
- f. Please review the Board's continuing education regulations at 49 Pa. Code § 23.82-23.90, which can be accessed on the Board's website.
- g. For information regarding continuing education subject matter, review 49 Pa. Code § 23.83. For information regarding acceptable sources of continuing education hours, please review 49 Pa. Code § 23.86.

PLEASE NOTE: It is your responsibility to maintain a copy of this application and all documents submitted to, or received from, the Board for your future reference.

STATE BOARD OF OPTOMETRY

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OPTOMETRIST REQUEST FOR CONTINUING EDUCATION APPROVAL

Requesting approval for (check one). Please indicate number of continuing education hours requested.

- Program
Credit hours requested: _____
- Teacher, preceptor, lecturer or speaker
Credit hours requested: _____
- Publications, articles, books, or research relating to the practice of optometry
Credit hours requested: _____
- Other _____
Credit hours requested: _____

1. Licensee's Name: _____

2. License number: _____ 3. Telephone number: (____) _____

4. Address: _____

5. E-Mail address: _____

6. Title of program, publication, article, book or research: _____

7. Location of program: _____

8. Date of program/date of publication: _____

9. Program Application – attach the following:
- Detailed time schedule of program
 - Outline of faculty
 - Outline of subject
 - Certificate of attendance

Program sponsor: _____

Program sponsor address: _____

10. Teacher, preceptor, lecturer or speaker – attach the following:
- Detailed time schedule of program
 - Outline of subject
 - Letter from the sponsor verifying date of service as a teacher, preceptor, lecturer, or speaker.

11. Publications, articles, books, or research – attach one of the following:
- Copy of publication with publication date
 - Copy of article with publication date
 - Copy of title page of the book, the table of contents, and the date of publication
 - Copy of research abstract, paper or other documentation verifying research.

VERSION: December 2020

The Board's Continuing Education Committee will review your application. If the request is approved, you will receive an approval letter from the Board. Retain this approval letter as your certificate.

Verification

I verify that the statements in this application are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities and may result in the suspension or revocation of my approval. I verify that this form is in the original format as supplied by the Department of State and has not been altered or otherwise modified in any way. I am aware of the criminal penalties for tampering with public records or information pursuant to 18 Pa. C.S. § 4911.

Signature of licensee: _____

Date: _____



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Harrisburg, PA 17110

APPLICATION FOR CONTINUING EDUCATION PROGRAM APPROVAL

INSTRUCTIONS:

- a. NO practice management courses will be considered (please see regulation referenced below for acceptable courses of study).
- b. Submit one application for each continuing education program. Please print or type.
- c. Applications cannot be considered unless all questions are answered.
- d. Submit \$45.00 application fee. Make check or money order payable to "Commonwealth of PA." **Application fees are not refundable.** If you do not receive the Board's approval of the continuing education program within one year from the date the application is received, you will be required to submit another application fee. A processing fee of \$20.00 will be charged for any check or money order returned unpaid by your bank, regardless of the reason for non-payment.
- e. Attach a Faculty/Presenter Information Form for each presenter.
- f. Program Schedule: Attach detailed time schedule, hour by hour, of subject matter.
- g. Certificate of Attendance: Attach a sample of the Certificate of Attendance that will be given to each attendee. It must include the name of the sponsor, name of the licensee, title of the course, date of the course, number of credit hours, PA Board approval number, and signature of person authenticating attendance.
- h. **Applications for approval of programs must be submitted to this Board 45 days in advance of presentation.**
- i. The Continuing Education Committee will review your application for continuing education approval. **If the program is approved, please note the continuing education approval number and the number of approved credit hours when you receive your approval letter. The approval number and the number of approved credit hours must be listed on certificates of attendance given to attendees of your program.**

PLEASE NOTE: It is your responsibility to maintain a copy of this application and all documents submitted to, or received from the Board for your future reference.

Title 49. Professional and Vocational Standards
Part I. Department of State
Subpart A. Professional and Occupational Affairs
Chapter 23. State Board of Examiners of Optometry

§ 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 § 4.1 of the act (63 P. S. § 244.4a) shall concern the treatment and management of ocular or oculo-systemic disease.

(c) Courses that will meet the requirements for certification to treat glaucoma in accordance with § 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.

STATE BOARD OF EXAMINERS OF OPTOMETRY

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APPLICATION FOR CONTINUING EDUCATION PROGRAM APPROVAL

1. Provider name: _____
2. Telephone number: ____ (____) _____
3. Address: _____
4. Program Coordinator: _____
5. Program Coordinator's E-Mail Address: _____
6. Program title: _____
7. Date(s) program will be offered: _____
8. Program location(s): _____
9. Attach a Faculty/Presenter Information Form for each of the following presenters:

Name	Title	Major Field of Interest

10. Program Schedule: Attach detailed time schedule, hour by hour, of subject matter.
11. Total credit hours requested: _____
Breakdown of requested hours: Core: _____ Therapeutics: _____ Glaucoma: _____
12. Describe the method to be used to monitor attendance and satisfactory completion of program: _____

13. Objectives and outline of program: _____

14. Describe admission requirements: _____

VERSION: December 2020

15. Identify core subjects of the program: _____

16. Methods of instruction (lecture, group dynamics, audiovisual aids, etc.): _____

17. Methods of evaluation (indicate methods to be used and how you will use evaluation findings. Attach copy of evaluation form, if available): _____

18. What means will be used to publicize or otherwise announce availability of program to assure open attendance?

19. Certificate of Attendance: Attach a sample of the Certificate of Attendance that will be given to each attendee. It must include the name of the sponsor, name of the licensee, title of the course, date of the course, number of credit hours, PA Board approval number, and signature of person authenticating attendance.

Verification

I verify that the statements in this application are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities and may result in the suspension or revocation of my approval. I verify that this form is in the original format as supplied by the Department of State and has not been altered or otherwise modified in any way. I am aware of the criminal penalties for tampering with public records or information pursuant to 18 Pa. C.S. § 4911.

Signature of Program Coordinator: _____ Date: _____

State Board of Optometry Faculty/Presenter Information Form

Instructions:

**To be submitted with application*

**To be printed or types only.*

**Provide complete background and expertise of presenter.*

1. Name of Faculty/Presenter: _____

2. Address: _____

3. Telephone Number: _____

4. Education: _____

5. Specify professional qualifications: _____



BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

P. O. Box 2649

Harrisburg, PA 17105-2649

APPLICANT INFORMATION

PERSONAL INFORMATION			
Last Name		First Name	
Middle Name		Suffix	
Full Name			
SSN		Date Of Birth	
		Age	
		Gender	
ADDRESS DETAILS			
Street Address			
City/State/Zip			
County		Country	
CONTACT DETAILS			
Phone number		Mobile Phone number	
Primary Email Address		Secondary Email Address	
CHECKLIST ITEMS			
Checklist name	Status	Submitted Date	Expiration Date
Application	Pending Review	10/06/2020	
Application Fee	Completed	10/06/2020	
Child Abuse CE	Completed	10/06/2020	
LEGAL QUESTIONS			
Questions	Answer	Document Uploaded	File Name
1 Are you submitting a name change with this renewal?	N	No	
2 First Name		No	
3 Middle Name		No	
4 Last Name		No	
5 You must submit a copy of a legal document verifying the name (s). The following are acceptable name change verification documents: (1) Marriage Certificate: (2) Divorce decree which indicates the retaking of your maiden name: (3) Other "legal" document indicating the retaking of a maiden name: (4) For a "legal" name change, a copy of the court document must be provided.		No	
6 With the exception of the one you are currently renewing, do you hold, or have you ever held, a license, certificate, permit, registration or other authorization to practice a profession or occupation in any state or jurisdiction?	Y	No	

7	Please provide the profession and state or jurisdiction.	Optometry- Delaware; Optometry- New Jersey	No	
8	Since your initial application or last renewal, whichever is later, have you had disciplinary action taken against a professional or occupational license, certificate, permit, registration or other authorization to practice a profession or occupation issued to you in any state or jurisdiction or have you agreed to voluntary surrender in lieu of discipline?	N	No	
9	Do you currently have any disciplinary charges pending against your professional or occupational license, certificate, permit or registration in any state or jurisdiction?	N	No	
10	Since your initial application or last renewal, whichever is later, have you withdrawn an application for a professional or occupational license, certificate, permit or registration, had an application denied or refused, or for disciplinary reasons agreed not to apply or reapply for a professional or occupational license, certificate, permit or registration in any state or jurisdiction?	N	No	
11	Since your initial application or last renewal, whichever is later, have you engaged in the intemperate or habitual use or abuse of alcohol or narcotics, hallucinogenics or other drugs or substances that may impair judgment or coordination?	N	No	
12	Since your initial application or your last renewal, whichever is later, have you had your DEA registration denied, revoked or restricted?	N	No	
13	Since your initial application or your last renewal, whichever is later, have you had provider privileges denied, revoked, suspended or restricted by a Medical Assistance agency, Medicare, third party payor or another authority?	N	No	
14	Since your initial application or your last renewal, whichever is later, have you had practice privileges denied, revoked, suspended, or restricted by a hospital or any health care facility?	N	No	
15	Since your initial application or your last renewal, whichever is later, have you been charged by a hospital, university, or research facility with violating research protocols, falsifying research, or engaging in other research misconduct?	N	No	
16	Do you maintain current medical professional liability insurance in the Commonwealth of Pennsylvania?	Y	No	
17	Have you completed at least 2 hours of Board approved continuing education in pain management, identification of addiction or the practices of prescribing or dispensing of opioids?	Y	No	
18	Do you hold a DEA number or use the registration number of another person or entity to prescribe controlled substances?		No	
19	Have you met your continuing education requirements?	Y	No	

Licenses/Certificates/Permits/Registrations In Any State/Jurisdiction

Profession	State/Jurisdiction
Optometry	Delaware
Optometry	New Jersey

PA VETERANS REGISTRY		
Questions	Answer	
1	Have you served in the U.S. Armed Forces?	N
2	Thank you for your service. Would you like to register with the PA Veterans Registry? The PA Veterans Registry provides veterans with information about federal, state and local benefits, programs and services that are available to Pennsylvania veterans and links veterans with resources that can provide assistance. Registration is quick and easy, and provides the Department of Military and Veterans Affairs (DMVA) with a way to contact you regarding the benefits and services you may be eligible for. If you check "Yes," you will receive an email with instructions to assist you in registering.	

CONFIRMATION	
<input checked="" type="checkbox"/>	Any fees paid are non refundable. (10/06/2020 20:09:55)

Attachment “B”

FEE REPORT FORM

Agency: State - BPOA

Date: April 6, 2016

Contact: Ian Harlow, Commissioner of Professional and Occupational Affairs

Phone No. 783-7194

Fee Title, Rate and Estimated Collections:

Application for Continuing Education Provider initial approval for providers under § 23.86(b)(relating to sources of continuing education hours): \$135.00

Estimated Biennial Revenue: \$2,700

(20 applications x \$135.00)

Fee Description:

The fee will be charged to every application for a continuing education provider initial approval for new provider.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Optometry to review and process an application for a continuing education provider initial approval for new providers (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-app prep & review	(1.00 hr)	\$ 35.65
Board Administrative Assistant review	(.5 hr)	\$ 24.13
Board Member review	(8.0 hr)	\$ 60.00
Administrative Overhead:		<u>\$ 14.76</u>
	Total Estimated Cost:	\$134.54
	Proposed Fee:	\$135.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$135.00 be established to process an application for a continuing education provider initial approval for new providers.

Board staff: receives application for a continuing education provider initial approval for new providers, reviews application and supporting documents to be certain that all requirements are met. Paperwork is submitted to Board Administrator for further review.

Paperwork is then presented for Board Member review. After final review, board staff issues license through computer or discrepancy notice.

FEE REPORT FORM

Agency: State - BPOA

Date: April 6, 2016

Contact: Ian Harlow, Commissioner of Professional and Occupational Affairs

Phone No. 783-7194

Fee Title, Rate and Estimated Collections:

Application for licensees seeking continuing education credit retroactively under § 23.86(e) or (h): **\$45.00**

Estimated Biennial Revenue: \$2,250 (50 applications x \$45.00)

Fee Description:

The fee will be charged to every application for licensees seeking continuing education credit retroactively.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Optometry to review and process an application seeking continuing education credit retroactively (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-app prep & review	(.25 hr)	\$ 8.91
Board Administrative Assistant review	(.25 hr)	\$ 12.06
Board Member review	(.50 hr)	\$ 8.00
Administrative Overhead:		<u>\$ 14.76</u>
	Total Estimated Cost:	\$ 43.73
	Proposed Fee:	\$ 45.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$45.00 be established to process an application for licensees seeking continuing education credit retroactively.

Board staff: receives application from licensee for a license seeking continuing education credit retroactively, reviews application and supporting documents to be certain that all requirements are met, issues license through computer or discrepancy notice.

FEE REPORT FORM

Agency: State - BPOA

Date: April 6, 2016

Contact: Ian Harlow
Commissioner of Professional and Occupational Affairs

Phone No. 783-7194

Fee Title, Rate and Estimated Collections:

Biennial Renewal fee for approved providers under § 23.86(b): \$45.00
Estimated Biennial Revenue: \$2,250 (50 applications x \$45.00)

Fee Description:

The fee will be charged to every applicant for renewal.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Optometry to review and process a renewal for new providers and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time-app prep & review	(.50 hr)	\$ 17.82
Board Administrative Assistant review	(.25 hr)	\$ 12.06
Administrative Overhead:		<u>\$ 14.76</u>
	Total Estimated Cost:	\$ 44.64
	Proposed Fee:	\$ 45.00

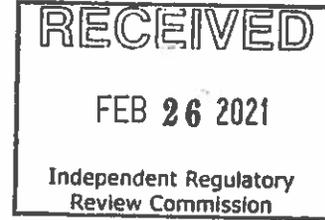
Analysis, Comment, and Recommendation:

It is recommended that a fee of \$45.00 be established to process a renewal fee for new providers.

Board staff: receives request from a licensee for renewal of new providers, reviews renewal application and supporting documents to be certain that all requirements are met, issues renewal through computer or discrepancy notice.

CDL-1

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



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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p><u>State Board of Optometry</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>16A-5213</u></p> <p>DATE OF ADOPTION _____</p> <p>BY: <u><i>Luanne K. Chubb</i></u> Luanne K. Chubb, O.D.</p> <p>TITLE <u>Chair</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u><i>Marisa H. Z. Lehr</i></u> (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><u>2/11/2021</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY
49 PA. CODE CHAPTER 23
General Revisions**

The State Board of Optometry (Board) hereby amends §§ 23.1, 23.21, 23.82, 23.86, 23.87, and 23.91 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The amendments are authorized under the Optometric Practice and Licensure Act (act) (63 P.S. §§ 244.1-244.12). Section 3(b)(14) of the act (63 P.S. § 244.3(b)(14)) gives the Board the authority to promulgate all rules and regulations necessary to carry out the purposes of the act. Under section 3(b)(12) of the act, the Board is authorized to establish and approve by rule and regulation courses of continuing professional optometric education. Section 6(c) of the act authorizes the Board to issue a license without an examination to applicants from other states.

Background and Purpose

The regulations define contact lenses to include lenses that correct vision conditions, act as a diagnostic or therapeutic device, or provide a cosmetic or decorative effect. Additionally, the regulations make amendments that clarify continuing education requirements and the sources that may be utilized to obtain the requisite 30 hours of continuing education. The rulemaking revises the fee schedule to include fees for continuing education provider initial approval and renewal fees and clarifies the fee for retroactive approval. The Board also amends the reciprocity regulations to clarify that an applicant for licensure by reciprocity who is a graduate of an unaccredited school must comply with the requirements of § 23.14 (relating to graduates of unaccredited schools).

Comments to Proposed Rulemaking

The Board published a notice of proposed rulemaking at 49 Pa. B. 922 (March 2, 2019), for thirty days of public comment. The Board did not receive any comments from the public. As part of their review under the Regulatory Review Act, the Independent Regulatory Review Commission (IRRC) submitted comments. The Board received no comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protections and Licensure Committee (SCP/PLC). The following represents a summary of the comments received and the Board's response.

Comments from the Independent Regulatory Review Commission

Continuing Education Requirements

IRRC commented about § 23.82 (relating to continuing education requirements; continuing education reporting; audit and enforcement) which requires a licensee to complete 30 hours of continuing education in the two years immediately preceding renewal. IRRC expressed concerns

that the amendments in § 23.82 possibly do not align with section 5(b) of the act, which states that a license shall not be renewed unless the applicant submits proof of completion of the requisite 30 hours of continuing education. IRRC asked the Board to explain how the amendments in § 23.82 are consistent with 5(b) of the act and with the intent of the General Assembly. IRRC also asked if the act contains a provision that would allow the Board to renew a license or not suspend a license when it becomes aware that continuing education requirements have not been met. Additionally, IRRC asked the Board to explain the consequences to a licensee when the licensee indicates that continuing education requirements have not been met and also asked whether a license would be automatically suspended and subject to discipline or a citation if the Board became aware of a continuing education deficiency through an audit.

As part of the existing renewal application procedures, licensees must certify that they completed the requisite continuing education. Prior to submitting the renewal application on the Bureau of Professional and Occupational Affairs' (Bureau) online platform (the Pennsylvania Licensing System (PALS)), the licensee must sign below the following statement:

"I certify that the information provided in this application is true and correct to the best of my knowledge, information, and belief. I understand that submission of false information subjects me to penalties under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)."

Under existing procedures, which would continue after the promulgation of this rulemaking, the Board does not require submission of continuing education certificates with the renewal application. The above certification requirement is consistent with section 5(b) of the act as the Board is accepting the certification as proof of completion of continuing education. This is consistent with the practices of other boards under the Bureau. If the above certification is not completed, the Board would not renew the applicant's license. In consideration of IRRC's comments, and to ensure consistency with the mandates of the act and the intent of the General Assembly, the Board determined that further clarification was necessary. Thus, the Board amended § 23.82(b) by making the certification of the required continuing education "a condition of renewal." Meaning if a licensee submits a renewal application and does not certify completion of the requisite 30 hours of continuing education, the license would not be renewed. To further clarify the continuing education regulations, the Board revised § 23.82(a) to clarify that a licensee who fails to renew by the expiration of the biennial renewal period may not engage in the practice of optometry until continuing education requirements are met and the license is renewed or reactivated.

IRRC asked how the Board will implement the new continuing education requirements and questioned the consequences of not complying with continuing education requirements. When an applicant fails to complete continuing education, the Board sends the licensee a discrepancy letter with instructions to complete the continuing education. Failure to comply with the discrepancy letter would result in the license not being renewed. To measure and enforce compliance with continuing education requirements, the Board conducts random audits. In instances where the Board learns of continuing education discrepancies after a license is renewed through an audit or otherwise, the license would not be automatically suspended as there are no provisions in the act that provide for automatic suspension for failure to complete continuing education. Instead,

because licensees have a property interest in their licenses, the Board would refer the matter to the prosecution division for the issuance of a citation or for the initiation of formal action against the licensee. As such, the licensee is provided due process before an act of suspension or other discipline is taken against the license.

The procedures put forth in the regulation are not new to the Board, but rather act to codify operating procedures, so the licensees are more aware of the procedures surrounding renewal and nonrenewal of licenses. The civil penalty for failing to complete continuing education is already a part of the Board's schedule of civil penalties (*See*. 49 Pa. Code § 43b.25) The mechanisms already exist for filing renewal applications, certifying continuing education completion, conducting audits and initializing disciplinary actions. Therefore, this portion of the regulation serves as a codification of the existent procedures and consequences.

Finally, for clarity, the Board reformatted § 23.82(a) to include paragraphs (1), (2) and (3). This amendment does not substantively change this provision. Additionally, the Board amended § 23.82(d) to reflect the recent recodification under Act 53, the act of July 1, 2020 (P.L. 575, No. 53).

Sources of Continuing Education

IRRC's second comment is regarding § 23.86 (relating to sources of continuing education hours) for which IRRC noted that the Board did not cross reference the course requirements in § 23.83 (relating to continuing education subject matter) in subsections (b) and (d). The Board agrees that adding cross-references to § 23.83(b) and (d) adds clarity; therefore, the Board added the cross references to the final rulemaking. Additionally, in § 23.86(a) the Board clarified that the approved providers of continuing education courses are authorized to provide continuing education courses in all professional optometric continuing education subject matters found at § 23.83, not just § 23.83(a) as was previously stated. Also, in § 23.86(d) the Board exchanged the word "given" for "offered" and removed the word "providers" and replaced it with "an individual or entity" to provide additional clarity of language. The Board also made minor grammatical revisions by making reference to a course instead of courses.

IRRC also commented that the proposed rulemaking at § 23.86(e) does not provide the rate of awarded continuing education hours per minutes of a program. For clarity, the Board added the rate of one continuing education hour for every 50 minutes. Additionally, IRRC asked the Board to explain its rationale for removing the pre-approval option from subsection (h). The Board removed the pre-approval process for two reasons. First, the pre-approval process has not been utilized by licensees. Second, the Board believes pre-approving an action that has not yet occurred would be difficult and is an unreliable way to approve continuing education credits. For instance, it would not be possible to pre-approve publication of a book or article, when the book or article has not been written, let alone selected for publication by a publisher. While a licensee could submit an outline or description of the proposed book or article, throughout the writing process there are numerous revisions and alterations that the end product often results in something quite different than what the drafter initially planned. Additionally, providing for retroactive approval puts subsection (h) in line with subsection (e).

IRRC further questioned whether licensees seeking continuing education credit under subsection (h) would be required to provide documentation to the Board within 60 days of the services as set forth in subsection (e). The Board does intend to apply the 60-day requirement to subsection (h) and has amended subsection (h) to reflect that a licensee shall provide documentation to the Board within 60 days of completion of the service, utilizing the process set forth in subsection (e). Additionally, IRRC asked if 60 days was a feasible span of time for the licensee to submit documentation to the Board and inquired as to when individuals would be expected to submit documentation. The Board believes that 60 days is a reasonable timeframe for an applicant to submit documentation to seek approval of continuing education. A teacher, preceptor, or speaker would have 60 days from the day the lecture was completed to submit an application to the Board. Additionally, an author would have 60 days from the day the article or book was published or 60 days from the completion of research to file an application with the Board. IRRC also asked the Board to explain the implementation procedure for this portion of the regulation. The implementation of this provision is a simple process. An applicant will complete an application seeking retroactive approval and provide all supporting documentation; the Board then reviews the application and, in most cases, approves the continuing education credits. Under the regulations, the fee for retroactive approval (\$45) is the same fee that the Board charged for pre-approval for continuing education for service as a teacher, preceptor, lecturer or speaker and for publications, articles, books and research relating to the practice of optometry; therefore, adding the retroactive fee does not have a fiscal impact to the regulated community.

IRRC asked why § 23.86(f) was being deleted, how the new allocations differed from those listed in subsection (f), why there is a need to restructure the percentage allocations, and what the percentage allocations were for subsections (a) and (b). The only percentage that has changed with this rulemaking is to allow for up to 50% of the credit hours to be obtained in subsection (g), which provides for continuing education credit through correspondence programs, taped study programs, online or webinar programs, journal courses and individual study programs. Previously, licensees were only allowed to obtain up to 25% of their credit hours for correspondence programs, taped study programs, online or webinar programs, journal courses and individual study programs. Providing licensees with the ability to obtain up to 50% of continuing education programs through home study programs such as online or webinar programs provides more flexibility to licensees, may be a lower cost option, and may provide for a wider variety of course selections. For further clarity, the Board has reincorporated the content of the former subsection (f) into what is now subsection (i) and included the updated percentage allotment for subsection (g) and added subsection (e) into the grouping so all percentages are clearly set forth in one subsection. Additionally, the Board has clarified in subsection (i) that the continuing education credits earned under subsections (a), (b) and (d) must be no less than 50% of the total hours.

Reporting of Continuing Education Credit Hours

IRRC's third comment is regarding § 23.87 (relating to reporting of continuing education credit hours). IRRC asked if the Board currently has access to the continuing education tracking databases and use of the information for compliance purposes. The Board does not currently have access to the continuing education tracking databases; however, as part of the paid for service, the user can print a report from the continuing education tracker database and provide it to the Board as proof of completion of the requisite continuing education. IRRC further inquired as to whether

the Board has considered the mandatory use of a database to track continuing education credit. While the Board has considered mandatory use of such a database, it is not feasible to do so at this time due to internal technology constraints. The Board does see the efficiency of electronic databases that track continuing education and has included this provision to allow licensees to take advantage of such databases. IRRC also inquired as to how the Board intends to implement this section of the regulation. As utilizing a continuing education database will not be mandatory for the licensees, this will not require efforts of the Board to implement. Rather, this section provides notice to licensees that use of a database is permitted to maintain continuing education records as required under § 23.88 (relating to retention of continuing education records).

Standards for Commercial Support

IRRC's final comment is in regard to § 23.90 (relating to standards for commercial support). IRRC questioned how the Board would determine whether continuing education is free from control of commercial interest. IRRC also found the regulatory language in subsection (c) to be ambiguous. Upon further review, the Board determined that the commercial support issues addressed in this section are already regulated by industry standards through the Accreditation Council for Continuing Medical Education. As such, the Board has removed this section from its final-form rulemaking.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Only minor paperwork requirements are imposed for the Board to develop a form for approval of providers of continuing education under § 23.86(b)(1) and a biennial renewal form for providers under § 23.86(b)(2). The Board will also make minor modifications in other existing forms. There is no fiscal impact to the regulated community associated with the \$45 fee for retroactive approval of continuing education under § 23.86(e) and (h) because the Board currently charges \$45 for this service. The amendments to the fee schedule for this fee are meant to clarify the existing fee schedule and do not create a new fee. Regardless, the \$45 cost could be avoided by simply taking all continuing education through pre-approved providers and courses.

Continuing education providers who are not pre-approved now have the option of obtaining provider approval at a cost of \$135, or of obtaining course approval at \$45 per course (which is the current fee). If a provider offers more than three courses per biennium, it would be advantageous to seek provider approval and then renew in subsequent years for \$45. Providers of continuing education courses could benefit from the new fee structure in that they could apply for provider approval and pay a \$135 fee, rather than pay a \$45 fee for each course offered.

Sunset Date

The Board continually monitors the cost effectiveness of 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 15, 2019, the Board submitted a copy of the proposed rulemaking, published at 49 Pa.B. 922 (March 2, 2019) and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received. In preparing the final-form regulation, the Board considered comments received from IRRC.

On February 26, 2021, the Board delivered final-form rulemaking to the HPLC, the SCP/PLC and IRRC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a (j.2)), the final-form rulemaking was (deemed) approved by the HPLC and the SCP/PLC on _____. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____ and approved the final-form rulemaking.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law.
- (3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 49 Pa.B. 922 (March 2, 2019).
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Optometric Practice and Licensure Act.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code §§ 23.1, 23.21, 23.82, 23.86, 23.87, and 23.91 are amended to read as set forth in Annex A.
- (b) The Board shall submit this final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall submit this final-form regulation to IRRC, the HPLC and the SCP/PLC as required by law.
- (d) The Board shall certify this final-form regulation and deposit them with the

Legislative Reference Bureau as required by law.

(e) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

LUANNE CHUBB, OD,
Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY

GENERAL PROVISIONS

§ 23.1. Definitions.

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

* * * * *

Clinical Skills Assessment Examination—A clinical skills competency examination developed, prepared, administered and scored by the NBEO, which the Board adopts as the State clinical examination for licensure.

Contact lens—A medical device or any other item or device of any material, tissue or power, including plano or zero-powered, that is required to be dispensed by prescription, and is placed directly on the cornea or the cornea and sclera to do any of the following:

- (i) Correct vision conditions.
- (ii) Act as a diagnostic or therapeutic device.
- (iii) Provide a cosmetic or decorative effect.

Continuing education hour—Fifty minutes of continuing education.

* * * * *

LICENSE BY RECIPROCITY AND INTERSTATE CERTIFICATION

§ 23.21. Reciprocal application.

(a) An applicant for licensure by reciprocity to practice optometry in this Commonwealth shall submit the following to the Board:

(1) A completed application which has been filed with the Board together with the fee required by § 23.91 (relating to fees), in the form of a check or money order, made payable to “Commonwealth of Pennsylvania—OE.”

(2) A certificate of preprofessional education issued by the Department, showing that the preliminary education requirements are satisfied.

(3) A transcript of subjects and grades from the college or school of optometry from which the applicant has graduated.

(b) Any school or college of optometry from which the applicant for reciprocity has graduated shall be one approved by the Board at the time he was graduated.

(c) An applicant for licensure by reciprocity who is a graduate of an unaccredited school shall comply with the requirements of § 23.14 (relating to graduates of unaccredited schools).

* * * * *

CONTINUING EDUCATION

* * * * *

§ 23.82. Continuing education hour requirements; continuing education reporting; audit and enforcement.

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2 years immediately preceding renewal or reactivation, a minimum

of 30 hours of continuing education. A LICENSEE WHOSE LICENSE IS NOT RENEWED BY THE EXPIRATION OF THE BIENNIAL RENEWAL PERIOD MAY NOT ENGAGE IN THE PRACTICE OF OPTOMETRY UNTIL THE CONTINUING EDUCATION REQUIREMENTS ARE SATISFIED AND THE LICENSE HAS BEEN RENEWED OR REACTIVATED.

(1) For licensees certified in accordance with section 4.1 of the act (63 P.S. § 244.4a), 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.

(2) 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] No more than 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.

(3) Completion of a Board-approved course described in 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.

(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)).] Licensees shall certify completion of the required continuing education on the biennial renewal application AS A CONDITION OF RENEWAL. False certifications will be grounds for disciplinary action under section 7(a)(3) of the act (63 P.S. § 244.7(a)(3)).

(c) The Board may randomly audit licensees to ensure compliance with the continuing education requirements. A licensee selected for audit shall provide information to document the licensee's completion of required continuing education, which shall include the information at § 23.87(a) (relating to reporting of continuing education credit hours).

(d) A licensee who, as a result of an audit, is determined to be deficient in continuing education hours will be subject to formal disciplinary action under section 7(a)(8) of the act (63 P.S. § 244.7(a)(8)), or will be subject to the issuance of a citation under ~~section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (63 P.S. § 2205(a))~~ 3108 OF THE ACT OF JULY 1, 2020 (P.L. 575, NO. 53) in accordance with § 43b.25 (relating to schedule of civil penalties—optometrists).

(e) Notwithstanding other disciplinary action taken as set forth in subsection (d), a licensee who is determined to be deficient in continuing education hours is required to make up all deficient hours of continuing education and submit documentation containing the information set forth in subsection (c) to the Board within 6 months from the issuance of a citation or the imposition of formal discipline. Hours of continuing education submitted to the Board to make up for a deficiency may not be used to satisfy the continuing education requirement for the current biennium.

(f) Failure to make up all deficiencies as set forth in subsection (e) will subject the licensee to further disciplinary action under section 7(a)(8) of the act.

(g) The Board may waive the requirements of continuing education in cases of certified illness or undue hardship. It is the duty of each licensee seeking waiver to notify the Board in writing and request the waiver 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.

* * * * *

§ 23.86. Sources of continuing education hours.

(a) [In addition to another provider which wishes to secure approval from the Board, the] The Board finds that the [following] providers listed below have currently met the standards for provider approval for all acceptable courses of continuing education [; accordingly,] that meet the requirements of § 23.83(a) (relating to continuing education subject matter). Accordingly, the following providers [have program approval in all allowable areas for continuing education] are preapproved sources for continuing optometric education courses:

- (1) [the] The American Optometric Association, and its state affiliates.
- (2) [the] The Pennsylvania Optometric Association, and its local societies.
- (3) [all Board-accredited] All schools and colleges of optometry [,] accredited by the Accreditation Council on Optometric Education (ACOE) of the American Optometric Association, or its successor.
- (4) [the] The College of Optometrists in Vision Development (COVD) [,].
- (5) [the] The Council on Optometric Practitioner Education (COPE) [, eye and vision-related continuing].

(6) Continuing education courses offered by accredited medical colleges, as defined in section 2 of the Medical Practice Act of 1985 (63 P. S. § 422.2) [,].

(7) [the] The Optometric Extension Program [,].

(8) [the] The American Academy of Optometry and its state affiliates [,].

(9) [the] The American Academy of Ophthalmology and its state affiliates [, and eye and vision-related courses offered by the].

(10) The American Medical Association and its state affiliates.

(b) The Board may approve other providers of continuing education not listed in subsection (a). The Board will maintain on its web site a list of all approved providers.

(1) A provider seeking approved provider status shall:

(i) Apply to the Board, on forms supplied by the Board, at least 90 days in advance of the date the initial course is given. The provider may not offer any course for credit until the Board grants its approval as an approved provider.

(ii) Pay the required fees under § 23.91 (relating to fees).

(iii) Demonstrate that the provider is competent to provide continuing education to optometrists.

(IV) ENSURE THAT THE COURSES PROVIDED MEET THE REQUIREMENTS OF § 23.83 (RELATING TO CONTINUING EDUCATION SUBJECT MATTER).

(2) All provider approvals expire November 30th of each even-numbered year, regardless of the date of issuance, and must be renewed biennially.

(c) The approval given to [these] the providers approved in accordance with subsections (a) and (b) is subject to reevaluation. 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).

[b] (d) A COURSE WHICH IS OFFERED BY AN INDIVIDUAL OR ENTITY THAT HAS Courses which are [provided] given by providers [not indicated in subsection (a)] who have not been approved in accordance with subsections (a) or (b) will count as continuing education hours provided that the [provider and subject matter are] course is approved by the Board prior to implementation of the course, AND THE COURSE MEETS THE REQUIREMENTS OF § 23.83 (RELATING TO CONTINUING EDUCATION SUBJECT MATTER). The course provider shall submit an application for course approval on a form supplied by the Board and pay the fee required under § 23.91 at least 45 days in advance of the date the course is given. [In addition, credits may be obtained on an individual basis for attendance at programs which have not had prior approval of the Board so long as the individual submits proper application for program approval and supporting documentation and verification of attendance; however, in this instance, the licensee cannot guarantee himself proper credit from the Board unless the Board finds such course to be in compliance with the subject matter and the provider to be qualified.]

(e) Continuing education credit may be awarded retroactively for attending programs, to include lectures and college or university courses, which have not been previously approved AT THE RATE OF 1 CONTINUING EDUCATION HOUR FOR EVERY 50 MINUTES. The attendee shall apply to the Board for approval on a form supplied by the Board, pay a fee under § 23.91, and document attendance within 60 days of attending the program. The attendee shall demonstrate to the Board's satisfaction that the program meets the requirements in § 23.83. A licensee may complete up to 50% of the licensee's required continuing education in programs approved under this subsection or subsections (f)–(h).

[(c)] (f) It shall be permissible to attend clinical conferences, clinical rounds, or training under a preceptor through clinical hospitals, medical centers, schools, and colleges which are acceptable at the rate of [one] 1 continuing education hour for every 50 minutes. If requested by the Board, a licensee shall provide documentation of completion. A licensee may complete up to 25% of the licensee's required continuing education from sources in this subsection and up to an additional 25% in required continuing education from any of the sources in subsections (e), (g) or (h).

[(d)] (g) Credit hours will be given for correspondence programs, taped study programs, online or webinar programs, journal courses, and other individual study programs at the rate of 1 continuing education hour for every 50 minutes. However, proper credit being given for such program is dependent upon the licensee proving, to the satisfaction of the Board, that the program meets the provisions of [§ 23.85 (relating to standards for providers)] subsections (a) or (b). A licensee may complete up to 50% of the licensee's

required continuing education in individual study in accordance with this subsection or in the continuing education from any of the sources in subsections (e), (f) or (h).

~~[(e)]~~(h) Credit hours will be credited for service as a teacher, preceptor, lecturer, or speaker and for publications, articles, books, and research relating to the practice of optometry.

[Application should be made prior to the service to assure that approval will be given by the Board to the program.] ~~At the request of the Board, a~~ A licensee shall provide

documentation to the Board WITHIN 60 DAYS OF COMPLETION OF THE ABOVE SERVICE UTILIZING THE PROCESS SET FORTH IN SUBSECTION (e). ~~Otherwise,~~

~~the licensee will be required to secure retroactive approval as set forth in subsection [(b)]~~

~~(e).~~ One continuing education hour will be granted for every 50 minutes of initial instruction or research, and 2 continuing education hours will be granted for the preparation

of each hour of instruction. If a licensee prepares written materials to accompany the instruction, the continuing education credits for only the instruction will be doubled. Five

continuing education hours will be granted for publication of a book, and 2 continuing education hours will be granted for publication of an article or a chapter in a book. A

licensee may complete up to 25% of the licensee's required continuing education in accordance with this subsection and up to an additional 25% from any of the required

continuing education sources in subsections (e), (f) and (g).

[(f) Each licensee is required to fulfill the continuing education hours using the following allocations:

- (1) Subsections (a) and (b) count for a minimum of 50%. Continuing education hours may be completed from subsections (a) and (b).

(2) Subsections (c), (d) or (e) may be used up to a maximum of 25% of the required biennial credit hours. In no case may the combined total from these three subsections exceed 50% of the total biennial requirement of 30 hours.]

(i) Of the 30 hours of continuing education credit required at § 23.82 (relating to continuing education hour requirements), the following shall apply:

(1) CONTINUING EDUCATION CREDITS EARNED UNDER SUBSECTIONS (a), (b) AND (d) SHALL ACCOUNT FOR NO LESS THAN 50% OF THE TOTAL REQUIRED HOURS.

(2) CONTINUING EDUCATION CREDITS EARNED UNDER SUBSECTIONS (e), (f) OR (h) SHALL ACCOUNT FOR NO MORE THAN 25% OF THE TOTAL HOURS INDIVIDUALLY AND NOT MORE THAN 50% OF THE HOURS WHEN COMBINED TOWARDS THE TOTAL HOURS.

(3) CONTINUING EDUCATION CREDITS EARNED UNDER SUBSECTION (g) MAY ACCOUNT FOR UP TO 50% OF TOTAL REQUIRED HOURS.

~~(4)~~(4) Courses in jurisprudence or ethics shall count for no more than 2 hours of the total.

~~(5)~~(5) Courses within the optometric curriculum offered by an accredited school of optometry or medicine in the United States or Canada shall count for no more than 25% of the required biennial credit hours. Two continuing education credit hours will be provided for each semester credit earned, including a course which the licensee audits.

§ 23.87. Reporting of continuing education credit hours.

(a) 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)) by providing information which shall include the following:

* * * * *

(b) If a course provider does not use an electronic database such as the Association of Regulatory Boards of Optometry's (ARBO's) Optometric Education (OE) Tracker to report a continuing education course, the licensee may make arrangements to have the continuing education course entered into an electronic database for compliance purposes.

* * * * *

~~§ 23.90. Standards for commercial support.~~

~~—(a) For a licensee to obtain continuing education credit, all continuing education must be free from the control of a commercial interest.~~

~~—(1) There must be a clear separation of any type of product, service and instrument or device promotion with any continuing education courses. All commercial exhibits and advertisements must be physically separated from continuing education courses.~~

~~—(2) Specific proprietary business interests or products may not be included in continuing education courses. Continuing education courses must give balanced coverage to treatment options.~~

~~—(3) Financial relationships with commercial interests of any person in a position to impact or control the educational content must be disclosed to the licensees taking the course and to the Board.~~

~~—(4) Course instructors shall assure that educational materials must not include any advertising or product group message. Instructors shall ensure balanced and transparent coverage of therapeutic and treatment options, and may disclose off-label or experimental information.~~

~~—(b) A licensee's travel, lodging, honoraria or personal expenses (including social events and recreation) for attending a continuing education program may not be paid for or reimbursed by the provider of the continuing education. Licensees who are course instructors or consultants rendering advisory services to the continuing education provider may receive reasonable compensation for those services and reimbursement for reasonable travel, lodging, and meal expenses incurred as part of providing these services.~~

~~—(c) A licensee may receive from the provider of continuing education food and refreshment of modest value according to local standards for attending the continuing education program.~~

FEES

§ 23.91. Fees.

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

* * * * *

Application for continuing education course or program approval.....\$ 45

Application for continuing education provider initial approval for providers

under § 23.86(b) (relating to sources of continuing education hours)\$135

Biennial renewal fee for providers approved under § 23.86(b)\$ 45

Application for licensees seeking continuing education credit retroactively

under § 23.86(e) or (h)\$ 45

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



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 26, 2021

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Optometry
16A-5213 GENERAL REVISIONS

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the State Board of Optometry pertaining to 16A-5213 General Revisions.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Luanne Chubb".

Luanne Chubb, OD, Chairperson
State Board of Optometry

LC/AEO:aaw

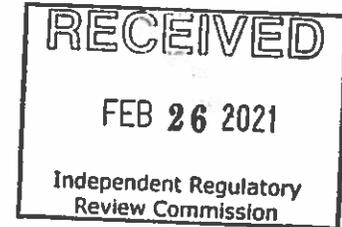
Enclosure

cc: K. Kalonji Johnson, Commissioner of Professional and Occupational Affairs
Kraig R. Kiehl, Deputy Secretary of Regulatory Programs
Marc Farrell, Deputy Director of Policy, Department of State
Cynthia Montgomery, Deputy Chief Counsel, Department of State
Ariel O'Malley, Counsel, State Board of Optometry
Jacqueline Wolfgang, Regulatory Unit Counsel, Department of State
State Board of Optometry

From: Smeltz, Jennifer
To: Worthington, Amber
Subject: RE: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Date: Friday, February 26, 2021 9:18:44 AM

Received.

Jen Smeltz
Executive Director
Consumer Protection and Professional Licensure Committee
Office of Senator Robert M. Tomlinson
Phone: (717) 787-5072



From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, February 26, 2021 8:34 AM
To: Smeltz, Jennifer <jmsmeltz@pasen.gov>
Cc: Blanch, Tammy <tblauch@pasen.gov>
Subject: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Importance: High

© CAUTION : External Email ©

Please provide written (email) confirmation of receipt of the delivery of the attached rulemakings.

Please be advised that the following Boards are delivering the following rulemakings:

- State Board of Optometry 16A-5213 General Revisions – Final Rulemaking
- State Board of Funeral Directors 16A-4824 Child Abuse Reporting Requirements – Proposed Rulemaking

Amber Worthington, PLS | *Supervising Legal Assistant*
Department of State | Counsel Division Legal Office | Clerical Supervisor 2
2601 North Third Street, P.O. Box 69523
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Phone: 717.783.7200 | Fax: 717.787-0251
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From: [Livingston, Jerry](#)
To: [Worthington, Amber](#)
Cc: [Keim, Jennifer](#)
Subject: RE: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Date: Friday, February 26, 2021 9:45:58 AM

Received. Thank you Amber.

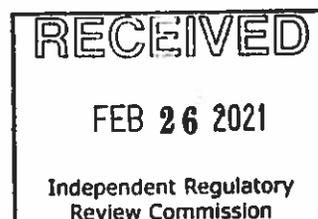
-JJ

J.J. Livingston

**Executive Director
Senate Consumer Protection & Professional Licensure Committee**

Tmp. Cell (717) 480-0108

**Office of State Senator Lisa M. Boscola
458 Main Capitol Building
Jerry.Livingston@pasenate.com**



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From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, February 26, 2021 8:34 AM
To: Livingston, Jerry <Jerry.Livingston@pasenate.com>
Cc: Keim, Jennifer <Jennifer.Keim@pasenate.com>
Subject: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Importance: High

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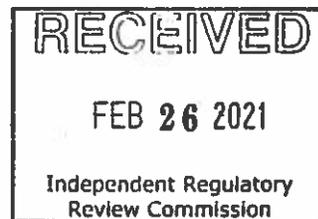
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From: [Emily Epler](#)
To: [Worthington, Amber](#)
Subject: Read: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Date: Friday, February 26, 2021 9:47:43 AM
Importance: High

Your message

To
Subject: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Sent: Friday, February 26, 2021 2:09:42 PM (UTC+00:00) Monrovia, Reykjavik
was read on Friday, February 26, 2021 2:09:34 PM (UTC+00:00) Monrovia, Reykjavik

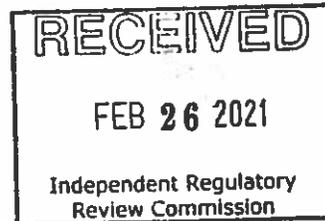


From: [Wilson, Marlene](#)
To: [Worthington, Amber](#)
Subject: RE: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Date: Friday, February 26, 2021 9:07:11 AM
Attachments: [image001.png](#)

Thank you.



*Marlene Wilson, Esquire
Senior Committee Executive Director
House Professional Licensure Committee
Rep. Jake Wheatley, Jr., Chairman
Room 36 East Wing
P.O. Box 202019
Harrisburg, PA 17120-2019
Phone: (717) 787-4032
Internal Phone: 6253
Cell: (717) 645-9967
Fax: (717) 772-9862
Email - mwilson@pahouse.net*



From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, February 26, 2021 8:35 AM
To: Wilson, Marlene <MWilson@pahouse.net>
Subject: DELIVERY OF REGULATIONS 16A-5213 & 16A-4824
Importance: High

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