

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF OPTOMETRY

In the Matter of Proposed Rule,  
Amendments of Rules of the  
Minnesota Board of Optometry  
Relating to Certification to  
Dispense Topical Legend Drugs

STATEMENT OF NEED AND  
REASONABLENESS

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BOARD OF OPTOMETRY

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

Laws of Minnesota, 1993, chapter 121, section 6, adds Minn. Stat. 148.575, which provides licensed optometrists in this state the authority to prescribe or administer topical legend drugs to aid in the diagnosis, cure, mitigation, prevention, treatment, or management of disease, deficiency, deformity, or abnormality of the human eye and adnexa.

Part II addresses the Board's statutory authority to adopt rules; Part III addresses small business considerations; and Part V provides a detailed statement of the need and reasonableness of the proposed rules detailing requirement for certification.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

Minn. Stat. 148.53 (1992) grants the Board power to make any rules which it may deem necessary for the effective enforcement of sections 148.52 to 148.62. The purpose of the licensing law for optometrists is clearly the protection of the public from incompetent, unprofessional, and/or unethical practice.

III. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. 14.115 requires administrative agencies, when proposing a rule or an amendment to an existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small businesses and to provide opportunity for small businesses to participate in the rulemaking process. It is the Board's opinion that Minn. Stat. 14.115 does not apply to this proposed rule amendment, as it should have no impact on small businesses.

However, in the event of disagreement with the Board's position, the Board has reviewed the five suggested methods listed in section 14.115, subdivision w, for reducing the impact of the rule on small businesses. The five suggested methods enumerated in subdivision 2 are as follows:

(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 performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

As part of its review the Board considered the feasibility of implementing each of the five suggested methods, and considered whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking.

1. It would not be feasible to incorporate any of the five methods into these proposed rule amendments.

Methods (a) - (c) of subdivision w relate to lessening compliance or reporting requirements for small businesses either by (a) establishing less stringent requirments, (b) establishing less stringent schedules or deadlines for compliance with the requirements, or (c) consolidating or simpligying the requirements. Since the Board is not proposing any compliance or reporting requirements for wither small or largebusinesses, it follows that there are no such requirements for the Board to lessen with respect to small businesses. If, however, this proposed amendment is viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those optometrists who practice in a solo or clinic setting of fewer than 50 employees, since that would include the vast majroity of optometrists. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Board's proposed rules do not propose design or operational standards for businesses, and therefore there is no reason to implement performance standards that do not exist. Finally, method (e) suggests exempting small businesses from any or all requirements of the rules. Under the Board's view that these proposed rules do not in any way regulate the business operation of optometrists, there are no rule requirements from which to exempt small businesses. However, if these proposed rules are viewed as regulating businesses insofar as they regulate optometrists, then it would hardly make sense for the Board to exempt from its rule those optometrists who practice in a solo or clinic setting with fewer that 50 employees, since they constitute the vast majority of optometrists. For all of these reasons, it is not feasible for the Board to incorporate into its proposed rules any of the five methods specified in subdivision 2 of the small business statute.

2. Reducing the impact of the proposed amendments on small businesses would undermine the objectives of the Minnesota licensing law for optometrists.

Pursuant to the Minnesota licensing law for optometrists, Minn. Stat. Chapter 148, the Board was created for the purpose of establishing requirements for licensure and adopting ethical standards governing appropriate practices or behavior for optometrists. Pursuant to Minn. Stat. S 148.53, the Board is empowered to "make any rules ..... for the effective enforcement" of the Minnesota licensing law for optometrists. Given these statutory mandates, it is the Board's duty to establish rules relating to the practice of optometry which apply to and govern all applicants and licensees, regardless of the nature of their practice. As it has been stated above, it is the Board's position that the proposed amendment will not affect small businesses, and certainly does not have the potential for imposing a greater impact on optometrists practicing in a large business setting. It has also been explained above that the Board considers it feasible to implement any of the five suggested methods enumerated in subdivision w of the small business statute. Nonetheless, to the extent that the proposed rule amendment may affect the business operation of an optometrist or a group of optometrists, and to the extent it may be feasible to implement any of the suggested methods for lessening the impact on small businesses, the Board believes it would be unwise and contrary to the purposes to be served by this rule for the Board to exempt one group of optometrists - indeed, the majority of optometrists - from the requirements of this rule. Similarly, the Board believes it would be unwise and contrary to its statutory mandate for the Board to adopt one set of licensure requirements for those optometrists who work in a large business setting and adopt another, less stringent, set of licensure requirements to be applied to those optometrists who practice in a solo or small clinic practice. It is the Board's view that this rule amendment must apply equally to all optometrists, if the public whom they serve is to be adequately protected.

#### IV. EXPENDITURE OF PUBLIC MONEY BY LOCAL PUBLIC BODIES

The Minnesota Board of Optometry has reviewed the proposed rules, and find no evidence that the rules would cause the expenditure of public money by any local public body.

#### V. IMPACT ON AGRICULTURE LANDS

The Minnesota Board of Optometry has reviewed the proposed rules, and find that the subject matter of the rules is not related to agriculture lands.

## VI. STATEMENT OF NEED AND REASONABLENESS

The Minnesota Optometry Board has the responsibility to regulate the requirements of Laws of Minnesota Chapter 121, 1993. This new law includes various educational requirements, which the Board felt needed some refinement.

### RULE 6500.1900 LICENSE CERTIFICATE ISSUANCE FEE

License certificate fees are used to cover the administrative expenses of the Board in the processing of applications. The fee assignment is determined by the amount of board staff time used to process an application, and supply costs incurred.

The current rule sets the standard for the issuance of certificates. It is reasonable to have separate fees for each certificate issued, with the fees based on actual expense of the Board. The \$50.00 fee being added to the current rule has been approved by the Department of Finance as required in Minnesota Statute 16A.128. See attached memo, dated July 21, 1993.

### RULE 6500.3000 CERTIFICATION REQUIREMENTS FOR TOPICAL LEGEND DRUGS.

Laws of Minnesota, 1993, Chapter 121, Section 6, requires all licensed optometrists in this state to be 'board certified' to use topical legend drugs, and sets the educational requirements for that certification.

Subpart 1, paragraph A reaffirms the requirements as stated in the law.

Subpart 1, paragraph B states a requirement for current certification of a course in cardiopulmonary resuscitation (CPR). The need for this is fundamental in any health care profession, and certainly reasonable to expect licensees to be current in this certification. This same CPR certification is required of licensed optometrists making application for the use of topical ocular drugs for diagnostic purposes, and stated so in Minn. Stat. 148.573, Subd. 1, Paragraph (c).

Subpart 1, paragraph C mandates an additional course of education as a pre-requisite for 'board certification', and lists those categories of individuals who would be exempt from the additional course requirement.

The Board of Optometry, knowing that a large number of licensees met the requirements of the law, prior to the law going into effect, felt it necessary to require a course to refresh and update the education previously attained.

The twenty four hours required of this course was determined by the Board, after considering the reasonable number of hours that could be aquired at a three day program.

It is reasonable to expect that an individual who gained knowledge through past education, yet has not integrated that knowledge into their practice of optometry, would benefit from a course developed to review and update that knowledge.

Those persons being exempt will have met the educational requirements of the law near the date of the law going into effect and would presumably have the most current knowledge to put into practice immediately. In addition, those persons currently practicing in a state with a law allowing the use of therapeutic drugs would be exempt from the additional course requirement.

Subpart 2 outlines the content of the course being required in subpart 1, paragraph c of the rule, and the need for prior approval of the course, study material, and instructors.

This prior approval by the Board is reasonable, inasmuch as the law is very specific, therefore the refresher/update course needs to be very specific to the implementation of the law. This course requirement would increase the competence of the optometrist, and therefore provide better protection to the public.

Date: August 2, 1993

  
Laurie Mickelson  
Executive Director



# MINNESOTA BOARD OF OPTOMETRY

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August 3, 1993

Maryanne V. Hruby  
Legislative Commission to  
Review Administrative Rules  
Room 55 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155-1201

Dear Ms. Hruby:

Please find enclosed a copy of the Board of Optometry's Statement of Need and Reasonableness, for proposed rules relating to Certification to Dispense Topical Legend Drugs.

The Notice of Intent to Adopt Rules Without a Public Hearing will be published in the State Register on August 16, 1993.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Mickelson".

Laurie Mickelson  
Executive Director

**The Legislative Commission to  
Review Administrative Rules**

AUG 5 1993

