

MINNESOTA BOARD OF OPTOMETRY

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February 20, 2018

Legislative Reference Library
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Via e-mail only

Re: In The Matter of the Proposed Rules of the Minnesota Board of Optometry
Proposed Amendments to and Repeals of Rules Relating to the Practice of
Optometry, Chapter 6500; Making Technical Changes; Revisor's ID Number 4441;
OAH Docket No. 80-9043-35023.

Dear Librarian:

The Minnesota Board of Optometry intends to adopt amended rules. The Board proposes to amend its rules (1) to update the rules with current terminology and to reflect more accurately current statutes and Board practices ("housekeeping amendments"), (2) to clarify and provide more guidance as to minimum standards for recordkeeping ("recordkeeping amendment"); (3) to increase the jurisprudence examination passing score ("jurisprudence examination amendment") and (4) to create a comprehensive continuing education rule with all relevant subparts under one rule ("continuing education amendments"). The Board plans to publish a Notice of Intent to Adopt Rules Without a Hearing in the March 5, 2018, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651.201.2762.

Yours very truly,

Randy Snyder
Executive Director

Enclosure: Statement of Need and Reasonableness

**MINNESOTA BOARD OF OPTOMETRY
STATEMENT OF NEED AND REASONABLENESS**

REVISOR'S ID NUMBER RD4441

GOVERNOR'S OFFICE TRACKING NUMBER RD4441

Proposed Amendments to and Repeals of Rules Relating to the Practice of Optometry, Chapter 6500; Making Technical Changes.

6500.0100 Definitions
6500.0300 Purpose and Application
6500.0400 Professional Conduct
6500.0500 Display and Disclosure of Name
6500.0600 Prescription
6500.0700 Recordkeeping
6500.0800 Incorporating Under the Professional Corporations Act
6500.0900, .0950, .1000, .1100, .1200, .1300, .1400, .1500, .1600, and .1700 [REPEAL]
6500.1800 Application Fees [REPEAL]
6500.1900 License Certificate Issuance Fee [REPEAL]
6500.2000 Individual Annual License Renewal
6500.2200 Fee Payment; Nonrefundable
6500.2300 Clinical Practical Examination [REPEAL]
6500.2400 Jurisprudence Examination
6500.2700 Optometrist Emeritus Registration
6500.2800 Terms and Renewal of License [REPEAL]
6500.2900 Reinstatement of License
6500.3000 Continuing Education Requirements

INTRODUCTION

The Minnesota Board of Optometry (“Board”) licenses and regulates optometrists in the State of Minnesota. The Board proposes to amend its rules (1) to update the rules with current terminology and to reflect more accurately current statutes and Board practices (“housekeeping amendments”), (2) to clarify and provide more guidance as to minimum standards for recordkeeping (“recordkeeping amendment”); (3) to increase the jurisprudence examination passing score (“jurisprudence examination amendment”) and (4) to create a comprehensive continuing education rule with all relevant subparts under one rule (“continuing education amendments”).

In drafting the proposed rules, the Board’s Rules Committee met in properly-noticed public meetings, in which members of the public were invited to participate. Members of the public participated in meetings with the Board’s executive director and Rules Committee.

In order to adopt these proposed rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. These requirements are as follows: 1) there is statutory authority to adopt rules; 2) the rules are necessary and reasonable; 3) all necessary procedural steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This statement demonstrates that the Board has met these requirements.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact:

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TTY users may call the Department at 1-800-627-3529.

STATUTORY AUTHORITY

Minnesota Statutes, sections 148.53 and 214.06 authorize the Board to adopt rules necessary to administer and enforce sections 148.52 through 148.62. Minnesota Statutes, section 145.714, authorizes the Board to enforce the Minnesota Contact Lens Prescription Act, Minnesota Statutes, sections 145.711 to 145.714. Because the Board is not relying on statutory authority recently granted or expanded, Minn. Stat. § 14.125 does not apply.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Board's response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The classes of persons most affected by the housekeeping amendments will be optometrists (“licensees”) and those applying for optometry licensure in the future (“applicants”). The housekeeping amendments have little to no additional cost to licensees and applicants. The public, applicants, and licensees benefit from the clarity that the amendments bring to the rules.

The classes of persons most affected by the recordkeeping amendments are licensees who will need to comply with the minimum standards for recordkeeping. This should not be onerous because the Board, with this rule amendment, is not creating new standards but rather is setting forth what already exists as a standard. The public and licensees will benefit from having the minimum standards clearly set forth in rule, and the public will benefit from having records that reflect necessary information.

The class of persons most affected by the jurisprudence examination amendment are applicants. The applicants will need an 80 percent score on the jurisprudence examination, as opposed to a 65 percent score that exists now in rule. This should not be onerous for applicants because the jurisprudence examination is open-book. Also, the profession and the public will benefit from ensuring that applicants have an adequate knowledge of Minnesota laws and rules affecting the practice of optometry.

The class of persons most affected by the continuing education amendments will be licensees. Licensees will benefit from having all relevant continuing education rules and subparts in one location and from the Board changing the rule to allow licensees to earn continuing education credit via webinar, teleconferencing and videoconferencing. Licensees will also benefit from having the continuing education rules, especially those related to independent study activities, clarified. Moreover, the public benefits from the Board ensuring a well-educated licensee base.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

Beyond the costs associated with the Board's promulgation of these rules, it is not anticipated that implementation and enforcement of these rules will result in additional costs to the Board or any other state agency. Additionally, it is not anticipated that these rules will have any effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

There is no less costly or less intrusive method of achieving the purposes of the housekeeping amendments. They are intended to clarify ambiguities between statute and rule, to reflect current Board processes, and to remove obsolete language.

There is no less costly or less intrusive method of achieving the purposes of the recordkeeping amendment. It is intended to set forth existing minimum standards for recordkeeping.

There is no less costly or less intrusive method of achieving the purposes of the jurisprudence examination amendment. It is intended to ensure a licensee base that has a strong knowledge of Minnesota laws and rules affecting the practice of optometry.

There is no less costly or less intrusive method of achieving the purposes of the continuing education amendments. They are intended to clarify all continuing education activities that qualify for credit, including independent study, and to allow for licensees to earn credit via webinar, teleconferencing, and videoconferencing, which are often lower-cost alternatives to traditional continuing education activities.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

The Board did not consider alternative methods for achieving the purposes of the housekeeping amendments. By their nature, there are no other alternatives to clarify ambiguities between statute and rule, to reflect current Board processes, and to remove obsolete language.

The only other alternative to the recordkeeping amendment the Board considered was to leave the rule as it currently existed and rely on other methods, including continuing education courses and/or literature on the Board’s website, to provide notice to licensees about the existing minimum standards of recordkeeping. The Board rejected this alternative as less effective and more burdensome.

The Board considered increasing the jurisprudence examination passing test score to 70 and 75 percent but rejected both of these as less effective to achieve the Board’s purpose of ensuring a licensee base with adequate knowledge and understanding of Minnesota laws and rules affecting the practice of optometry.

The Board considered amending each of the currently-existing continuing education rules and adding other rules to address unaddressed topics. The Board rejected that approach as more burdensome and less effective in communicating the overall continuing education process and requirements.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The housekeeping amendments will have little to no cost for governmental units, businesses or individuals.

The recordkeeping amendment will have little to no cost for governmental units, businesses, or individuals.

The jurisprudence examination amendment will have little to no cost for governmental units, businesses or individuals. The only individuals who may incur an additional cost are those who would have passed at the 65 percent passing rate but fail at the 80 percent passing rate and have to re-take the examination.

The continuing education amendments will have little to no cost for governmental units, businesses or individuals, and may, in fact, decrease continuing education cost for licensees.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The costs and consequences of not adopting the housekeeping amendments will most likely be increased and/or continued inquiries from licensees, applicants, and the public to the Board about the rule requirements. This has the potential to raise Board staff costs.

The costs and consequences of not adopting the recordkeeping amendment will most likely be increased and/or continued inquiries from licensees and the public about the minimum recordkeeping standards in Minnesota and possibly continued disciplinary actions for licensees who are not clear on the minimum recordkeeping standards in Minnesota.

The costs and consequences of not adopting the jurisprudence examination amendment will be a failure to ensure, to a sufficient degree, that licensees have an adequate understanding of Minnesota laws and rules affecting the practice of optometry.

The costs and consequences of not adopting the continuing education amendments will be the ongoing use of an outdated and difficult-to-navigate continuing education framework for licensees, course sponsors, and the Board.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

The housekeeping amendments, the recordkeeping amendment, the jurisprudence examination amendment, and the continuing education amendments are not in conflict with any existing federal regulations.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

The Board has found no cumulative effect with the housekeeping amendments, the recordkeeping amendment, the jurisprudence examination amendment, and the continuing education amendment.

PERFORMANCE-BASED RULES

With respect to the housekeeping amendments, the Board is clarifying rule ambiguities, omitting obsolete language, and better reflecting current Board practices and expectations. The Board has not decreased the flexibility in any of these rule amendments.

With respect to the recordkeeping amendment, the Board has sought to set forth in rule the currently-existing minimum standards of recordkeeping in Minnesota in order to ensure that licensees and the public have better access to the minimum standards. The Board has not decreased the flexibility that licensees have in choosing what belongs in patient records; the Board has only set forth what is minimally required.

With respect to the jurisprudence examination amendment, the Board has sought to increase the passing rate to better ensure that licensees adequately understand Minnesota laws and rules affecting the practice of

optometry. The Board has decreased flexibility for those individuals who score less than 80 percent on the open-book examination, but this decrease in flexibility is offset by the ability to better ensure an educated licensee base.

With respect to the continuing education amendments, the Board has sought to clarify the different ways and the processes of satisfying continuing education requirements and increase flexibility by allowing licensees to obtain continuing education credit for webinars, teleconferences, and videoconferences.

ADDITIONAL NOTICE

The Board's notice plan includes the following mandated statutory actions:

1. A copy of the Dual Notice and proposed rules shall be mailed to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, Section 14.14, subdivision 1a; and
2. A copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to the Legislature according to Minnesota Statutes, section 14.116. The following is a list of the Legislators:
 - a. House – Health and Human Services Finance Committee Chair and Lead;
 - b. House – Health and Human Services Reform Chair and Lead;
 - c. House – Rules and Legislative Administration Chair and Lead;
 - d. Senate – Finance: Health and Human Services Budget Division Chair and Ranking Minority Member;
 - e. Senate – Health, Housing and Housing Committee Chair and Ranking Minority Member;
 - f. Senate – Rules and Administration Committee Chair and Ranking Majority Member;
 - g. Legislative Coordinating Commission.

The Board is also providing notice according to its Additional Notice Plan, which was reviewed by the Office of Administrative Hearings and approved in an February 13, 2018, Order On Review of Additional Notice Plan by Administrative Law Judge Schlatter. The Additional Notice Plan consists of the following:

- The Board's Rules Committee held properly-noticed, public meetings in September 2016 and January 2017 about the proposed rule changes. Members of the public, continuing education providers, and trade associations were invited to attend and participate. One trade association representative attended all the Rules Committee and Board open meetings.
- The Board itself discussed the proposed rule changes at properly-noticed, regularly scheduled Board meetings in September 2016 and in January, March, July, and September 2017.
- The Board posted the draft of the proposed rules and the minutes from each of the Rules Committee meetings on its website beginning in October 2016 under a section titled, "News: Rules Committee Update." The website is accessible to all stakeholders and members of the public and has been updated with current drafts of the rules.
- The Board provided notice of the rules changes in both its October 2016 and October 2017 renewal newsletters, which are emailed to all licensees.
- The Board provided notice of the proposed rule change postings on the website either verbally or via email to all stakeholders including the trade associations, continuing education providers, licensees, and potential licensees.
- The Board sent out an email blast/newsletter on May 17, 2017 to all Minnesota Licensed Optometrists notifying them about the proposed rule changes posted on the Board's website. Electronic copies of the current SONAR, issues related to contact lens laws and other contemporary topics were included in the email blast.

- As the Board moves through the rulemaking process, the Board will send out email blasts to all Minnesota Licensed Optometrists notifying them of updates to the rulemaking process, including the filing of all notices and related documents, on the Board's website.
- The Board will also send out email blasts to the Minnesota trade associations that represent optometrists and to Minnesota continuing education providers, which are primarily the Minnesota trade associations, notifying them of updates to the rulemaking process, including the filing of all notices and related documents, on the Board's website.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board consulted with Minnesota Management and Budget (MMB)). The Board sent copies of the Governor's Office Proposed Rule Form, the proposed rules, and the SONAR to the Board's Executive Budget Officer with MMB. The Board will submit a copy of the cover correspondence and the response received from MMB to the OAH at the hearing or with the documents it submits for OAH review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board was unable to identify any local ordinances or regulations that would require amendment in order to implement the proposed amendments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

LIST OF WITNESSES

Randy Snyder, Executive Director, Minnesota Board of Optometry
Patrick O'Neill, O.D., Board Chair

RULE-BY-RULE ANALYSIS

In order to facilitate discussion, the following section includes an analysis of each proposed rule amendment.

6500.0100 DEFINITIONS (housekeeping)

The Board is recommending repealing subparts 2a, 4, 4a, 5, and 6 and incorporating those concepts into a comprehensive continuing education rule. Please see proposed rule 6500.3000.

6500.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Act.** "Act" means the Minnesota Optometric Practice Act, Minnesota Statutes, sections 148.52 to 148.62, and the Minnesota Contact Lens Prescription Act, Minnesota Statutes, sections 145.711 to 145.714.

Subp. 2a. [See repealer.]

Subp. 3. **Board.** "Board" means the Minnesota Board of Optometry.

Subp. 4. [See repealer.]

Subp. 4a. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

6500.0300 PURPOSE AND APPLICATION (housekeeping)

The changes reflected in this section are intended to remove cumbersome and outdated terminology and to better reflect the Board's public protection goal.

6500.0300 PURPOSE AND APPLICATION.

~~These rules are~~ This chapter is intended to clarify and implement Minnesota Statutes, section sections 148.52 et seq., to the end that the provisions thereunder may be best effectuated and the public interest most effectively served to 148.62 and 145.711 to 145.714, in order to best protect the public.

~~These rules shall be~~ This chapter is applicable to all persons licensed to practice optometry in the state of Minnesota pursuant to the provisions of Minnesota Statutes, section 148.52 et seq., and, in pertinent part, and to those persons applying to the Minnesota board of Optometry for a license to practice optometry in the state of Minnesota.

6500.0400 PROFESSIONAL CONDUCT (housekeeping)

The Board is recommending that subpart 2 be repealed because it is obsolete.

The Board is recommending that subpart 3 be repealed because the conduct sought to be prohibited is already prohibited by the fee splitting provision of Minn. Stat. § 148.603(15)(2016).

The Board is recommending changes to subpart 4 to omit cumbersome and outdated language and to reflect current practices, including the use of e-mail.

6500.0400 PROFESSIONAL CONDUCT.

Subpart 1. **Title.** When using the title "Doctor" or its abbreviation "Dr.", the abbreviation "O.D." shall not be used as a suffix to the name. However, when using the title or abbreviation before the name, the name shall be followed by the explanatory term "Optometrist."

Subp. 2. [See repealer.]

Subp. 3 [See repealer.]

Subp. 4. **Transfer of practice.** In the event an optometric practice is transferred to a duly licensed optometrist, ~~said the~~ transferee may, through professional cards, stationery, signs, e-mail, or other permissible forms of announcement, identify the transferee as having acquired the practice, provided that no such announcement shall be used or displayed more than two years after the date of transfer. During ~~said the~~ two-year period, the name or names of ~~those from whom the practice was transferred~~ the transferor shall not appear in letters larger than the letters used in the name of the transferee.

6500.0500 DISPLAY AND DISCLOSURE OF NAME (housekeeping)

The Board recommends these changes to remove cumbersome and outdated language and to better reflect current practices.

6500.0500 DISPLAY AND DISCLOSURE OF NAME.

~~The name of the optometrist~~ optometrist's board-issued certificate shall be displayed prominently at any office or establishment where ~~such person examines eyes~~ the optometrist practices optometry.

~~All receipts relating to payment for eye examinations shall indicate the name of the examining optometrist.~~

6500.0600 PRESCRIPTION (housekeeping)

The Board recommends this change to specify when a personal examination is required under currently-existing standards.

6500.0600 PRESCRIPTION.

Prescriptions furnished to the patient shall be signed by the examining optometrist. No licensed optometrist shall sign or cause to be signed a refractive prescription without first making a personal examination of the eyes of the person for whom the prescription is made.

6500.0700 RECORDS (recordkeeping)

The maintenance of adequate medical records is an integral part of medical care. Adequate records are necessary to ensure continuity of care. The Board felt that the old records rule was outdated and unhelpful. The proposed rule more clearly and accurately sets forth currently-existing minimum standards. Moreover, the Board also specified that the records be in the English language. The purpose of this requirement is to ensure continuity of care in the event that the provider is unable to continue care and to allow for a meaningful records review should the Board require one.

6500.0700 RECORDS.

Subpart 1. ~~Content of records~~ **Minimum standards for medical records.** ~~In the absence of compelling reasons to the contrary, it shall be considered either grossly incompetent or unprofessional conduct, or both, for an optometrist licensed to practice optometry in this state to fail to keep a record of the following minimum procedures on all patients: An optometrist licensed in the state must maintain a medical record for each patient. For each encounter with a patient, the medical record must:~~

- ~~A. case history; be legible to someone other than the author, and written in the English language;~~
- ~~B. visual acuity without correction; contain only those terms and abbreviations that are or should be comprehensible to other health care professionals in the same or similar specialties;~~
- ~~C. ocular pathology; contain adequate identification of the patient and treating health care professional;~~
- ~~D. refractive findings, both far and near; specify the date the health care was provided;~~
- ~~E. binocular findings; contain information supporting the decision making, diagnosis, or recommended treatment plan, which may include the chief complaint or reason for the encounter; history of present illness; medical, social, or family history; examinations performed and tests ordered and their findings or interpretations; counseling offered; concurrent care or transfers of care; or consultations requested;~~
- ~~F. prescription given, if any, with visual acuity attained; and specify the prescriptions written or renewed; any medications prescribed, dispensed, or administered; and the quantity and strength of each;~~
- ~~G. patient referral, if any. document the patient's progress during the course of treatment if applicable; and~~
- ~~H. include all patient records received from other health care providers, if those records formed the basis for a treatment decision by the optometrist.~~

Subp. 2. [See repealer.]

Subp. 3. **Storage.** Patient records required by subpart 1 shall be maintained for at least five years. In the event of closure of a practice, all records from patient encounters during the previous five years shall be offered to the individual patients or transferred to another provider after notification of the new location is made to those individuals.

6500.0800 INCORPORATING UNDER THE PROFESSIONAL FIRMS ACT (housekeeping)

The Board recommends repealing subparts 3 and 4 because they are no longer applicable. The Board recommends the changes to subparts 1 and 2 to incorporate current case law and the Minnesota Firms Act and to better reflect the Board's current procedure.

6500.0800 INCORPORATING UNDER THE PROFESSIONAL CORPORATIONS ACT.

Subpart 1. **Incorporation.** ~~One or more licensed optometrists may form a professional optometric corporation. If an optometrist chooses to incorporate, the optometrist must do so under the Professional Corporations Firms Act as stated in Minnesota Statutes, section 319A.01 et seq chapter 319B. With reference to the formation and maintenance of such professional optometric corporations, the following rules shall apply. A solo practitioner optometrist who is not incorporated is not required to comply with the Professional Firms Act.~~

Subp. 2. **Filing.** No professional optometric corporation shall begin to render professional service in this state until it has filed with the board executive secretary a copy of its articles of incorporation.

Subp. 3. ~~[See repealer.]~~

Subp. 4. ~~[See repealer.]~~

6500.0900, 0.950, .1000, .1100, .1200, .1300, .1400, .1500, .1600, AND .1700. (continuing education)

The Board recommends repealing these provisions because they have all been incorporated into the comprehensive continuing education rule. Please see proposed rule 6500.3000.

6500.1800 APPLICATION FEES – REPEAL (housekeeping)

This rule is no longer applicable.

6500.1900 LICENSE CERTIFICATE ISSUANCE FEE – REPEAL (housekeeping)

This rule is no longer applicable.

6500.2000 INDIVIDUAL ANNUAL LICENSE RENEWAL and 6500.2800 TERMS AND RENEWAL OF LICENSE (housekeeping)

The Board recommends that rules 6500.2000 and 6500.2800 be combined into one rule that addresses (1) the deadline for renewal application and information required to renew; (2) the procedure the Board will follow to notify licensees about the failure to timely renew; and (3) the penalty for failure to renew on time. As currently written, the two sections are somewhat duplicative and, given their separation in the rules, could be misleading. Also, the Board is recommending that the language of a non-renewed or lapsed license be “terminated” instead of “suspended” to lessen the possibility that someone would believe an administrative suspension is a disciplinary action.

6500.2000 TERMS AND RENEWAL OF INDIVIDUAL ANNUAL LICENSE RENEWAL.

Subpart 1. **Fee Renewal of application.** ~~On or before January 1 of each year, the board shall receive a licensee must submit to the board a license renewal fee of \$105 from every licensed optometrist who desires application to continue to be entitled to lawfully practice in this state. A renewed license is valid from January 1 of the year of issue until December 31 of the year of issue.~~

Subp. 2. **Address of practice Information required on renewal application.** ~~At the time of paying the fee required by this part, the optometrist shall inform the board of the address or addresses of the place or places where the practice is conducted. The optometrist shall also inform the board of any change in the address or addresses of the practice during the 12-month period within one month of the change. An application for renewal must be postmarked by, or if submitted online, received by the board, on or before December 31 of each year of renewal. The renewal application shall include the applicant's signature, any application fees required by statute, the address or addresses where the applicant practices optometry, any changes in the applicant's optometry practice locations in the previous 12-month period, the applicant's license number, and any other information requested by the board.~~

Subp. 3. **Compliance with continuing education requirements.** As specified in parts 6500.0900 to

~~6500.1700, submission to the board of satisfactory proof of compliance with continuing education requirements is and shall be a condition precedent to annual license renewal part 6500.3000, an applicant must submit to the board proof of compliance with continuing education requirements as part of the applicant's annual license renewal.~~

~~Subp. 4. [See repealer.]~~

~~Subp. 4a. **Failure to submit renewal application, required fees, or evidence of continuing education compliance.** If a licensee fails to submit the renewal application, the required fee, or evidence of continuing education compliance, the board shall follow the following procedures.~~

~~A. After January 1 of the renewal year, the board shall change the status of the active licensee to designate the nonrenewed or lapsed license. A licensee may not provide services as a licensed optometrist with a lapsed or nonrenewed license.~~

~~B. After January 1 of the renewal year, the board shall send to the licensee, at the last address on file, notice that the licensee has failed to satisfy the license renewal requirements and shall specify which requirement remains unsatisfied. The board shall set out the steps the licensee must take to renew a license and any late fees required, notify the licensee of the option of voluntarily terminating the license, and notify the licensee that failure to respond within 30 days after the notice is sent by the board will result in termination of the license.~~

~~C. If the application for renewal, including the required information about continuing education compliance, the application fee, and any late fees, are not received by the board within the 30-day deadline specified in the notice, the license shall be terminated and the licensee will no longer be authorized to practice optometry in Minnesota. The termination will be administrative and will not constitute disciplinary action on the license.~~

~~D. A license that has been administratively terminated under this part may be reinstated pursuant to part 6500.2900.~~

~~Subp. 5. **Practicing optometry without a current license.** Practicing optometry without a renewed or current license shall have the same force, effect, and potential legal consequences as practicing optometry without a license.~~

~~Subp. 6. **Contested case proceeding.** The board, in lieu of the process in subpart 4a, may initiate a contested case proceeding to take disciplinary action on the license for failure to submit fees and continuing education compliance at the same time that it initiates disciplinary action proceedings against the licensee for other grounds specified in part 6500.3000 or Minnesota Statutes, sections 148.52 to 148.62.~~

6500.2200 FEE PAYMENT; NONREFUNDABLE (housekeeping)

The Board is recommending these changes to omit cumbersome and outdated language. Also, fees are now set by statute so the reference to "this chapter" is no longer applicable.

6500.2200 FEE PAYMENT; NONREFUNDABLE.

All required fees required in this chapter shall be submitted only by check or money order, made payable to the board. No such fee or any portion of a fee paid or payable to the board is refundable.

6500.2300 CLINICAL PRACTICAL EXAMINATION – REPEAL (housekeeping)

This rule is no longer applicable.

6500.2400 JURISPRUDENCE EXAMINATION (jurisprudence examination)

The Board recommends that the pass rate be increased to 80 percent and that the rule specifies that the score is valid for one year. The changes in subpart 2 are intended to better reflect the scheduling process.

6500.2400 JURISPRUDENCE EXAMINATION.

Subpart 1. **Requirements.** An applicant must pass an examination on Minnesota optometric jurisprudence shall be given and must be passed with a score of ~~65~~ 80 percent or better. An applicant

who fails the Minnesota jurisprudence examination and passes a board constructed or nationally constructed clinical examination may repeat the jurisprudence examination only. ~~If the clinical examination is failed, the entire examination must be retaken, including the Minnesota jurisprudence examination. For applicants, the Minnesota jurisprudence examination score is valid for one year from the date of the examination.~~

Subp. 2. **Scheduling.** ~~An applicant for licensure in this state may: The Minnesota jurisprudence examination must be scheduled either in conjunction with the national clinical examination or scheduled with the examining body on a separate occasion from the national clinical examination.~~

A. ~~take the jurisprudence examination in conjunction with a nationally presented examination according to the procedures set by the examining organization; or~~

B. ~~schedule an appointment to take the jurisprudence examination with the executive director of the board.~~

6500.2700 OPTOMETRIST EMERITUS REGISTRATION (housekeeping)

These changes are intended clarify the language and remove reference to the fee, which is now set by statute.

6500.2700 OPTOMETRIST EMERITUS REGISTRATION.

Subpart 1. **Application.** Any optometrist duly licensed to practice optometry in Minnesota pursuant to Minnesota Statutes, sections 148.52 to 148.62, who declares that he or she is retired from active practice of optometry may apply to the board for emeritus registration on the annual license renewal form. To qualify, the optometrist must be retired and must not be subject to any disciplinary action or be subject to an order of the board imposing a suspended, conditional, or restricted license to practice optometry.

Subp. 2. **Status of registrant.** The emeritus registration is not a license ~~which that~~ permits the registrant to practice optometry as defined in Minnesota Statutes, sections 148.52 to 148.62, and the rules of the board.

Subp. 3. **Continuing education.** The continuing education requirements of part ~~6500.0900~~ 6500.3000 are not applicable to emeritus registration.

Subp. 4. **Change to active status.** The emeritus optometrist must:

A. apply to the board for reinstatement of his or her active license; and

B. comply with the continuing education requirements for the time period in which the license was in emeritus status. ~~This requirement~~ The continuing education requirements must be fulfilled prior to petitioning the board for reinstatement of license.

Subp. 5. **Renewal cycle or fees.** Being registered as an emeritus optometrist will not subject the person to the annual license renewal cycle or renewal fee.

Each applicant who meets all requirements for registration as emeritus optometrist shall be issued a certificate. ~~The fee for this certificate is \$10.~~ A replacement certificate may be issued by the board.

6500.2800 TERMS AND RENEWAL OF LICENSE – REPEAL (housekeeping)

The Board is recommending that this rule be repealed and combined with 6500.2000.

6500.2900 REINSTATEMENT OF LICENSE (housekeeping)

The Board recommends the changes above so the rule more clearly reflects the two “reinstatement” processes – one in which someone petitions for reinstatement after a lapsed Minnesota license and one in which someone petitions for reinstatement after disciplinary action on his or her license. Subpart 1 addresses the licensee petitioning after a lapsed license, and subpart 3 address the licensee petitioning after disciplinary action.

6500.2900 REINSTATEMENT OF LICENSE.

Subpart 1. **Requirements.** ~~Upon complying~~ After a former licensee complies with the requirements in this part, the applicant’s license shall be reinstated. Any person desiring the reinstatement of a license shall:

- A. submit to the board a completed application on a form provided by the board;
- B. submit with the application the fee specified in part 6500.2000, subpart 1 of three prior renewal periods and late fees, if the person has not held an active license in any state during the three calendar years preceding the date of application;
- C. include with the application a letter stating the reasons for applying for reinstatement; and
- D. retake and pass the Minnesota jurisprudence examination; and
- D. E. comply with the application provisions of part 6500.2000, subpart 3. Upon reinstatement, the person shall be assigned to the continuing education cycle to which the licensee was assigned before termination of the license, demonstrate satisfaction of continuing education requirements for the three years prior to application, except that if the person holds an active license in any state on the date the person applies for reinstatement, the person may demonstrate proof of compliance with the continuing education requirements of the state or states in which the person is licensed for the three calendar years preceding the date of the application in lieu of demonstrating compliance with Minnesota continuing education requirements..

If the individual is licensed in another state, the individual must also demonstrate that the individual's license has been in active, good standing for the three years prior to application.

Subp. 2. [See repealer.]

Subp. 3. **Revoked or suspended license.** No license that has been suspended or revoked by the board under its authority to take disciplinary action may be reinstated unless the applicant for reinstatement satisfies the requirements of subpart 1, provides evidence of full rehabilitation from the offense for which the license was suspended or revoked, and complies with all other reasonable conditions imposed by the board for the purpose of establishing the extent of rehabilitation. In addition, if the disciplinary action was based in part on failure to meet continuing education requirements, the license may not be reinstated until the applicant has successfully completed the requirements in subpart 2. The board may require the licensee to pay all costs of the proceedings resulting in the suspension or revocation of a license under part 6500.2800 6500.2000 or pursuant to its disciplinary authority and the reinstatement or issuance of a new license. A licensee who has been disciplined by the board in a manner other than by suspension or revocation may be required by the board to pay all costs of the proceedings resulting in the disciplinary action.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

6500.3000 CONTINUING EDUCATION (continuing education)

The purpose of mandatory continuing education is to promote the health and safety of the residents of Minnesota who receive care from licensees and to promote the ongoing professional competence of providers of these services. The continued development and maintenance of competence are ongoing activities and the ethical responsibility of each licensee. To render continuing education rules easier to understand and navigate, the Board would like all of the separate continuing education rules combined into one comprehensive rule that addresses all issues related to continuing education and more accurately reflects the way the Board tracks CE compliance. The proposed rule also allows licensees to earn continuing education credit via webinar, teleconferences, and videoconferences and more clearly sets forth non-traditional sources of credit. This rule is modeled on the continuing education rule recently passed by the Board of Marriage and Family Therapy.

6500.3000 CONTINUING EDUCATION REQUIREMENTS.

Subpart 1. Required hours and compliance period. An optometrist licensed in Minnesota is required as a condition of licensure and license renewal to complete 40 hours of board-approved continuing optometric education every two years. The two-year cycle begins on January 1 and ends on December 31 of the second year.

Subp. 2. Continuing education reporting. At the time of license renewal, each licensee shall demonstrate, either through a board-approved electronic tracking system or paper documentation, completion of the minimum of 40 approved continuing education hours since the last renewal. A maximum of 15 hours per reporting period may be satisfied by board-approved noninteractive,

independent study. A maximum of six hours per reporting period may be satisfied by continuing education in practice management.

It is the licensee's responsibility to maintain proof of continuing education compliance in either paper or electronic format. Failure to demonstrate proof of the required continuing education compliance shall result in nonrenewal of license pursuant to part 6500.2000.

Proof of attendance, in either electronic or paper form, must include:

- A. the name of the sponsoring organization;
- B. the name of the licensee;
- C. the course title and instructor's name;
- D. the number of hours in attendance;
- E. the date of the program; and
- F. any other evidence the board requires.

For purposes of this subpart, a receipt for payment of the fee for the continuing education program or activity is not sufficient evidence of completion.

Subp. 3. **Audits of continuing education.** The board may conduct random audits for the purpose of verifying continuing education each reporting year. A licensee who is being audited must provide verification of the required number of continuing education hours by submitting the documentation described in subpart 2. Failure to submit the required documentation shall be grounds for disciplinary action.

Subp. 4. **Courses; board approval required.** Continuing education activities must be approved by the board or the board's designee. Activities must be approved for all attendees when submitted by the sponsor pursuant to subpart 6, or a licensee may request individual approval pursuant to subpart 7. Courses that meet approval criteria standards and receive approval from the board's designee shall be accepted for credit by the board.

The board or the board's designee shall consider the following factors when determining whether an activity should be approved:

A. whether the activity is structured on sound educational principles and has a topic relevant to the practice of optometry;

B. whether the speakers, lecturers, or other presenters are recognized by the board as being highly qualified in their fields;

C. whether the proposed course, if conducted within Minnesota, is open to all optometrists licensed in Minnesota;

D. whether the tuition fee charged for courses conducted within Minnesota is the same for nonmembers of the course's sponsoring organization as it is for members. Any difference in tuition shall be reasonable and related to the sponsoring organization's expense in operating the continuing education course; and

E. whether the course is interactive between audience and instructor, either live or remote via Webinar, teleconferencing, or videoconferencing.

Courses or programs deemed by the board to be a sales promotion for a product or service shall be denied approval of continuing education credit, and may be presented without continuing education credit when so noted by the sponsor.

Subp. 5. **Retroactive revocation of CE approval.** The board may, after due consideration, add or delete continuing education credit hours of previously approved continuing education programs due to a change in content or actual hours of presentation. The board shall notify the program sponsor via mail of the change in approval. The program sponsor must then notify the program participants of the change in continuing education hours awarded.

Subp. 6. **Sponsor's application for course approval.** A program sponsor requesting approval by the board or the board's designee must submit a program, schedule, and course description to the board. The board shall respond to the applications within 30 days. Nothing in this part shall permit the board to approve an educational program that has not satisfied the criteria in subpart 4. Courses not eligible for credit shall be identified by the program sponsor.

Subp. 7. **Licensee's application for course approval.** A licensee may apply individually to the board for approval of continuing education activities that have not been approved by the board or its

designee. A licensee shall complete and submit to the board the following information, as well as any other information the board or its designee deems necessary to evaluate the course for approval:

- A. the name and address of the organization sponsoring the activity, if applicable;
- B. a detailed description of the content of the activity;
- C. the name and credentials of each instructor or presenter, if applicable; and
- D. the location, including the name and address of the facility, at which the activity will be conducted.

If the activity does not meet the standards in subpart 4, the board or its designee shall deny approval. The board shall notify the licensee in writing of the reason for denying approval or an activity under this subpart.

Subp. 8. Sources of credit. Continuing education credit may be applied for the types of programs described in this subpart.

A. Programs approved by the board or its designee under subpart 4. A maximum of six credit hours per compliance period may be granted for programs related to practice management.

B. Participation in grand rounds, which consist of presenting medical conditions or treatment of a particular patient or type of condition to an audience consisting of licensed health care providers, residents, or medical students. One hour of continuing education credit may be awarded for each hour of participation in grand rounds.

C. Preparation of articles accepted for publication in optometric journals or other health-related journals. A maximum of three hours of continuing education per compliance period may be granted for acceptance and publication of articles in optometric or health-related journals.

D. Preparation of books or subparts of books on optometry-related subjects that have been accepted for publication. A maximum of nine hours of continuing education credits per compliance period may be granted for acceptance and publication of books.

E. Development and presentation of one or more lectures on optometry-related topics before an audience of optometric or other health care professionals. One hour of continuing education credit may be awarded for each hour of presentation. For one time only per lecture, two hours of continuing education credit may be awarded for development of each hour of presentation.

F. Participation in noninteractive, independent study activities, including self-instruction in vision care periodicals, Webcasts, audiotaped or videotaped programs, podcasts, written correspondence courses, and Internet courses. All programs must include a self-test to qualify for continuing education credit. A maximum of 15 hours of continuing education credits per compliance period may be awarded for noninteractive, independent study activities.

Subp. 9. Exemption for continuing education requirements. A licensee whose license has not expired and who meets any of the following conditions is exempt from continuing education requirements as described in this subpart.

A. A licensee who has been granted emeritus status under part 6500.2700 is exempt from continuing education requirements.

B. A licensee serving in active military service, as defined in Minnesota Statutes, section 190.05, subdivision 5, during any part of the 12 months immediately preceding the annual license renewal date is exempt from continuing education requirements.

C. A licensee first licensed by examination or reciprocity in the first year of the compliance period is exempt from continuing education requirements for that year but is responsible for 20 hours of continuing education for the second year of the compliance period.

D. A licensee first licensed by examination or reciprocity in the second year of the compliance period is exempt from continuing education requirements for the entire compliance period.

Subp. 10. Requirements in specified subjects. The board may, when compelled by advancement in scope of practice or emerging public health issues, and by mailing written notice to each licensed optometrist on or before January 1, require all optometrists to attend continuing education programs in specified subjects.

REPEALER. Minnesota Rules, parts 6500.0100, subparts 2a, 4, 4a, 5, and 6; 6500.0400, subpart 2; 6500.0700, subpart 2; 6500.0800, subparts 3 and 4; 6500.0900; 6500.0950; 6500.1000; 6500.1100;

6500.1200; 6500.1300; 6500.1400; 6500.1500; 6500.1600; 6500.1700; 6500.1800; 6500.1900; 6500.2000, subpart 4; 6500.2300; 6500.2800; and 6500.2900, subparts 2, 5, and 6, are repealed.

LIST OF EXHIBITS

In support of the need and reasonableness of the proposed rules, the Board anticipates it will enter the following exhibits into the hearing record:

148.53

Revisor's Final Draft of Rules

Memo from Chardae Kimber, Minnesota Management and Budget

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Date February 15, 2018

/s/ **Randy Snyder**

Randy Snyder

Executive Director

Minnesota Board of Optometry