

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

OPT 1 General Provisions

A. Purpose. These rules are intended to clarify and implement Minn. Stat. § 148.52 et seq. to the end that the provisions thereunder may be best effectuated and the public interest most effectively served.

B. Applicability. These rules shall be applicable to all persons licensed to practice optometry in the State of Minnesota pursuant to the provisions of Minn. Stat. § 148.52 et seq. and, in pertinent part, to those persons applying to the Minnesota Board of Optometry for a license to practice optometry in the State of Minnesota.

C. Pronouns. The use herein of masculine pronouns shall be deemed to include the feminine.

OPT 2 Definitions.

The following terms and expressions when used in these rules shall have the meanings hereinafter stated:

A. "Act" means the Minnesota optometric practice act, Minn. Stat. § 148.52 et seq.

B. "Board" means the Minnesota Board of Optometry.

OPT 3 Professional Conduct

A. 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."

B. For an optometrist to use a hyphenated term connecting the practice of optometry with any business properly considered foreign to the subject of eyes and refraction is considered misleading and constitutes unprofessional conduct.

C. Any optometrist employing or engaging for a salary, fee or commission any person, firm or corporation to steer, solicit, lure or entice any person to come to his office or branch office for optometric service is considered as employing "cappers" or "steerers" to obtain business and this constitutes unprofessional conduct.

D. In the event an optometric practice is transferred to a duly licensed optometrist, said transferee may, through professional cards, stationery, signs, or other permissible forms of announcement, identify himself 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 two year period the name or names of those from whom the practice was transferred shall not appear in letters larger than the letters used in the name of the transferee.

OPT 4 Records, Minimum Specifications

A. 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:

1. Case history.

2. Visual acuity without correction.

3. Ocular pathology.

4. Refractive findings, both far and near.

5. Binocular findings.

6. Prescription given, if any, with visual acuity attained.

7. Patient referral, if any.

B. Any and all patient records required at A, above, shall be maintained for at least five years.

OPT 5 Required Continuing Education

A. All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs as may be approved by the board under the provisions of this rule. In the event an optometrist becomes ineligible for license renewal for failure to comply with continuing education requirements, he shall be suspended from further practice. The board shall reinstate any such suspended license upon receipt of satisfactory proof that such suspended licensee has made up the deficient hours of study.

B. Study compliance year. The optometric study compliance year shall extend from January 1 through December 31. Courses attended during that period will be credited to the current license renewal year. Credit for approved courses attended between January 1 and March 31 may be applied to either the current or subsequent license renewal year but not both. No credit for such attendance shall be given, however, unless the board determines that such educational program complied with the criteria as set forth in paragraph D herein.

C. Approved programs. Educational programs which are approved as meeting the required standards are indicated below. This approval is and shall be based on continued maintenance of high standards. Courses not eligible for credit shall be so identified by the program sponsor.

1. Courses on subjects relative to optometry at any board approved school or college of optometry.

2. Educational meetings of the North Central States Optometric Conference.

3. Educational meetings of the Minnesota Optometric Association.

4. Educational meetings of the American Optometric Association.

5. Educational meetings of the American Academy of Optometry.

6. Other educational programs approved by the board as meeting the criteria as set forth in paragraph D herein, after submission of a program, schedule, and outline to the board executive secretary not less than 45 days prior to the date of the program. The board may, upon application of any licensee and for good cause shown, waive the requirement for the submission of advance information and request for prior approval. Nothing herein shall permit the board to approve of an educational program which has not complied with the criteria as set forth in paragraph D herein.

7. The board reserves the right to determine the number of hours credit for any course or program under C above.

D. Criteria for judging and approving educational programs. Board approval of continuing education programs will be determined on the following basis:

1. Whether or not the program is likely to contribute to the advancement and extension of professional skill and knowledge in the practice of optometry.

2. Whether or not the speakers, lecturers and others participating in the presentation of any such program are recognized by the board as being highly qualified in their field.

3. Whether or not the proposed course, if it is to be conducted within the State of Minnesota, is open to all optometrists licensed in this state.

4. Whether or not the tuition fee charged for courses conducted within the State of Minnesota is the same for non-members of the course sponsoring organization as it is for members. Any difference in tuition charged to non-members as opposed to members of the sponsoring organization shall be reasonably and directly related to the sponsoring organization's expense in operating the course.

5. As a condition of approval of an educational program hereunder, the board may require that the program director furnish it with satisfactory evidence of attendance of all Minnesota licensees.

6. Programs and or courses deemed by the board to be a sales promotion of a product or service may be denied approval of continuing education credit. Such programs and or courses may be presented without continuing education credit by the sponsor when so noted on the program.

E. Notice of addition or deletion of approved programs. The board may, after due consideration and by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, either add to or delete programs from the list of approved programs for the ensuing study compliance year.

F. Proof of attendance. Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board executive secretary at the time he applies for renewal of his license and shall contain the following information:

1. The name of the sponsoring organization.
2. The name, signature, and address of the licensee.
3. The subject of the educational topic.
4. Number of hours in attendance.
5. The date of the educational program.
6. Such other evidence of attendance as the board may deem necessary.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section D herein. Such forms shall be made available by the board executive secretary upon request.

G. Limitation on credit to be given for certain courses. Credit shall not be given for more than two hours attendance in courses of office management or administration.

H. Exemptions form required attendance. The following licensees shall be exempt from the requirements of this section:

1. Any licensee serving in the regular armed forces of the United States during any part of the 12 months immediately preceding the annual license renewal date.

2. Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances.

3. Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

I. Board may require attendance of specified subjects. The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, require all optometrists to attend specified subjects of continuing education for credit toward the annual hourly requirement.

OPT 6 Incorporating Under The Professional Corporation Act

One or more licensed optometrists may form a corporation under the Professional Corporation Act as stated in Minn. Stat. § 319A.01 et seq. With reference to the formation and maintenance of such professional optometric corporations, the following rules shall apply:

A. 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.

B. Either the abbreviation "O.D." or the word "Optometry," "Optometric," or "Optometrist(s)" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O.D." shall not be used as a suffix.

C. Where an optometrist is working as an employee of a professional optometric corporation, his name shall be displayed prominently at any establishment where such person is rendering professional services.

OPT 7 Display And Disclosure Of Name

A. The name of the optometrist shall be displayed prominently at any office or establishment where such person examines eyes.

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

C. Prescriptions furnished to the patient shall be signed by the examining optometrist.

D. No licensed optometrist shall sign or cause to be signed a prescription without first making a personal examination of the eyes of the person for whom the prescription is made.

OPT 8 Fees

A. General.

1. All fees required herein shall be submitted only by check or money order, made payable to the board.

2. No such fee or any portion of a fee paid or payable to the board is refundable.

B. License examination.

1. All applications for licensure by examination in this state shall be accompanied by a $50.00 fee.

2. In the event the applicant fails to pass a part of the examination, upon application and the payment of an additional fee of $35.00, he may retake the examination at the time for which the board next schedules such examinations.

C. License certificate issuance.

1. Each applicant who meets all applicable requirements for licensure under the act and these rules shall be issued a license certificate by the board. The fee for this license certificate shall be $12.00.

2. Upon proof of loss or damage of an original license certificate and payment of an additional $12.00 fee, a replacement certificate may be issued by the board.

D. Individual annual license renewal.

1. On or before March 31 of each year, the board shall receive a license renewal fee from every licensed optometrist who desires to continue to be entitled to practice in this state. The amount of said fee to be received by the board not later than March 31, 1978, for licensure between April 1, 1978, and March 31, 1979, shall be $65.00. Thereafter,

subject to the approval of the State Commissioner of Finance under Minn. Stat. §§ 16A.128 and 214.06, subd. 1, the amount of said fee shall be as determined by the board at open meetings for which not less than 30 days advance notice is published in the state register and at which meetings any affected persons shall be given an opportunity to present pertinent oral or written statements. No renewal fee determined by the board pursuant to this subsection for licensure subsequent to March 31, 1979, shall exceed 115% of the renewal fee of the immediately preceding licensure year nor, in conjunction with all other authorized board fees, result in the collection of amounts not approximately equal to anticipated board expenditures. Such anticipated expenditures may include only reasonable or required costs associated with a. the board's necessary purchase of or payment for those services and staff required by Minn. Stat. § 214.04, b. authorized board member compensation, and c. the economical administration of the act.

2. At the time of paying the fee required herein, the optometrist shall inform the board of the address or addresses of the place or places where he conducts his practice. He shall also inform the board of any change in the address or addresses of his practice during the 12 month period within one month of the change.

3. As specified at Opt 5 hereof, submission to the board of satisfactory proof of compliance with continuing education requirements is and shall be a condition precedent to annual license renewal.

4. When an optometrist defaults in payment of the annual renewal fee as set forth at D 1 above, the board, upon a hearing, may revoke his license; provided that the payment of such fee at or before the time of hearing, with such additional sum not exceeding $25.00 as may be fixed by the board, shall excuse the default. In the event any such default remains unexcused at the time of hearing and a license is revoked for nonpayment of renewal fees, the board may, in its discretion, refuse to issue a new license to any person whose license has been so revoked until such time as that person repasses or, if he was previously licensed by reciprocity, passes the examinations and complies with all other requirements for initial licensure by examination in this state.

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

E. Reciprocity. A fee of $100.00 shall accompany every application for licensure by reciprocity.

APPROVED AS TO FORM AND LEGALITY

FEB 22 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 22 1978
Joan Anderson Growe
Secretary of State
10:00 AM

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

Address Reply to:
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717 Delaware Street S.E.
Minneapolis, Minnesota 55440
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December 27, 1977

Mr. Douglas Skor
Attorney at Law
2200 First National Bank Building
St. Paul, Minnesota 55101

Re: Proposed Rules of Minnesota
Board of Optometry
Your File No. 7066.8

Dear Mr. Skor:

Pursuant to your letter request of December 20, 1977, please be advised that the complete hearing record in the above-subject matter was submitted to the Attorney General on December 23, 1977. Additionally, I am enclosing a copy of the full text of the rules as adopted.

Very truly yours,

RTH

ROBERT T. HOLLEY
Special Assistant
Attorney General

RTH:cs

Enc.

cc: Leo A. Meyer, O.D.
Michael B. Miller, Esq.

December 27, 1977

Ms. Sue Solie
Chestnut, Brooks & Burkard, P.A.
900 Midland Bank Building
Minneapolis, Minnesota 55401

Re: Proposed Rules of the
Minnesota Board of Optometry

Dear Ms. Solie:

In response to your recent telephone request, this is to inform you that the above-subject rules were submitted to the Attorney General on December 23, 1977.

Very truly yours,

RTH

ROBERT T. HOLLEY
Special Assistant
Attorney General

RTH:cs

cc: Leo A. Meyer, O.D.
Michael B. Miller, Esq.

Rec'd 7/15/77 SOA

OPT 1 GENERAL PROVISIONS

A. Purpose.

These rules are intended to clarify and implement Minn. Stat. § 148.52 et seq. to the end that the provisions thereunder may be best effectuated and the public interest most effectively served.

B. Applicability.

These rules shall be applicable to all persons licensed to practice optometry in the State of Minnesota pursuant to the provisions of Minn. Stat. § 148.52 et seq. and, in pertinent part, to those persons applying to the State of Minnesota Board of Optometry for a license to practice optometry in the State of Minnesota.

C. Pronouns.

The use herein of masculine pronouns shall be deemed to include the feminine.

OPT 2 DEFINITIONS

The following terms and expressions when used in these rules shall have the meanings herinafter stated:

A. "Act" means the Minnesota optometric practice act, Minn. Stat. § 148.52 et seq.

B. "Board" means the State of Minnesota Board of Optometry.

C. "Prscription" means a spectacle lens correction as formulated by a licensed optometrist.

BOARD'S EXHIBIT NO. E
File No.
Date

OPT [1] 3 (ADVERTISING PROFESSIONAL CONDUCT

[The language of the law is plain. In order that there be no misunderstanding as to the Board's interpretation of the above section of the statute, § 148.57(3) the following pointed definitions are herewith set forth for guidance of all licensees in Minnesota:]

[a. So-called "bait advertising by optometrists of service or material furnished or to be furnished, is considered "bait" advertising and constitutes unprofessional conduct.]

[b. All price advertising by optometrists of service or material furnished or to be furnished, is considered "bait" advertising and constitutes unprofessional conduct.]

[c. Advertising of free examination, free consultation, or advice, or the use of any such similar "catch phrase" is considered "bait" advertising and constitutes unprofessional conduct.]

[d. The use of any statement of exaggeration, high-sounding technical terms, names and phrases in describing of materials or services is considered "bait" advertising and constitutes unprofessional conduct.]

[e. The advertising of unsupported claims of superior service or ability to undersell competitors is considered "bait" advertising and constitues unprofessional conduct.]

[f. All optometrists in advertisements, announcements, signs, etc. must follow their name with the word OPTOMETRISTS or the initials O. D. or D. O. or D. O. S. To omit the word 'OPTOMETRIST' or the initials O. D. or D. O. or D. O. S. in connection with the use of the prefix Dr. is considred misleading and constitutes unprofessional conduct.]

A. When using the title "Doctor" or its abbreviation "Dr.", the abbreviation "O. D." should not be used as a suffix to the name. However, when using the title or abbreviation before the name, the name may be followed by the explanatory term "Optometrist".

[g.] B. For an optometrist to [use a hyphenated term connecting] advertise the practice of optometry with any business properly considered foreign to the subject of eyes and refraction, is considered misleading and constitutes unprofessional conduct.

[h.] C. Any optometrist employing or engaging for a salary, fee or commission any person, firm or corporation to steer, solicit, lure or entice any person to come to his office or branch office for optometric service, is considered as employing "cappers" or steerers" to obtain business and constitutes unprofessional conduct.

[i. The use, for advertising purposes, by any one, of the name of a deceased optometrist who prior to his demise was licensed to practice optometry in this state, shall be prohibited. Provided, however, that in the event the practice of the deceased is transferred to a duly licensed optometrist, the transferee shall be permitted to identify himself as having acquired the practice of the deceased for a period of not more than two years after the demise. During said two year period, in all advertisements or announcements by the transferee, the name of the deceased optometrist shall appear in letters no larger than the letters in the name of the transferee.]

D. In the event an optometric practice is transferred to a duly licensed optometrist, said transferee may, through professional cards, stationery, signs, or other permissible forms of announcements, identify himself 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 two year period the name or names of those from

whom the practice was transferred shall not appear in letters larger than the letters used in the name of the transferee.

[OPT 2 RECORDS

An optometrist, upon each examination of a patient, shall maintain records of his procedures and findings relating to the detection of ocular pathology.]

OPT [3] 4 RECORDS, MINIMUM SPECIFICATIONS

A. 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 procedure on all patients:

1. Case history.
2. Visual acuity without correction.
3. Ocular pathology.
4. Refractive findings, both far and near.
5. Binocular findings.
6. Prescription given, if any, with visual acuity attained.
7. Patient referral, if any.

B. Any and all patient records required at A, above, shall be maintained for at least seven years.

OPT [4] 5 REQUIRED CONTINUNING EDUCATION

A. All optometrists now or hereafter licensed in this state are and shall be required, as a prerequisite to license renewal, to attend annually courses totalling at least 12 clock hours of study of educational optometric programs as may be approved by the board under the provisions of this rule. In the event an optometrist becomes [inelligible] ineligible for license renewal for failure to comply with continuing education require-

ments, he shall be suspended from further practice. The board shall reinstate any such suspended license upon receipt of satisfactory proof that such suspended licensee has made up the deficient hours of study.

[a. Study compliance year.

Except as provided below, the optometric study compliance year shall extend from February 1 through January 31, during which period attendance at approved study sessions may be used as evidence of fulfillment of study requirements for the subsequent license renewal year beginning April 1 and expiring on March 31. Credit will be allowed only for the year in which the education course was actually attended. Example: Credit for 1976 must be obtained between February 1, 1975 and January 31, 1976 for license renewal on April 1, 1976. For the year 1975 however credit shall additionally be given for educational programs attended from January 1, 1974, so long as an educational program for which credit is requested is either specifically approved herein or has complied with the criteria as set forth in paragraph (c) herein. A licensee shall not be required to submit an educational program to the board for prior approval for those programs not specifically approved herein and which are attended betweeen January 1, 1974 and March 15, 1974. No credit for such attendance shall be given, however unless the board determines that such educational program complied with the criteria as set forth in paragraph (c) herein.]

B. Study compliance year.

The optometric study complaince year shall extend from January 1 through December 31. Courses attended during that period will be credited to the current license renewal year. Credit for approved courses attended between January 1 and March 31 may be applied to either the current

or subsequent license renewal year but not both. No credit for such attendance shall be given, however, unless the board determines that such educational program complied with the criteria as set forth in paragraph D herein.

[b.] (C.) Approved programs.

Educational programs which are approved as meeting the required standards (include the following) are indicated below. [( ] This approval is and shall be based on continued maintenance of high standards. [):] Courses not eligible for credit shall be so identified by the program sponsor.

1. Courses on subjects relative to optometry at any board approved school or college of optometry.
2. Education meetings of the North Central States Optometric Conference.
3. Educational meetings of the Minnesota Optometric Association.
4. Educational meetings of the American Opotometric Association.
5. Educational meetings of the American Academy of Optometry.
6. Other educational programs approved by the board as meeting the criteria as set forth in paragraph [(c)] (D) herein, after submission of a program, schedule, and outline to the board executive secretary not less than 45 days prior to the date of the program. The board may, upon application of any licensee and for good cause shown, waive the requirement for the submission of advance information and request for prior approval. Nothing herein shall permit the board to approve of an educational program which has not complied with the criteria as set forth in paragraph [(c)] (D) herein.
7. The board reserves the right to determine the number of hours credit for any course or program under C above.

[c] D. Criteria for judging and approving educational programs.

Board approval of continuing education programs will be determined on the following basis:

[ ] 1. [ ] Whether or not the program is likely to contribute to the advancement and extension of professional skill and knowledge in the practice of optometry.

[ ] 2. [ ] Whether or not the speakers, lecturers and others participating in the presentation of any such program are recognized by the board as being highly qualified in their field.

[ ] 3. [ ] Whether or not the proposed course, if it is to be conducted within the State of Minnesota, is open to all optometrists licensed in this State.

[ ] 4. [ ] Whether or not the tuition fee charged for courses conducted within the State of Minnesota is the same for non-members of the course sponsoring organization as it is for members. Any difference in tuition charged to non-members as opposed to members of the sponsoring organization shall be reasonable and directly related to the sponsoring organization's expense in operating the course.

[ ] 5. [ ] As a condition of approval of an education program hereunder, the board may require that the program director furnish it with satisfactory evidence of attendance of all Minnesota licensees.

6. Programs and or courses deemed by the board to be a sales promotion of a product or service may be denied approval of continuing education credit. Such programs and or courses may be presented without continuing education credit by the sponsor when so noted on the program.

[d] E. Notice of addition or deletion of approved programs.

The board may, after due considereation and by mailing written notice

thereof to each licensed optometrist on or before January 1 of each year, either add [additional] to or delete programs [to] from the list of approved programs for the ensuing study compliance year. [one or more of the programs as set forth in paragraph (b) herein.]

[e] F. Proof of attendance.

Certificates of attendance of continuing education courses shall be submitted by the optometrist to the board executive secretary at the time he applies for renewal of his license and shall contain the following information:

1. The name of the sponsoring organization.
2. The name, signature, and address of the licensee.
3. The subject of the education topic.
4. Number of hours in attendance.
5. The date of the educational program.
6. Such other evidence of attendance as the board may deem necessary.

The use of the board certificate form is recommended for all educational programs approved by the board pursuant to section [(b)] (4) D herein. Such forms shall be made available by the board executive secretary upon request.

[f] G. Limitation on credit to be given for certain courses.

Credit shall not be given for more than two hours attendance in courses of office management or administration.

[g] H. Exemptions from required attendance.

The following licensees shall be exempt from the requirements of this section:

[(] 1. [)] Any licensee serving in the regular armed forces of the United States during any part of the 12 month [,] immediately preceeding the annual license renewal date.

[(] 2. [)] Those licensees as the board, in its discretion, determines were unable to attend sufficient hours of continuing education courses because of illness, incapacity, or other unavoidable circumstances.

[(] 3. [)] Any licensee first licensed by examination or reciprocity within the 12 months immediately preceding the annual license renewal date.

[h] (I) Board may require attendance of specified subjects.

The board may, by mailing written notice thereof to each licensed optometrist on or before January 1 of each year, require all optometrists to attend specified subjects of continuing education for credit toward the annual hourly requirement.

OPT [5] (6) INCORPORATING UNDER THE PROFESSIONAL CORPORATION ACT

One or more licensed optometrists may form a corporation under the Professional Corporation Act as stated in [Minnesota Statutes 1973, Chapter 319A] (Minn. Stat § 319A.2). With reference to the formation and maintenance of such professional optometric corporation, the following rules shall apply:

[a] (A.) 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.

[b] (B.) Either the abbreviation "O. D." or the word "Optometry" or "Optometric" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O. D." shall not be used as a suffix.

[c] (C.) Where an optometrist is working as an employee of a professional optometric corporation, his name shall be [prominently displayed] (displayed prominently) at any establishment where such person is rendering professional services.

OPT [6] (7) DISPLAY AND DISCLOSURE OF NAME

A. The name of the optometrist shall be [prominently displayed] displayed prominently at any office or establishment where such person examines eyes.

B. All receipts relating to payment for eye examinations (and all prescriptions for correction furnished to the patient) shall indicate the name of the examining optometrist.

C. Spectacle prescriptions furnished to the patient shall be signed by the examining optometrist.

D. No licensed optometrist shall sign or cause to be signed a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person for whom the prescription is made.

OPT 8 FEES

A. General

1. All fees required herein shall be submitted only by check or money order, made payable to the board.

2. No such fee or any portion of a fee paid or payable to the board is refundable.

B. License examination.

1. All applications for licensure by examination in this state shall be accompanied by a $50.00 fee.

2. As provided at Minn. Stat. § 148.56 subd. 1, said fee and a completed application form shall be filed with the board at least two weeks prior to the date of the examination. However to facilitate processing, assure the availablity of sufficient examination space, equipment and testing personnel, and provide the applicant with a reasonable opportunity to remedy any deficiencies in his application, it is recommended that the application form and fee be received by the

board sixty (60) days before examination.

3. In the event the applicant fails to pass a part of the examination, upon application and the payment of an additional fee of $35.00, he may retake the examination at the time for which the board next schedules such examinations.

C. License certificate issuance.

1. Each applicant who meets all applicable requirements for licensure under the Act and these rules shall be issued a license certificate by the board. The fee for this license certificate shall be $12.00.

2. Upon proof of loss or damage of an original license certificate and payment of an additional $12.00 fee, a replacement certicate may be issued by the board.

D. Individual annual license renewal.

1. On or before March 31 of each year, the board shall receive a license renewal fee from every licensed optometrist who desires to continue to be entitled to practice in this state. The amount of said fee to be received by the board not later that March 31, 1978, for licensure between April 1, 1978, and March 31, 1979, shall be $65.00. Thereafter, subject to the approval of the Sate Commissioner of Finance under Minn. Stat. § § 16A.128 and 214.06 subd. 1, the amount of said fee shall be as determined by the board, not to exceed 115% of the renewal fee for the immediately preceding licensure year.

2. At the time of paying the fee required herein, the optometrist shall inform the board of the address or addresses of the place or places where he conducts his practice. He shall also inform the board of any change in the address or addresses of his practice during the 12 month period within one month of the change.

3. As specified at Opt 5 hereof, submission to the board of satisfactory proof of compliance with continuing education requirements is and shall be a condition precedent to annual license renewal.

4. When an optometrist defaults in payment of the annual renewal fee as set forth at D1 above, the board, upon a hearing, may revoke his license; provided that the payment of such fee at or before the time of hearing, with such additional sum not exceeding $25.00 as may be fixed by the board, shall excuse the default. In the event any such default remains unexcused at the time of hearing and a license is revoked for nonpayment of renewal fees, the board may, in its discretion, refuse to issue a new license to any person whose license has been so revoked until such time as that person repasses or, if he was previously licensed by reciprocity, passes the examinations and complies with all other requirements for intitial licensure by examination in this state.

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

E. Reciprocity.

Any qualified person seeking licensure in this state by reciprocity shall, in accordance with Minn. Stat. § 148.57 subd. 2, file a completed and sworn application for such licensure with the board at least two weeks prior to the regular meeting at which the board considers such applications. To assure sufficient time for processing, however, it is recommednded that all such applications be received by the board sixty (60) days prior to the board's consideration thereof. A fee of $100.00 shall accompany every application for licensure by reciprocity.

F. Professional corporations.

Pursuant to Minn. Stat. § 319A.21, every professional optometric corporation holding a certificate to do business in this state shall file annually with the board on or before January 1 a corporate report accompanied by a fee. Until otherwise provided by law, this fee shall be $100.00 for filing the first of such reports and $25.00 for filing each successive report.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

STATEMENT OF NEED

I. INTRODUCTION

This statement is submitted and has been duly filed in accordance with Minn. Stat. § 15.0412 subd. 4 (1976) and Minn. Rule HE 103. Its purpose is to set forth the specific necessity and legal authority for promulgation of the above-captioned rules by the State of Minnesota Board of Optometry (hereinafter "Board").

Excepting the proposed promulgation of new rules numbered and entitled, respectively, "Opt 1 General Provisions," "Opt 2 Definitions," and "Opt 8 Fees," all rules' changes herein proposed constitute the amendment or repeal of existing Board rules. The last time Board rules' amendments were filed was February 8, 1974.

II. NEED

It is the position of the Board that all of its existing rules require at least some housekeeping clarification or updating. Hence, the rules proposed herein represent a revision or repeal of some portion of every existing Board rule, as well as the already noted addition of three new rules. More specifically, the need, rule-by-rule, to adopt the instant changes is as follows:

Opt 1 General Provisions

This new rule is necessary to clarify and give express notice of the rules' purpose and scope of application. Existing Board rules lack any such provision.

BOARD'S Exhibit No. 4
File No.
Date

(e)

Opt 2 Definitions

Opt 2, another new rule, is also needed for purposes of clarification and notice. It would cover certain currently undefined terms used in the optometric practice act and Board rules.

Opt 3 Professional Conduct

Presently numbered Opt 1, this rule would delete several unnecessary clauses, related mainly to advertising, which are duplicated in the practice act. This part is also needed to correct and update existing references to the use of professional titles and to the transfer of practices.

Opt 4 Records, Minimum Specifications

This rule is needed to correct an area of unnecessary duplication now existing between those rules currently numbered Opt 2 and Opt 3. It would entirely repeal Opt 2.

This rule is also required to clarify and give express notice of the length of time for which optometric patient records are to be maintained by licensees.

Opt 5 Required Continuing Education

Proposed rule Opt 5 would amend (and renumber) current Opt 4. The principal changes it proposes are needed to resolve widespread confusion in the profession respecting existing continuing education dates.

Opt 6 Incorporating under the Professional Corporations Act

This rule is substantially identical to the present Opt 5. Its only changes would involve the correction of the form of a statutory citation and a reference to the Board's secretary. These changes are deemed necessary for housekeeping accuracy.

Opt 7 Display and Disclosure of Name

This rule would also make certain necessary housekeeping changes and clarify some present uncertainty regarding a portion of what is currently numbered as Opt 6.

Opt 8 Fees

Opt 8 would be a new rule. It is needed to comply with Minn. Stat. § 214.06 subd. 1 (1976) and 1976 amendments to the optometric practice act which delete all listings of fee amounts and procedures from the practice act and require that they hereafter be set by Board rule, with the fees to be in amounts sufficient to cover Board expenditures.

The sole fee change this rule presents relates to an increase in the annual license renewal fee. This change is required to meet the Board's anticipated increase in expenditures for fiscal year 1978 and subsequent years.

III. LEGAL AUTHORITY

Legal authority for the Board's promulgation of the instant rules is found at Minn. Stat. § 148.53 (1976). That section provides as follows:

> The state board of optometry shall have the power to make any rules and regulations and to do any and all things not inconsistent with law which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 148.62 or the full and efficient performance of its duties thereunder.

Additionally, with regard to its proposed clarification of continuing education requirements (new Opt 5), Minn. Stat. § 214.12 (1976) specifically grants the Board of Optometry, among others, rule making authority "to promote the continuing professional competence of licensees."

Express rule making authority is similarly granted in relation to Board fees (Opt 8). Thus, as previously noted, under Minn. Stat. § 214.06 subd. 1 (1976):

> . . . [A]ll health related licensing boards . . . may by rule, with the approval of the commissioner of finance, adjust any fee which the board is empowered to assess a sufficient amount so that total fees collected by each board will as closely as possible equal anticipated expenditures.

The Board's various fee assessment powers are set forth at Minn. Stat. § 148.57 subd. 1 (examination, re-examination, and certificate issuance fees), § 148.59 (renewal and renewal penalty fees), § 148.57 subd. 2 (reciprocity fee), and § 319A.21 (professional corporation fees). Further, under § 214.06 subd. 2, authorization is explicitly given to set by rule the sole fee adjustment proposed herein, i.e., the optometric license renewal fee.

IV. CONCLUSION

Based upon the foregoing, the Board respectfully submits that for the several reasons expressed, including the necessity to comply with legislative mandate and to clarify and update its present rules, the changes herein proposed are needed and clearly authorized by statute.

Dated: April 28, 1977

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

OPT 3 Professional Conduct

A. When using the title "Doctor" or its abbreviation "Dr.", the abbreviation "O.D." ~~should~~ 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."

OPT 8 Fees

B. License examination.

~~2. As provided at Minn. Stat. § 148.57, subd. 1, said fee and a completed application form shall be filed with the board at least two weeks prior to the date of the examination. However, to facilitate processing, assure the availability of sufficient examination space, equipment and testing personnel, and provide the applicant with a reasonable opportunity to remedy any deficiencies in his application, it is recommended that the application form and fee be received by the board sixty (60) days before examination.~~

~~3.~~ 2. In the event the applicant fails to pass a part of the examination, upon application and the payment of an additional fee of $35.00, he may retake the examination at the time for which the board next schedules such examinations.

E. Reciprocity. ~~Any qualified person seeking licensure in this state by reciprocity shall, in accordance with Minn. Stat. § 148.57, subd. 2, file a completed and sworn application for such licensure with the board at least two weeks prior to the regular meeting at which the board considers such applications. To assure sufficient time for processing, however, it is recommended that all such applications be received by the board sixty (60) days prior to the board's consideration thereof.~~ A fee of $100.00 shall accompany every application for licensure by reciprocity.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF OPTOMETRY

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES BY THE STATE)
OF MINNESOTA BOARD OF OPTOMETRY)
RELATING TO THE ESTABLISHMENT)
OF GENERAL PROVISIONS, DEFINI-)
TIONS AND FEES, AND TO THE)
AMENDMENT OR REPEAL OF CERTAIN)
EXISTING RULES.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on August 23, 1977, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Board of Optometry on November 10, 1977; and

WHEREAS, the Board of Optometry determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board of Optometry submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and RULE HE 107; and

WHEREAS, on December 15, 1977, the Chief Hearing Examiner found that the proposed rules were not substantially different from those proposed at the public hearing and that the Board of Optometry had met all requirements of Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board of Optometry submitted the complete hearing record and the rules as adopted by the Board to the Attorney General; and

WHEREAS, the Attorney General advised the Board of Optometry to revise certain parts of said rules prior to his approval thereof; and

WHEREAS, the Board of Optometry has so revised the rules and determined to adopt them as revised; and

WHEREAS, the Board of Optometry has resubmitted said rules as revised to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules as revised are not substantially different from those proposed at the public hearing and that the Board of Optometry has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Board of Optometry has the responsibility of submitting the revised rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 27th day of January, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions and Fees, and to the Amendment or Repeal of Certain Existing Rules

CERTIFICATE OF BOARD'S ADOPTION OF AMENDMENT RULES RESOLUTION

I, Leo A. Meyer, O.D., do hereby certify that I am the Executive Secretary of the Minnesota Board of Optometry, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Board of Optometry duly and properly called and held on the 26th day of January, 1978; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that, pursuant to the authority vested in us by Minn. Stat. §§ 148.53, 148.57, Subd. 1-2, 148.59, 319A.21, 214.06 and 214.12 (1976), rules relating to the establishment of general provisions, definitions and fees and to the amendment or repeal of certain existing rules be and hereby are approved and adopted as originally proposed, except that said rules shall be modified in accordance with such non-substantial changes as are set forth in the Board's Findings, Conclusions and Order Adopting Rules, dated December 1, 1977, and in Amended Findings, Conclusions and Order Adopting Rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of January, 1978.

MINNESOTA BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions and Fees, and to the Amendment or Repeal of Certain Existing Rules.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing in Minneapolis on August 23, 1977 before Steve M. Mihalchick, Hearing Examiner assigned by the Chief Hearing Examiner.

This is a rules hearing pursuant to Minn. Stat. Ch. 15, to determine whether amendments to Minn. Rules OPT 1-6 [7 MCAR §§ 7.001-7.006] and new Minn. Rule OPT 8 [7 MCAR § 7.008] should be adopted.

Dr. Leo Meyer, Executive Secretary; Marie Anderson, Accounting Advisor; and Robert Holley, Special Assistant Attorney General, appeared for the Board of Optometry (hereinafter "Board").

Five non-agency persons attending the hearing signed the hearing register. The hearing continued until all interested persons had had an opportunity to participate.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have

indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On June 24, 1977, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On July 11, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 44.

3. On July 21, 1977, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On July 27, 1977, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) A Statement of Facts Establishing Reasonableness of Rules;
(i) A Fee Analysis Statement for Fiscal Year 1978; and
(j) The Department of Finance approval.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through September 12, 1977 for the receipt of written comments and statements. Three comments were received after the close of the record.

STATUTORY AUTHORITY

6. The Board's general rule-making authority is found in Minn. Stat. § 148.53 which provides:

> "The state board of optometry shall have the power to make any rules and regulations and do any and all things not inconsistent with law which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 148.62 or for the

full and efficient performance of its duties thereunder."

7. With regard to the proposed clarification of continuing education requirements (OPT 5), Minn. Stat. § 214.12 states:

> "The health related and non-health related licensing boards may promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills and shall not exceed an average attendance requirement of 50 clock hours per year."

8. The authority to adopt fees by rule is provided in Minn. Stat. § 214.06, subd. 1, which provides in pertinent part:

> ". . . [A]ll health related licensing boards . . . may by rule, with the approval of the commissioner of finance, adjust any fee which the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures."

With regard to renewal fees, Minn. Stat. § 214.06, subd. 2, provides:

> "Notwithstanding any law to the contrary, each health related and non-health related licensing board shall promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information required for renewal, and renewal fees to be set pursuant to subdivision 1."

The Board's various fee assessment powers are set forth at Minn. Stat. § 148.57, subd. 1, (Examination, Re-examination and Certificate Issuance Fees), § 148.59 (Renewal and renewal penalty fees), § 148.57, subd. 2 (Reciprocity Fee), and § 319.A.21 (Professional Corporation Fees).

PROPOSED MINN. RULE OPT 1 - GENERAL PROVISIONS

9. This is a new rule which the Board justified as necessary to clarify and give express notice of the rules' purpose and scope of application.

10. OPT 1 A., Purpose, states that these rules are intended to clarify and implement Minn. Stat. § 148.52, et seq. OPT 1 B., Applicability, states that the rule shall apply to all persons licensed to practice optometry in the State and to those persons applying to the Board for a license to practice optometry. Such statements are not crucial, but they are needed to provide a reasonable framework and introduction to the remaining rules.

11. OPT 1 C. states that the use of masculine pronouns includes the feminine. This is a reasonble way of handling the gender problem and is a method used in the statutes. Minn. Stat. § 645.08(2).

PROPOSED MINN. RULE OPT 2 - DEFINITIONS

12. This is another new rule. The Board justified it as needed for purposes of clarification and notice. It gives definitions for the presently undefined terms: "Act", "Board", and "Prescription". The Board also justified the rule as establishing a format for additional definitions that may be needed in subsequent rule amendments.

13. No comments were made on the definitions of "Act" or "Board". In OPT 2 B., the Board is calling itself "the State of Minnesota Board of Optometry." In 1975, the Legislature went about the major task of uniformly renaming all the boards, commissions and councils in the state. In Laws 1975, Ch. 136, § 16, they changed the name of the Board from the "State Board of Optometry" to "Board of Optometry". Use of the words "State of Minnesota" is redundant and unnecessary; they should be deleted from OPT 2 B.

14. OPT 2 C. states:

> "Prescription" means a spectacle lens correction as formulated by a licensed optometrist."

Dr. Meyer stated that the purpose of the definition was to distinguish spectacle prescriptions from drug prescriptions. (Tr. 9)

At the hearing, the representative of the Minnesota Association of Optometrists and Opticians raised the question as to whether limiting the definition to "spectacle lens correction" would have an effect upon opticians or other practitioners who now dispense and fit contact lenses upon the prescription of ophthalmologists and optometrists. Dr. Meyer responded that it was the position of the Board that a prescription for contact lenses could not be written because such a prescription involves facets other than just the formulation of a lens formula. (Tr. 9-10) The posthearing comments show that this issue is the subject of considerable controversy and significant public interest.

The Minnesota Association of Ophthalmology suggested that the Board has been attempting to prohibit the sale of contact lenses upon prescription, and thus eliminate from the marketplace the large group of opticians and other technicians who sell and fit contact lenses, for several years. They cite the attempt of the Board in 1973 to adopt a rule that specifically stated that the Board interpreted the laws of the State as requiring the fitting of contact lenses only by licensed optometrists or physicians. The proposed rule would have made it unprofessional conduct for any optometrist to dispense a prescription for corrective lenses knowing or having reason to believe that the prescription would be used for the fitting of contact lenses by someone other than a licensed optometrist or physician. The Attorney General rejected the rule on grounds that it exceeded the authority of the Board and constituted the indirect regulation of practitioners other than optometrists (Pub. Ex. 5). The Minnesota Association of Optometrists and Opticians made similar comments (Pub. Ex. 6). They also noted that the word "prescription" appears only in OPT 7 C., and that in that context, the rules speak of "spectacle prescriptions", a phrase that indicates the existence of other prescriptions. They conclude:

> "The potential confusion caused by the definition together with its potentially serious effects upon portions of the eye care profession, which may not be regulated by the State Board of Optometry, and the total lack of need for the definition in the first instance speaks strongly to its elimination. The Minnesota Association of Optometrists and Opticians strongly urges that the Hearing Examiner reject OPT 1 C., the definition of the word 'prescription' as being both unnecessary and improper."

In the Board's posthearing comments (Board's Ex. Q), Dr. Meyer submitted some evidence and argument that it may, indeed, be dangerous and therefore improper for an optometrist or an ophthalmologist to issue a prescription for contact lenses. Again, he stated that it may be impossible to do so because other factors are involved that can alter the lens prescription.

This matter is of such significant public interest that it deserves fuller treatment than it was given at this hearing. No meaningful justification for the rule was offered by the Board

until the question was raised at the hearing. The Administrative Procedures Act demands more. It may well be that the Board's position is justified, but the position needs to be tested before it can be adopted as a rule. The Board has failed to demonstrate that the proposed rule is reasonable; therefore, OPT 2 C. must be deleted.

MINN. RULE. OPT 3 - PROFESSIONAL CONDUCT

15. This rule was formerly numbered OPT 1 and entitled "Advertising". The first change in this rule is to delete the first five sections which refer to various forms of advertising. Minn. Stat. § 148.57, subd. 3, states in pertinent part:

> "The board may revoke the license or suspend the right to practice of any person . . . who is found by the board to be . . . guilty of unprofessional conduct. 'Unprofessional conduct' means any conduct of a character likely to deceive or defraud the public, including, among other things, price advertising, and free examination advertising, . . . the employment of 'cappers' or 'steerers' to obtain business; splitting or dividing a fee with any person; the obtaining of any fee or compensation by fraud or misrepresentation; . . . the advertising by any means of optometric practice or treatment or advice in which untruthful, improbable, misleading, or impossible statements are made."

The Board justified deletion of existing sections (a) through (e) by stating that they either repeat statutory language or are obsolete. The Minnesota Association of Ophthalmology objected to the deletions, except section (b), saying they were neither obsolete nor repeated the statute (Pub. Ex. 5). The Examiner finds that these sections do, in fact, substantially repeat the statute and that their deletion is reasonable. Section (a) states:

> "So-called 'bait' advertising by optometrists of service or materials furnished or to be furnished, is considered 'bait' advertising and constitutes unprofessional conduct."

This is a confusing statement. A fair reading of the section would be that it simply prohibits all advertising. That is contrary to the statute. Sections (b) through (e) define other types of bait advertising. Section (b) prohibits price advertising. That is prohibited by the statute. Section (c) prohibits advertising of free examination, free consultation or advice. That adds a little bit to the statute, but not much. Section (d) prohibits any statement of exaggeration or high-sounding technical

terms, names and phrases. Section (e) prohibits advertising of unsupported claims of superior service or ability to undersell competitors. Those prohibitions quite clearly are covered by the statute under untruthful, improbable, misleading or impossible statements. In sum, it is clear that these sections probably could not be adopted as new rules at this point because they substantially repeat an existing statute. The Examiner would note at this point that he received one letter (Pub. Ex. 4) and some phone calls from legislators supporting the deletion of the advertising rules. It must be noted that their deletion will have little effect upon what constitutes unprofessional conduct. If the Legislature desires to delete the advertising restrictions, Minn. Stat. § 148.57, subd. 3, must be amended.

16. Existing Minn. Rule OPT 1(f) provides:

> All optometrists in advertisements, announcements, signs, etc., must follow their name with the word OPTOMETRIST or the initials O.D. or D.O.S. To omit the word "OPTOMETRIST" or the initials O.D. or D.O. or D.O.S. (in connection with the use of the prefix Dr.) is considered misleading and constitutes unprofessional conduct.

The Board proposes to amend this rule to read:

> When using the title "Doctor"or its abbreviation "Dr.", the abbreviation "O.D." should not be used as a suffix to the name. However, when using the title or abbreviation before the name, the name may be followed by the explanatory term "Optomestrist".

The Board justified this rule as necessary to update and clarify the use of professional titles. The initials "D.O." refer to doctors of osteopathy and are not relevant to the Board's rules. The initials "D.O.S." are without meaning. Dr. Meyer added that using the term "Doctor" or the abbreviation as a prefix and then using the degree title as a suffix is grammatically poor.

Ophthalmologists correctly read the proposed rule as allowing the use of the prefix without any suffix (Pub. Exs. 1, 3 and 5). They argue that this would be confusing to the public. (The Examiner would note at this point that no member of the "public" attended the hearing or submitted written comments. The only persons or groups represented were optometrists and competing eye care providers.) The Examiner would note that he finds absurd the claim by the physicians that they have any exclusive right to

the use of the title "Dr.". The time has long since passed since the public thought that everyone usong the title was a physician. Nevertheless, in response to the objections at the hearing, the Board proposed to modify the proposed rules by changing the word "may" to "shall". The rule so modified is reasonable. However, the Examiner would suggest that the wording should be modified even more because the proposed rule is somewhat awkward. In order to meet both the stated purpose of the Board and the objections raised, the Examiner suggests the following language:

> All optometrists, in advertisements, announcements, signs, etc., must follow their name with the word "Optometrist" or the initials O.D. However, when using the title "Doctor" or its abbreviation "Dr.", the name must be followed by the explanatory term "Optometrist".

It is unnecessary to further state that failure to do so is considered misleading and constitutes unprofessional conduct.

17. In OPT 3 B., the Board proposes the following change:

> For an optometrist to ~~use-a-hyphenated-term-connecting~~ advertise the practice of optometry with any business properly considered foreign to the subject of eyes and refraction, is considered misleading and constitutes unprofessional conduct.

The Board stated that this change in wording is needed to remove obsolete language and clarify the rule's language and intent. The Minnesota Association of Optometrists and Opticians suggested that this term could cause problems that were not intended. For example, large stores, like Sears, often have an optometric department. The rule would prevent Sears from advertising that they have optometric services available and it would likewise prevent an optometrist whose office is located within such a store to advertise his availability. Dr. Meyer stated that the Board did not intend to prohibit such an activity, and that the existing rule goes back to the time when some optometrists practiced dual occupations, such as "optometrist-jewelry". The Board admitted the confusion and requested offers of better language. In its posthearing comments, the Minnesota Association of Optometrists and Opticians offered the following options:

"1. Strike the entire section as being unnecessary.

2. Re-insert the old language.

3. Adopt language similar to the following: 'no optometrist shall hold himself out to the public as engaging in both the practice of optometry and any other business properly considered foreign to the subject of eyes and refraction. To do so is considered misleading and constitutes unprofessional conduct.'" (Pub. Ex. 6)

The amendment proposed by the Board is unreasonable because it is confusing. The Examiner would recommend that the third option suggested by the Minnesota Association of Optometrists and Opticians be adopted, except for the unnecessary last sentence.

18. OPT 3 C. merely remembers existing OPT 1(h) without changing the substance of the rule. It might be noted that while this rule repeats the statutory prohibition on employing cappers or steerers, it goes further and defines those terms.

19. Proposed OPT 3 D. is a revision and expansion of existing OPT 1(i). The old rule allowed the transferee of a deceased optometrist's practice to identify himself as having acquired that practice for a period of not more than two years. The revision applies the same rule to all transfers.

MINN. RULE OPT 4 - RECORDS, MINIMUM SPECIFICATIONS.

20. This rule is needed to correct an area of unnecessary duplication that now exists between those rules currently numbered as OPT 2 and OPT 3. It would entirely repeal OPT 2. Current OPT 2 is duplicated under current OPT 3 in that both rules require the keeping of records on ocular pathology. The proposed rule OPT 4 A. is identical to the present OPT 3.

21. Proposed OPT 4 B. is new and sets a minimum limit of seven years on the length of time the records must be maintained. Some period of time is necessary to ensure the patient that his record remains on file if it is needed, and to aid in the Board's investigative functions. The Board chose seven years because it believed it to be consistent with similar rules of other states and with the customs and usage in the profession. For example, Alaska is five years; Arizona is six years; Illinois is three years; New Jersey is five years; Oregon is seven years, and Ohio is ten years (Board's Ex. O). The Minnesota Association of Optometrists and Opticians suggested that five years would be sufficient and that that was the present practice in the profession and

sufficient to protect the public (Pub. Ex. 6). The Minnesota Optometric Association, Inc., had no particular objection to the seven-year figure but requested that some clarification be made as to where the records should be kept and where they would be available (Tr. 65-67). Based upon the evidence presented, the figure of seven years is not unreasonable. Five years is also a reasonable figure if the Board should desire to modify the rule.

MINN. RULE OPT 5 - REQUIRED CONTINUING EDUCATION

22. Proposed OPT 5 would amend and renumber current OPT 4. The principal changes it proposes are needed to resolve confusion in the profession respecting existing continuing education dates.

23. OPT 5 A. is identical to the first paragraph of the current OPT 4 which outlines the number of continuing education hours required annually for license renewal. Consistent with statutory and rule language, which will remain in effect until this section is adopted, it also provides for license suspension for non-compliance.

24. OPT 5 B. replaces currently numbered OPT 4(a) relative to the study compliance year. This section moves the study compliance year from February 1 through January 31 to January 1 through December 31. It is on this issue that the greatest confusion has occurred for a large number of licensees. The present rule cuts off the month of January for many attending courses for credit for the subsequent license renewal year. By moving the date back, the Board feels that it will permit the licensee to use those courses between January 1 and March 31 to meet the educational requirements for the current or subsequent license renewal year, but not for both years. The license renewal year begins April 1, thus permitting the licensee additional time for make-up, if needed.

25. OPT 5 C., entitled "Approved Programs", replaces current OPT 4(b). The wording of this section remains relatively the same with some exceptions. It mandates that the program's sponsor identify those courses which are not eligible for credit. This will assist the licensee in the selection of courses and identification of those for which he may not claim credit.

Another amendment changes "Board Secretary" to "Executive Secretary" to comply with new statutory language. Another part was added to this section of the rule that will allow the Board to limit credit hours in certain courses where a program may be overly long for the subject matter presented.

26. OPT 5 D. replaces current OPT 4(c). The only substantive change to this section is the addition in regard to courses that are essentially sales promotions. Such courses are not likely to contribute to the improvement of the licensee's professional competence. This addition will give the Board the authority to screen out such courses or programs, and, if necessary, deny them approval. Remaining changes to OPT 5 are either renumbering changes or grammatical corrections.

27. The proposed changes in regard to the study compliance year were strongly supported by the Minnesota Association of Optometrists and Opticians (Pub. Ex. 6), and the Minnesota Optometric Association, Inc. (Tr. 67). The Minnesota Assocation of Optometrists and Opticians did, however, object to the unamended portion of the rule that provides for automatic approval of all courses offered by certain listed associations and groups. The amendments proposed are necessary and reasonable.

MINN. RULE OPT 6 - INCORPORATING UNDER THE PROFESSIONAL CORPORATION ACT.

28. This rule is substantially identical to the present OPT 5. The only proposed changes involve the correction of the form of a statutory citation, and the statutory change from "Board Secretary" to "Executive Secretary". One other minor grammatical change is made. These changes are reasonable.

MINN. RULE OPT 7 - DISPLAY AND DISCLOSURE OF NAME

29. This rule replaces the currently numbered OPT 6 which provides:

> "The name of the optometrist shall be prominently displayed at any office or establishment where such person examines eyes. All receipts relating to payment for eye examinations, and all prescriptions for correction furnished to the patient shall indicate the name of the examining optometrist."

The Board proposes to expand this rule to correct what it views as two deficiencies in the existing rule. First, the current

rule does not require a prescription to be signed by the optometrist but merely that it indicate who the examiner may have been. Second, the rule does not clearly require that the optometrist first examine the patient's eyes before signing a prescription. Adequate identification of the optometrist is necessary in several situations. For example, patients with complaints should have evidence of who the responsible licensee is. These changes are intended to strengthen the rule with respect to these needs.

The Board proposes that the rule be modified to read as follows:

A. The name of the optometrist shall be displayed prominently at any office or establishment where such person examines eyes.

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

C. Spectacle prescriptions furnished to the patient shall be signed by the examining optometrist.

D. No licensed optometrist shall sign or cause to be signed a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person for whom the prescription is made.

30. For reasons discussed in Finding No. 14, the use of the qualifying terms "spectacle" in section C, and "for an ophthalmic lens" in section D is unreasonable. Other than that, there was no comment on this proposed rule, and it is reasonable.

PROPOSED MINN. RULE OPT 8 - FEES

31. This is a new rule and is necessary to comply with Minn. Stat. § 214.06, subd. 1, and 1976 amendments to the optometry practice act that deleted all existing listings of fee amounts and procedures from the statute and required that they be set by rule. Such fees are to be set in amounts sufficient to cover Board expenditures. The only fee change this rule presents relates to an increase in the annual license renewal fee. All other fee amounts and procedures established in the proposed rule are identical to existing statutory fees and procedures which remain in effect until these rules are adopted.

32. OPT 8 A. requires that all fees be submitted by check or money order made payable to the Board and that no fee or any portion of any fee is refundable. Minn. Stat. § 148.57, specifically

makes examination fees not refundable, and is reasonable to expand that provision to all fees.

33. OPT 8 B. sets the examination fee at $50 and states that an examination application form must be filed at least two weeks prior to the date of the examination. This repeats the statutory language of 148.57, subd. 1, but the rule goes on to request that applications and fees be submitted 60 days before the examination. If the statute did not specify the two-week period, it would be reasonable for the Board to mandate a period of up to 60 days so that it would have sufficient time to prepare for administration of the tests. However, since the statute does exist, it is reasonable for the Board to give some notice that it would appreciate applications being filed sooner. This is not, strictly speaking, a rule, but it seems to be a reasonable manner of handling the problem.

34. OPT 8 C. sets the fee at $12 for issuance of the license certificate or a replacement certificate. This fee is the same as the still effective statutory fee and corresponds to engrossing and handling costs.

35. OPT 8 D. deals with license renewals and establishes the license renewal year, the amount of the fee ($65 for the next year as opposed to $50 for the current year), methods of approval and limitations on increases in future years, requires licensees to inform the Board of address changes at the time of renewal, requires licensees to submit proof of compliance with continuing education requirements, and sets procedures for revoking licenses upon failure to pay renewal fees.

36. The Board's projected expenditures for fiscal year 1978 are $34,908. Without the proposed renewal fee increase, the Board's income during the same period would be approximately $28,810. Thus, the amount of the increase is necessitated by the Board's present financial condition and projected expenditures and revenues for fiscal 1978. Because renewal fees must be paid by every licensed optometrist and generate the largest source of Board revenue, limiting a fee increase at this time only to license renewals results in the most equitable distribution of the increase.

37. There were no objections or questions as to any of the fee provisions raised at the hearing or in comments. The Examiner did question the method by which renewal fees will be set in subsequent years. The proposed rule, OPT 8 D.1., was modified by the Board at the hearing (Board's Ex. N). The effect of the proposed rule is to establish a "formula" by which the renewal fees would be established in subsequent years without going through the rule-making procedures of Minn. Stat. Ch. 15. A copy of the proposed rule is attached to this Report as Appendix A. Also attached to this Report is the Board's Supplementary Statement Relating to Proposed Rule 8 D.1., which sets forth facts and arguments demonstrating to the Examiner's satisfaction that the Board's proposed rule is authorized, necessary and reasonable. (With the exception of footnote 5, which refers to procedures that the Examiner believes to be meaningless or impractical for most persons).

38. OPT 8 E. sets the fee for licensure by reciprocity and like the applications for licensure by examination, requests that such applications be submitted 60 days in advance.

39. OPT 8 F. requires every professional optometric corporation to file an annual report on or before January 1, accompanied by a fee of $100 for the first report, and $25 for each successive report. This rule repeats the language of Minn. Stat. § 319A.21, but the Board stated that it was set out here to outline and cover all fees collected by the Board. Minn. Stat. § 15.0412, subd. 1, (Supp. 1977) states in relevant part:

> "No agency shall adopt a rule which duplicates language contained in Minnesota Statutes unless the hearing examiner determines that the duplication of the language is crucial to the ability of a person affected by a rule to comprehend its meaning and effect."

This rule does not meet that test, and it must be deleted.

CONCLUSIONS

1. Due, timely and adequate notice of the hearing was properly served and published by the Board. All other substantive and procedural requirements have been fulfilled.

2. The Board has demonstrated its statutory authority to adopt the proposed rules.

3. Except as noted in the Findings, the Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts.

RECOMMENDATION

The Hearing Examiner recommends that the proposed rules be modified as suggested in the findings and that, so modified, they be adopted.

Dated this 10th day of November, 1977.

STEVE M. MIHALCHICK
Hearing Examiner

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EXAMINERS

OPT 8 Fees.

D. Individual annual license renewal.

1. On or before March 31 of each year, the board shall receive a license renewal fee from every licensed optometrist who desires to continue to be entitled to practice in this state. The amount of said fee to be received by the board not later than March 31, 1978, for licensure between April 1, 1978, and March 31, 1979, shall be $65.00. Thereafter, subject to the approval of the State Commissioner of Finance under Minn. Stat. §§ 16A.128 and 214.06, subd. 1, the amount of said fee shall be as determined by the board at open meetings for which not less than 30 days advance notice is published in the state register and at which meetings any affected persons shall be given an opportunity to present pertinent oral or written statements. No renewal fee determined by the board pursuant to this subsection for licensure subsequent to March 31, 1979, shall exceed 115% of the renewal fee of the immediately preceding licensure year nor, in conjunction with all other authorized board fees, result in the collection of amounts not approximately equal to anticipated board expenditures. Such anticipated expenditures may include only reasonable or required costs associated with a. the board's necessary purchase of or payment for those services and staff required by Minn. Stat. § 214.04, b. authorized board member compensation, and c. the economical administration of the act.

APPENDIX "A"

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions and Fees, and to the Amendment or Repeal of Certain Existing Rules.

FINDINGS, CONCLUSIONS AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Mr. Steve Mihalchick, hearing examiner, on August 23, 1977, in Room 105, at the Minnesota Department of Health Building, Minneapolis, Minnesota. On November 21, 1977, the matter was considered by the Minnesota Board of Optometry (hereinafter "Board") at a special meeting held in Room 305, also at the Minnesota Department of Health Building in Minneapolis. After reviewing the entire record in this proceeding, the Board adopts and makes the following:

FINDINGS AND CONCLUSIONS

The Board adopts as its own the Findings of Fact and Conclusions contained in the Report of Hearing Examiner of November 10, 1977, said Report being fully incorporated into and made a part of this document as if hereby set forth, except that the Board does not adopt said Findings of Fact and Conclusions to the extent they are inconsistent with the following:

PROPOSED OPT 2 DEFINITIONS

1. The Board finds as authorized, necessary and reasonable the amendment of proposed OPT 2.B, relating to the definition of "Board", to read:

"Board" means the Minnesota Board of Optometry.

This amendment constitutes the deletion of the words "State of" which, as originally proposed, preceded the word "Minnesota" in the foregoing definition. It is the determination of the Board that the two deleted words are superfluous. Further, although the optometric practice act, Minn. Stat. §§148.52-148.62 (1976), continues to employ no less than three somewhat different titles in referring to the Board, the deletion of the words "State of" parallels recent practice act

amendments in which the word "state" was deleted from two of the act's provisions. See Minn. Laws 1975, Ch. 136 §§16,17.

Each of the remaining words within the Board's title, including "Minnesota", is regarded as essential for purposes of fully and accurately identifying and entitling Board stationery and official documents such as license certificates and legal pleadings. Inclusion of the state name in the Board's title is also regarded as a necessary and most reasonable means of avoiding confusion in matters of Board interstate dealings, especially those involving other states' boards of optometry. Moreover, its use corresponds to a designation of the Board appearing at Minn. Stat. §148.57 subd. 2 (1976).

Finally, it is the decision of the Board that proposed OPT 1.B, covering the rules' general applicability, be changed in conformity with the above findings and conclusions by also deleting the words "State of" where they there immediately precede the phrase "Minnesota Board of Optometry."

2. Comments of record in opposition to the adoption of proposed OPT 2.C, which defines the terms "Prescription," are found to be unpersuasive and, in large part, irrelevant to the instant rulemaking proceeding. Nevertheless, because the Board also finds an overriding interest in the expenditious and most economical approval and final filing of the bulk of its total package of proposed rules in the above subject matter, it shall withdraw and not presently adopt OPT 2.C.

PROPOSED OPT 3 PROFESSIONAL CONDUCT

3. In accordance with its amendatory hearing statements and post-hearing written submission (Tr. 36-38; Board's Exhibit Q), the Board finds and concludes that proposed OPT 3.A is authorized, justified and reasonable and shall be adopted in the following form:

> When using the title "Doctor" or its abbreviation "Dr.", the abbreviation "O.D." should 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".

The above language varies the Board's initial or pre-hearing proposal only by the substitution of the word "shall" for "may" in the second sentence.

4. For the reasons stated at paragraph 2 hereof, the Board shall withdraw and not adopt proposed OPT 3.B, except that existing OPT 1(g), the referent or antecedent of proposed OPT 3.B, shall, without language modification, be renumbered as OPT 3.B.

PROPOSED OPT 4 RECORDS, MINIMUM SPECIFICATIONS

5. The Board finds that while there was no objection of record to its proposal that patient records be maintained by the optometrist for at least seven years, evidence was submitted that a five year period is also reasonable and, perhaps, more consistent with prevailing custom and usage in the profession (Public's Exhibit 6). Accordingly, modified to read as follows, proposed OPT 4.B shall be adopted:

> Any and all patient records required at A, above, shall be maintained for at least five years.

PROPOSED OPT 6 INCORPORATING UNDER THE PROFESSIONAL CORPORATION ACT

6. The alteration initially proposed by the Board relative to the statutory citation appearing in the introductory paragraph of proposed OPT 6 is, upon further review, found to be incorrect. Rather than reference simply Minn. Stat. §319A.21, the fee and reporting provision of the Professional Corporations Act, it is the Board's intention and an obvious requirement of this rule's context that the entire statute be cited. Thus, the phrase "Minn. Stat. §319.A.21" is changed to read "Minn. Stat. §319A.01 et seq.," and, so modified, the introductory paragraph of OPT 6 shall be adopted.

7. It is the determination of the Board that the first sentence of existing OPT 5(b), now proposed OPT 6.B, shall be amended by adding the words "or 'Optometrist(s)'" between "Optometric" and "shall". In accordance with this change, OPT 6.B shall state:

> Either the abbreviation "O.D." or the word "Optometry," "Optometric," or "Optometrist(s)" shall appear in the corporate name. Where the word "Doctor" or its abbreviation is used as a prefix with the name of the optometrist, the abbreviation "O.D." shall not be used as a suffix.

This amendment is deemed to be consistent with other permissible corporate titles listed under OPT 6.B and, indeed, a reasonable and necessary counterpart of the therein presently authorized abbreviation "O.D." Also, it corresponds to the authorized titles' usage under proposed OPT 3.A. See paragraph 3 hereinabove.

THE RECORD

8. The Board finds and concludes that Public's Exhibits 7, 8 and 9 were submitted after the close of the hearing record herein and that, pursuant to Minn. Stat. §15.0412 subd. 4 (1977 Supp.), said Exhibits are not included in the record.

ORDER ADOPTING RULES

NOW, THEREFORE, IT IS ORDERED that, (a) pursuant to the authority vested in the Board by Minn. Stat. §§148.53, 148.57 subd. 1-2, 148.59, 319A.21, 214.06 and 214.12 (1976), (b) by resolution of the Board duly adopted at a meeting thereof held on the 21st day of November, 1977, and (c) in accordance with the above modifications and those parts of the Report of Hearing Examiner not inconsistent therewith, the above subject rules are adopted.

Dated: Dec 1, 1977.

MINNESOTA BOARD OF OPTOMETRY

By Leo A. Meyer, O.D.
Leo A. Meyer, O.D.
Executive Secretary

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF OPTOMETRY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES BY THE STATE OF MINNESOTA BOARD OF OPTOMETRY) RELATING TO THE ESTABLISHMENT OF GENERAL PROVISIONS, DEFINITIONS AND FEES, AND TO THE AMENDMENT OR REPEAL OF CERTAIN EXISTING RULES.

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on August 23, 1977, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Board of Optometry on November 10, 1977; and

WHEREAS, the Board of Optometry has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board of Optometry has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Board of Optometry has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Board of Optometry has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 15th day
of December, 1977.

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Robert T. Holley, do hereby declare that I have examined the proposed rules of the Minnesota Board of Optometry relating to general provisions, definitions, fees and the amendment or repeal of certain existing rules and all related documents and that, based upon such examination and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has, without exceptions, been followed.

Robert T. Holley

ROBERT T. HOLLEY
Special Assistant
Attorney General

Dated: December 21, 1977

OPT-77-002-SM

717 DELAWARE ST. S.E.
ROOM 342
MINNEAPOLIS, MINNESOTA 55440
(612) 296-5544

STATE OF MINNESOTA
BOARD OF OPTOMETRY

LEO A. MEYER, O. D.
EXECUTIVE SECRETARY

June 24, 1977

RECEIVED
JUN 24 1977
OFFICE OF HEARING EXAMINERS

Mr. Duane Harves
Chief Hearing Examiner
State Office of Hearing Examiners
Room 300 - 1745 University Avenue
St. Paul, Minnesota 55104

Re: In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

Dear Mr. Harves:

This is to request the appointment of a Hearing Examiner in the above-entitled matter. It is proposed that hearing herein be held on Tuesday, August 23, 1977, at 9:00 a.m. in the Board Room of the State Health Department Building, 717 Delaware Street S.E., Minneapolis, Minnesota 55440.

As required under Minn. Rule HE 102, hereby filed with you are copies of the following documents:

(a) The proposed rules (together with a copy of existing Board of Optometry rules);
(b) The proposed Order for Hearing, including an attached Certificate of Board's Authorizing Resolution;
(c) The proposed Notice of Hearing; and
(d) Statement of Number of Persons Expected to Attend and Length of Hearing.

Form 1060, "Request for Hearing Examiner's Services," is also included with the above materials.

Finally, the tape recording and a transcript of the proceedings are requested.

Sincerely,

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary
Board of Optometry

LAM:ss
enclosures

RTH

(Form 1060 to follow shortly)

AN EQUAL OPPORTUNITY EMPLOYER

DOCKET OPT-77-002-SM

Record Documents

Pg 1 of 2

DATE August 23, 1977

TITLE In the Matter of the Proposed Adoption of Rules by the State Board of Optometry Relating to the Establishment of General Provisions, Definitions and Fees, and to the Amendment or Repeal of Certain Existing Rules.

EXHIBIT	PARTY Board's	PARTY Public's	MARKED	REC'D	OBJECTION
The Proposed Rules	A		X	6/24/77	
Proposed Order for Hearing; Certificate	B		X	"	
Proposed Notice of Hearing	C		X	"	
Statement of No. Persons Expected to attend and length of Hearing	D		X	"	
Proposed Rules, amended	E		X	7/5/77	
Amended Notice of Hearing	F		X	"	
Proposed Rules, as submitted to State Register 7/11/77	G		X	7/11/77	
Order for Hearing & Resolution	H		X	7/27/77	
Notice of Hearing as mailed	I		X	"	
Affidavit of Receipt of Sec. of State's List; list	J		X	"	
Affidavit of Mailing; Certificate of Sec. of State	K		X	"	
Statement of Need	L		X	"	
Statement of Evidence, and attachments	M		X	"	
R. P. Carroll, M.D.		1	X	8/22/77	
Modification of Opt & D.T.	N		X	8/23/77	
B.H. SKUZA		2	X	8/23/77	
Other States rule & record keeping	O		V	"	
Register	P		V		
~~Tapes~~ Transcript	-	-	-	8/24/77	
Dr. Leavenworth		3	V	"	
Rep. Sieben		4	V	8/30/77	
Skor for MN Assn Ophthalmology		5	V	9/9/77	
Brooks for MN Assn of O&O		6	V	9/12/77	

DOCKET OPT-77-002-SM

DATE

TITLE

EXHIBIT	PARTY		MARKED	REC'D	OBJECTION
	Board's	Public's			
Board's Comments	Q		X	9/12/77	
Lundin for MN Opt Assn		7	✓	9/15/77	After 20 days
Skor for MAO		8	✓	9/15/77	"
Minn State Med Assn		9	✓	10/24/77	"
Examiners Report	–	–	–	11/10/77	

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions and Fees, and to the Amendment or Repeal of Certain Existing Rules

CERTIFICATE OF BOARD'S ADOPTION OF RULES RESOLUTION

I, Leo A. Meyer, O.D., do hereby certify that I am the Executive Secretary of the Minnesota Board of Optometry, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Minnesota Board of Optometry duly and properly called and held on the 21st day of November, 1977; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that, pursuant to the authority vested in us by Minn. Stat. §§ 148.53, 148.57, Subd. 1-2, 148.59, 319A.21, 214.06 and 214.12 (1976), rules relating to the establishment of general provisions, definitions and fees and to the amendment or repeal of certain existing rules be and hereby are approved and adopted as originally proposed, except that said rules shall be modified in accordance with such non-substantial changes as are set forth in the Board's Findings of Fact, Conclusions and Order Adopting Rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of November, 1977.

MINNESOTA BOARD OF OPTOMETRY

Leo A. Meyer O.D.

Leo A. Meyer, O.D.
Executive Secretary

RECEIVED
SEP 12 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA
BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

SUPPLEMENTARY STATEMENT RELATING TO PROPOSED RULE 8. D. 1.

The instant Statement of the State of Minnesota Board of Optometry (hereinafter "Board") is intended to supplement Board's Statement of Facts Establishing Reasonableness of Rules, dated July 26, 1977. It is designed to address only that portion of herein proposed and hereto attached OPT 8.D.1., as amended at hearing,[1/] relating to the Board's adjustment of renewal fees for licensure subsequent to March 31, 1979. Specifically, this Statement is submitted in rebuttal to comments made by the Hearing Examiner to the effect that said proposed rule is illegal by reason of its provision for future year renewal fee amount adjustments absent the Board's engagement in formal rule making hearing procedures.[2/]

HEARING REQUIREMENT

It may not be disputed that the Board possesses explicit statutory authority to set and adjust optometry license renewal fees. In accordance with Minn. Stat. § 148.59 (1976):

> A licensed optometrist shall pay to the state board of optometry a fee as set by the board in order to renew his license as provided by board rule.

1/ At the August 23, 1977, hearing herein, the amended version of proposed OPT 8.D.1. was marked and received by the Hearing Examiner as Board's Hearing Exhibit "N."

2/ Such comments were made by the Hearing Examiner to the undersigned prior to hearing and again at hearing. Tr. pp. 59-60. No other comments or any written materials of record respecting this proposed rule are believed to have been submitted, except that one hearing witness termed the proposal "unorthodox." Tr. 61.

APPENDIX "B"

The Board's license renewal fee setting and adjustment authority is further founded upon the following provisions appearing at Minn. Stat. § 214.06 (1976):

> Subdivision 1. Notwithstanding any law to the contrary . . . all health related licensing boards . . . may by rule, with the approval of the commissioner of finance, adjust any fee which the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures.
>
> Subdivision 2. Notwithstanding any law to the contrary, each health related . . . licensing board shall promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information required for renewal, and renewal fees to be set pursuant to subdivision 1.

Further, the foregoing provisions, together with Minn. Stat. § 15.0411 and 15.0412 (1976), set forth the procedures and standards by which Board fees may be set. Such fees may be established (1) by rule, (2) with the approval of the commissioner of finance, and (3) in amounts resulting in total collections which approximate anticipated expenditures. In the instant case, the Board has met or will shortly have met each of the above criteria respecting the promulgation of OPT 8.D.1. Upon the conclusion of the present hearing procedures, the Board will have complied with all statutory rule making requirements mandated by the Administrative Procedure Act. The written approval of the commissioner of finance has been given;[3/] and, within the explicit meaning of section 214.06, subdivision 1, the current fee adjustment and adjustments for licensure after March 31, 1979, will, under 8.D.1., result only in total fee collections approximately equal to anticipated Board expenditures.

Despite this clear compliance by the Board with the letter of all renewal fee rule making requirements, it is the Hearing Examiner's apparent interpretation of the above-cited statutes, that, regardless of the fact that by law and under 8.D.1 no future adjustment may be made by the Board without the case-by-case prior approval of the commissioner of finance and only in accordance with definite formula standards, a separate rule making hearing is required to determine the legality and reasonableness of each such formula adjustment which the Board

---

3/ See attachment to Board's Hearing Exhibit "M."

and the commissioner might be required to compute.[4/] It must be noted, however, that nowhere within the above-cited statutory provisions is it expressly required that hearing and related formal rule making proceedings accompany each board renewal fee adjustment. It is not contended by the Board that the existence of such requirements may not be inferred from said provisions, but, under the clearly unique mandate of section 214.06, subdivision 1, respecting the required and permissive amounts of agency fees, it is evident that the obviously more reasonable interpretation of these equivocal provisions is to conclude that they apply only to substantive and procedural matters within an agency's discretion to establish. Indeed, where, as here, there exists a pre-set statutory formula for determining fees, adjustments in fee amounts are self-executing and the Board is effectively without discretion in the matter.

Under such circumstances, further hearings on subsequent year fee amount adjustments would only be cumulative. In that the legality of the Board's express authority to set and adjust renewal fees is expected to be conclusively confirmed pursuant to the instant proceeding, it cannot reasonably be suggested that the legislature intended that there be subsequent hearings to review precisely the same narrow issue. Similarly, the reasonableness of any fee amount to be computed by the Board and the commissioner of finance is controlled not by comments which may be made at subsequent hearings but by the formula of section 214.06, subdivision 1, and by certain of the additional safeguards proposed under 8.D.1. Also, as will hereinafter be discussed, any suggestion that subsequent year renewal fee hearings are required for purposes of publicly reviewing the legitimacy of the Board's past and anticipated expenditures fails to recognize the existence of and would improperly serve to pre-empt the functions of the several authorized and financially more expert state reviewing bodies and agencies presently engaged in the ongoing review of all agency expenditures.

4/ Without reference to any rule making or associated hearing requirements, Minn. Stat. § 16A.128 (1976) directs the commissioner of finance to make fee adjustments on the basis of the same formula applicable to board-initiated adjustments under section 214.06 subdivision 1.

SAFEGUARDS

In general theory rule making hearing requirements may be said to exist for purposes of (a) interrupting the unnecessary proliferation of regulations, (b) providing an opportunity for interested and affected persons to monitor their agencies and to participate in the making of its rules, and (c), as noted above, guaranteeing the legality and reasonableness of agency enactments. In sum, rules' hearings requirements exist as safeguards for those persons regulated and for the public at large.

One area of agency activity of special and legitimate concern to the public and most regulatees is that of agency expenditures. The public, of course, has a direct interest in seeing that state agencies provide needed and effective services; and, at least as to health professionals in this state, it is important that the various fees they pay their boards be wisely spent because such fees provide the sole source of financial support for these agencies, and any new or increased expenditures by the agencies are taxed directly against the regulated professions.

Recognizing these interests, the legislature has passed special laws relating to agency expenditures and fees. Among them are requirements under section 214.07 (1976) that the agencies submit biennial reports to the legislature justifying, among other things, their receipts and disbursements. This procedure is accompanied by appearances before the senate finance and house appropriations committees by representatives of all agencies, including the Board, which receive state appropriations and involves the detailed examination of agency budgets. Another special provision, Minn. Stat. § 16A.128 (1976), requires that all agency fees be reviewed every six months by the state commissioner of finance. A similar special provision exists as to the legislative auditor who, under Minn. Stat. § 3.972 (1976), makes a "constant" audit of all agency financial transactions and, at least once a year, conducts an unannounced on-site inspection of each agency's books and completely reviews its expenditures. Perhaps most important, however, is the special formula adopted by the legislature for agency fees and expenditures. This previously referenced formula, set forth at Minn. Stat. §§ 214.06, subd. 1, and 16A.128 (1976), provides that agency fees must as closely as possible equal agency

expenditures. Further, the state commissioner of finance is specifically designated to enforce this formula, and he does so in part through his biennial recommendation to the legislature and to the governor as to every agency budget and the relationship between fee amounts and the cost of collections and services provided. See Minn. Stat. § 16A.1281 (1976).

It should be quite apparent, then, that agency finances and their justification are subject to an ongoing and rather complex review both by elected and appointed state officials. Further, the collective amounts of all agency fees, including license renewal fees, may be established, not by agency whim, but only according to a fixed formula, the final application of which is subject to review by no less than two independent state financial experts, two legislative committees and by the governor.

To argue that a rule making hearing solely on fee amounts, which are already confined by a formula, could add anything new or useful to this elaborate set of rather sophisticated financial reivew procedures is, quite simply, presumptuous and, absent an unequivocal mandate, not reasonably to be regarded as having been intended by the legislature.[5/] Additionally, it may be noted that proposed rule 8.D.1., as amended at hearing, would provide numerous more safeguards and checks on the Board than those required by the legislative formula. Not only does the proposed rule require formula compliance and prior commissioner of finance approval, but it limits non-hearing fee adjustments to a fixed percentage amount and specifically defines the several permissible expenditures which may be considered under the formula. Equally important, by requiring that the Board make fee adjustments only at open meetings for which advance published notice must be given and at which any affected persons may present oral or written statements, it offers the traditional hearing safeguards but without the associated expenses of a hearing.

5/ It may also be pointed out, of course, that, under Minn. Stat. § 15.0415 (1976), the legislature has already established a mechanism for any interested person to petition the Board for a rules' hearing respecting fees or any other subject and, further, that judicial remedies are available to any person aggrieved by Board action.

HEARING COSTS

Also most relevant to the issue of whether subsequent year renewal fee hearings may reasonably be understood to be required is the question of hearing costs. Under the Administrative Procedure Act and the Rules of the Office of Hearing Examiners no less than ten written documents, not including the proposed rules themselves, are required to be filed for the promulgation of any rule, regardless of the length or complexity of the rule. See Minn. Stat. § 15.0412 (1976) and Minn. Reg. HE 102 and 103. These documents are typically drafted by the agency attorney. His time is also obviously expended during the course of the hearing itself and prior to the hearing in rules' redrafting and in assisting the agency to prepare its own statements justifying the reasonableness of proposed rules. Based upon the common experience of the health licensing board lawyers on the Attorney General's staff, it is estimated that a minimum of 25 hours is required for even the most simple rule; and, at the rate of approximately $28.50 per hour,[6/] this amounts to $712.50. Again, this is a conservative estimate and relates only to very short and simple rules.

Also part of hearing costs is the hearing examiner's time. At the present time, it is understood that the hearing examiner's office is charging $35 per hour for its lawyers' services. If it may be assumed that a fee rule adjustment hearing might require only .25 hours of preparation, one hour of hearing and travel time and perhaps two hours after hearing for report writing; and if this 3.25 hours is multiplied by the rate of $35 per hour, hearing examiners' costs would be about $113.75.[7/] Again, it is believed that this is a conservative estimate, even for simple rules.

Another required expense is state register publication. The cost per page is $48 and with two publications still required for rules' hearings this could, for a simple hearing, come to $96.

6/ This per hour figure is based upon not-yet-final estimates provided verbally, on August 26, 1977, to the undersigned by the financial officer for the Attorney General's office.

7/ This information, excepting the computation total, was provided to the undersigned by the Hearing Examiner herein on August 23, 1977.

Mailing of notice of the hearing is also required. Relative to the Board there are about 500 names on its mailing list with the secretary of state which cannot be covered by inter-office mailing. At 13¢ per letter, this amounts to about $65.

Of course, many other costs would also be involved in every health related board's fee rules' hearing. They would include many hours of secretarial time, the secretary of state's office's time, the commissioner of finance's office's time, the department of health's accounting office's time, and time spent at the main office of the Attorney General reviewing rules. Further, if a court reporter were requested for the hearing, rather substantial additional costs could result. Court reporters provided through the hearing examiner's office are understood to now charge approximately $15 per hour and from $1.35 to $2.95 per page of transcription. 8/

For present purposes, however, these other costs are not included and, simply totaling the Hearing Examiner's time, the agency attorney's time, state register costs and mailing costs, the total bill for even the shortest rules' hearing would amount to $987.25 or almost $1,000. 9/

The point of referencing these figures is not to suggest, of course, that any rights or procedures available to the public or to regulated professionals can or should be compromised for the sake of saving money. The point is that the bulk of this money would be spent unnecessarily on subsequent year fee amount hearings when they are not specifically required by law, when complex systems of independent and expert review already exist, when board fees are already pre-set by a fixed legislative formula, and when additional safeguards, traditionally associated with formal hearings, are now being proposed for incorporation into the Board's own rules.

8/ Information regarding court reporter costs was verbally supplied to the undersigned by the Hearing Examiner herein on August 23, 1977, and through the accounting office of the Department of Health.

9/ That this estimate may be low is further substantiated by rule making hearing costs and other figures appearing in a recent article prepared by Mr. Thomas J. Triplett and other members of the office of said counsel. See the Hennepin Lawyer, July-August 1977, "1977 State Legislation of Interest to the Practicing Bar," pp. 16-22. Based upon a survey of state agencies, it was Mr. Triplett's finding that the minimal time required to promulgate a rule was over 200 days and that, exclusive of agency staff time, the cost of promulgating a rule requiring no more than one day's hearing was $2,000.

In this regard it is also instructive to examine the potential impact of hearings' costs on the fee amounts which agencies are statutorily required to charge. As has been previously emphasized, under section 214.06, subdivision 1, agency fees must approximately equal anticipated expenditures. This means, for example, that if anticipated Board expenditures for the next fiscal year were to be $1,000 more than for the existing fiscal year, the Board could not simply raise its fees the required $1,000 but would have to double those fees to $2,000 to offset the cost of a hearing. Similarly, if Board fees this year exceeded anticipated expenditures by a substantial amount, the Board, by law, should lower its total fees by that amount. However, this might not be economically possible were a formal rules' hearing to be required for fee adjustments because hearing and associated costs would themselves consume the Board's surplus revenues.

Particularly as to agencies like the Board with relatively small budgets, it is clear that these absurd and unreasonable results derived from interpreting § 214.06 to require a rules' hearing for every fee adjustment made cannot reasonably be viewed as having been intended by the legislature or to be consistent with the applicable canons of statutory construction. See Minn. Stat. § 645.17 (1976).

ANALOGIES

Finally, it is evident that the proposition being advanced under the latter portion of proposed rule 8.D.1., namely, that fee adjustments may be made other than through the formal hearing process, is not novel and is directly analogous to numerous other authorized extra-hearing functions now being performed by various state boards and agencies. For instance, under the community health services act, Minn. Stat. § 145.911 et seq. (1976) and rules for that act promulgated earlier this year, the state commissioner of health, may, without hearings and guided simply by formulas, award grants and subsidies in various amounts. Under Minn. Rule CHI 5 (1976), the Board of Chiropractic Examiners may, without hearings, assess penalties of $5.00 per month for every month licensees' annual renewal fees are overdue. Similarly, under presently

effective statutory provisions, the Board may, without hearings, assess late payment penalty fees of up to $25 for license renewal delinquencies. See Minn. Stat. § 148.59 (1974). By 1977 amendment to the Administrative Procedures Act, provision has also now been made for the promulgation of temporary rules without prior hearings. And, perhaps most directly comparable to the present proposal, under MHD 392(b)(5), the Department of Health may, without hearings, adjust by formula the annual license renewal fees for supervised living facilities on the basis only of a self-executing computation involving numbers of facility beds. In short, even a most limited review of existing law evidences the considerable body of precedent for the Board's annual renewal fee adjustment proposal.

CONCLUSION

Based upon the foregoing and the related portions of the Board's Statement of July 26, 1977, it is submitted that the subsequent year renewal fee adjustment provisions of OPT 8.D.1. are both legal and eminently reasonable.

Dated: September 12, 1977

By Robert T. Holley

ROBERT T. HOLLEY
Special Assistant
Attorney General

232 Minnesota Health Dept. Bldg.
717 Delaware Street S.E.
Minneapolis, Minnesota 55440
Telephone: (612) 296-5518

ATTORNEY FOR THE STATE OF
MINNESOTA BOARD OF OPTOMETRY

RECEIVED
JUL 05 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street S.E., Minneapolis, Minnesota, on August 23, 1977, commencing at 9:00 A.M. and continuing until all interested persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, Hearing Examiner, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612)296-8112, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would: (a) make certain housekeeping changes in existing Minn. Rules Opt 1, 5 and 6; (b) delete Opt 2; (c) require the maintenance of patient records for 7 years; (d) clarify the meaning of "study compliance year" under current Opt 4; (e) add a new rule relating to the rules' general purpose; (f) add a new rule devoted exclusively to definitions; and (g) establish in rule form existing fees payable to the Board of Optometry, including an annual renewal fee increase to $65.00 and a mechanism for possible future renewal fee adjustments. Copies of the proposed rules are now available and one free copy may be obtained by writing to:

Leo A. Meyer, O.D.
Executive Secretary
Board of Optometry
Room 342 - 717 Delaware Street S.E.
Minneapolis, Minnesota 55414

Board's Exhibit No. F
File No.
Date

Additional copies will be available at the door on the date of the hearing.

The statutory authority of the State of Minnesota Board of Optometry to promulgate the proposed rules is contained in Minn. Stat. §§ 148.53, 214.06 subd. 1, and 214.12 (1976).

A "Statement of Need" explaining why the State of Minnesota Board of Optometry feels the proposed rules are necessary will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to Leo A. Meyer, O.D., address as above. If the person submitting a statement cannot be present to read his statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written statements or exhibits, it is requested that at least three copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs or other written material relative to the proposed rule for 20 days subsequent to the public hearing.

It is suggested that to save time and avoid duplication, those organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

Also, please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the the State Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rule making by communicating with or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The chapter provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building,

St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: June 28, 1977

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

RECEIVED
JUN 24 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

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All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at hearing. In addition, written materials may be submitted by mail to _____, Hearing Examiner, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612)296-_____, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would: (a) make certain housekeeping changes in existing Minn. Rules Opt 1, 5 and 6; (b) delete Opt 2; (c) require the maintenance of patient records for 7 years; (d) clarify the meaning of "study compliance year" under current Opt 4; (e) add a new rule relating to the rules' general purpose; (f) add a new rule devoted exclusively to definitions; and (g) establish in rule form existing fees payable to the Board of Optometry, including an annual renewal fee increase to $65.00 and a mechanism for possible future renewal fee adjustments. Copies of the proposed rules are now available and one free copy may be obtained by writing to:

Leo A. Meyer, O.D.
Executive Secretary
Board of Optometry
Room 342 - 717 Delaware Street S.E.
Minneapolis, Minnesota 55414

BOARD'S Exhibit No. C
File No._____
Date_____

Additional copies will be available at the door on the date of the hearing.

The statutory authority of the State of Minnesota Board of Optometry to promulgate the proposed rules is contained in Minn. Stat. §§ 148.53, 214.06 subd. 1, and 214.12 (1976).

A "Statement of Need" explaining why the State of Minnesota Board of Optometry feels the proposed rules are necessary will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to Leo A. Meyer, O.D., address as above. If the person submitting a statement cannot be present to read his statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written statements or exhibits, it is requested that at least three copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs or other written material relative to the proposed rule for 20 days subsequent to the public hearing.

It is suggested that to save time and avoid duplication, those organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

Also, please be advised that pursuant to Minn. Stat. § 10A.03 subd. 1 (1976) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethical Practices Board as a lobbyist within 5 days of the commencement of such activity by the individual.

Dated: May 24, 1977

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Robert T. Holley, being duly sworn upon oath, deposes and says:

1. That he is legal counsel for the State of Minnesota Board of Optometry.

2. That on the 18th day of July, 1977, he called the Minnesota Secretary of State's office and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules or amendments thereto pursuant to Minn. Stat. § 15.0412 subd. 4 (1976).

3. That on the 19 day of July, 1977, in response to the above request, the Secretary of State provided him with such a list, a photocopy of which is attached hereto and incorporated by reference.

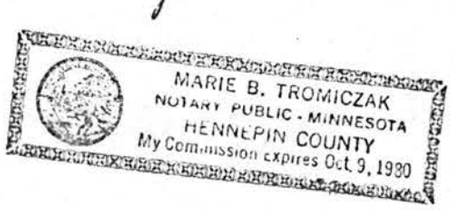
Further affiant sayeth not.

Robert T Holley

ROBERT T. HOLLEY

Subscribed and sworn to before me
this 19th day of July, 1977.

Marie B. Tromiczak



BOARD'S Exhibit No. J
File No.
Date

(c)

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

RECEIVED
JUL 27 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street S.E., Minneapolis, Minnesota, on August 23, 1977, commencing at 9:00 A.M. and continuing until all interested persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at hearing. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Steve Mihalchick, Hearing Examiner, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8112, either before the hearing or within five days after the close of the hearing, unless a longer period not to exceed 20 days is ordered by the Hearing Examiner. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

The proposed rules, if adopted, would: (a) make certain housekeeping changes in existing Minn. Rules Opt 1, 5 and 6; (b) delete Opt 2; (c) require the maintenance of patient records for 7 years; (d) clarify the meaning of "study compliance year" under current Opt 4; (e) add a new rule relating to the rules' general purpose; (f) add a new rule devoted exclusively to definitions; and (g) establish in rule form existing fees payable to the Board of Optometry, including an annual renewal fee increase to $65.00 and a mechanism for possible future renewal fee adjustments. Copies of the proposed rules are now available and one free copy may be obtained by writing to:

Leo A. Meyer, O.D.
Executive Secretary
Board of Optometry
Room 342 - 717 Delaware Street S.E.
Minneapolis, Minnesota 55414

Additional copies will be available at the door on the date of the hearing.

BOARD'S Exhibit No. I
File No.
Date

The statutory authority of the State of Minnesota Board of Optometry to promulgate the proposed rules is contained in Minn. Stat. SS 148.53, 214.06 subd. I, and 214.12 (1976).

A "Statement of Need" explaining why the State of Minnesota Board of Optometry feels the proposed rules are necessary and a "Statement of Evidence" outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Also, please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the the State Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rule making by communicating with or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The chapter provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: July 19, 1977

STATE OF MINNESOTA
BOARD OF OPTOMETRY

/s/ Leo A. Meyer, O.D.
LEO A. MEYER, O.D.
Executive Secretary

RECEIVED
JUL 27 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on August 23, 1977, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: May 24, 1977

STATE OF MINNESOTA

BOARD OF OPTOMETRY

L. A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

BOARD'S Exhibit No. H
File No.
Date

(a)

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, Leo A. Meyer, O.D., do hereby certify that I am the Executive Secretary of the State of Minnesota Board of Optometry, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made at a meeting of the State of Minnesota Board of Optometry duly and properly called and held on the 21st day of April, 1977; that a quorum of the Board was present at said meeting, that a majority of those present voted for the motion, that it is set forth in the minutes of the meeting and has not been rescinded or modified.

> RESOLVED that Leo A. Meyer, O.D., Executive Secretary of the State of Minnesota Board of Optometry, be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Optometry relating to general provisions, definitions, and fees and to the amendment or repeal of certain existing rules as well as performing any and all acts incidental thereto, including but without being limited to, signing an order for hearing and notice of hearing as well as performing all other matters required by the Administrative Procedure Act and the rules of the Office of Hearing Examiners.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of April, 1977.

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer O.D

LEO A. MEYER, O.D.
Executive Secretary

RECEIVED
JUN 24 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

STATEMENT OF NUMBER OF PERSONS EXPECTED TO ATTEND AND LENGTH OF HEARING

The number of persons expected to attend the hearing in the above-captioned matter is 20, and it is estimated that the length of the hearing will be 3 hours.

Dated: May 24, 1977

STATE OF MINNESOTA
BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

BOARD'S Exhibit No. D
File No.
Date

RECEIVED
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EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

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IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: May 24, 1977

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

BOARD'S Exhibit No. B

File No.

Date

RECEIVED
JUN 24 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, Leo A. Meyer, O.D., do hereby certify that I am the Executive Secretary of the State of Minnesota Board of Optometry, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made at a meeting of the State of Minnesota Board of Optometry duly and properly called and held on the 21st day of April, 1977; that a quorum of the Board was present at said meeting, that a majority of those present voted for the motion, that it is set forth in the minutes of the meeting and has not been rescinded or modified.

> RESOLVED that Leo A. Meyer, O.D., Executive Secretary of the State of Minnesota Board of Optometry, be and hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Optometry relating to general provisions, definitions, and fees and to the amendment or repeal of certain existing rules as well as performing any and all acts incidental thereto, including but without being limited to, signing an order for hearing and notice of hearing as well as performing all other matters required by the Administrative Procedure Act and the rules of the Office of Hearing Examiners.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of April, 1977.

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer O.D.

LEO A. MEYER, O.D.
Executive Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

AFFIDAVIT OF MAILING

Leo A. Meyer, O.D., being first duly sworn, deposes and says:

That on the 21st day of July, 1977, at the City of Minneapolis, County of Hennepin, State of Minnesota, he served the attached Notice of Hearing by (a) depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State or, where designated by the Secretary of State as requested for certain State employees, officers or agencies located in the Capitol complex and listed on said Certificate, by (b) properly depositing such enveloped Notice of Hearing for delivery through the State intra-office mailing system or, for those State agencies or persons listed on said Certificate which maintain offices in the State Department of Health Building, by (c) personal, hand-delivery thereto.

Leo A. Meyer, O.D.
LEO A. MEYER, O.D.

Subscribed and sworn to before me this 22 day of July, 1977.

Arthur W. Poore

ARTHUR W. POORE
Notary Public, Ramsey County, Minn.
My Commission Expires Dec. 10, 1981

Board's Exhibit No. K
File No.
Date

(d)

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

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The proposed rules, if adopted, would: (a) make certain housekeeping changes in existing Minn. Rules Opt 1, 5 and 6; (b) delete Opt 2; (c) require the maintenance of patient records for 7 years; (d) clarify the meaning of "study compliance year" under current Opt 4; (e) add a new rule relating to the rules' general purpose; (f) add a new rule devoted exclusively to definitions; and (g) establish in rule form existing fees payable to the Board of Optometry, including an annual renewal fee increase to $65.00 and a mechanism for possible future renewal fee adjustments. Copies of the proposed rules are now available and one free copy may be obtained by writing to:

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The statutory authority of the State of Minnesota Board of Optometry to promulgate the proposed rules is contained in Minn. Stat. §§ 148.53, 214.06 subd. 1, and 214.12 (1976).

A "Statement of Need" explaining why the State of Minnesota Board of Optometry feels the proposed rules are necessary and a "Statement of Evidence" outlining the testimony it will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

Also, please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the the State Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rule making by communicating with or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The chapter provides certain exceptions. Questions should be directed to the State Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: July 19, 1977

STATE OF MINNESOTA
BOARD OF OPTOMETRY

/s/ Leo A. Meyer, O.D.
LEO A. MEYER, O.D.
Executive Secretary

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

CERTIFICATE

I hereby certify that the 506 general labels and 1 page list for the State of Minnesota Board of Optometry, all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 1:30 o'clock P.m., this 19 day of July, 1977, have requested pursuant to Minn. Stat. § 15.0412 subd. 4 (1976), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules and amendments thereto on the subject captioned above.

SECRETARY OF STATE

JOAN ANDERSON GROWE

By Pam Dall W. Sayers

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

STATEMENT OF EVIDENCE

The State of Minnesota Board of Optometry (hereinafter "Board") will introduce the following evidence at the hearing in the above-entitled matter scheduled for August 23, 1977, commencing at 9:00 a.m. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota.

1. Documents attached hereto and made a part hereof evidencing the Board's compliance with procedural requirements for rule making:

(a) Order for Hearing;

(b) Notice of Hearing as mailed;

(c) Affidavit of Receipt of the Secretary of State's List;

(d) Certificate of the Secretary of State;

(e) Affidavit of Mailing of the Notice of Hearing; and

(f) Certificate of Board's Authorizing Resolution.

2. Documents attached hereto and made a part hereof constituting the Board's affirmative presentation of facts establishing the need for and reasonableness of the proposed rule and evidencing the Board's compliance with substantive requirements for rule making:

(a) Statement of Need;

(b) Statement of Facts Establishing Reasonableness of Rule; and

(c) Department of Finance Approval.

Board's Exhibit No. M
File No.
Date

(f)

3. The following witnesses will represent the Board at the hearing:

Marie Anderson, Accounting Operations Supervisor
State Department of Health; and

Leo A. Meyer, O.D.
Executive Secretary
State of Minnesota Board of Optometry

Said witnesses will be available to answer questions as they might relate to the Board's affirmative presentation of facts as set forth through the previously listed and attached documents.

4. The Statement of Need attached hereto contains the citations to the Board's statutory authority to promulgate the proposed amendments to the Board's rules.

Dated: July 19, 1977

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

STATEMENT OF FACTS ESTABLISHING REASONABLENESS OF RULES

The State of Minnesota Board of Optometry (hereinafter "Board") hereby affirmatively presents facts establishing the reasonableness and justifying the adoption of the above-captioned Rules relating to the establishment of General Provisions, Definitions, and Fees, and to the amendment or repeal of certain existing rules. The Board's statutory authority to promulgate these rules is established under Minn. Stat. § 148.53 (1976). Additionally, with regard to continuing education, Minn. Stat. § 214.12 specifically grants the Board, among others, the authority "to promote the continuing professional competence of licensees." Express rule making authority is similarly granted for Board fees under Minn. Stat. § 214.06 subd. 1 (1976). The Board's various fee assessment powers are set forth at Minn. Stat. §§ 148.57 subd. 1; 148.59; 148.57 subd. 2; and 319A.21. Further under section 214.06, subdivision 2, authorization is explicity given to set by rule the sole fee adjustment proposed herein, i.e., the license renewal fee.

It is the position of the Board that all of its existing rules require at least some housekeeping clarification or updating. Hence the rules proposed herein represent a revision or repeal of some portion of every existing Board rule and the promulgation of three new rules. More specifically, the justification, rule by rule, to adopt the instant changes is as follows:

Opt 1 General Provision

This new rule is necessary and justified to clarify and give express notice of the rules' purpose and scope of application. Existing Board rules lack any such provision. It is the intent of the Board by the adoption of this

rule that the purpose, applicability and certain pronoun usage under the subsequent rules proposed herein will be clarified.

Opt 2 Definitions.

This is another new rule. It is also justified and needed for purposes of clarification and notice. It covers the following presently undefined terms used in the optometric practice act and Board rules: "Act", "Board", "Prescription." The Board also further believes the rule is justified in that it establishes a format for possible future use for the addition of other definitions which may hereafter be needed.

Opt 3 Professional Conduct.

Presently numbered and entitled "Opt 1 Advertising," this rule would delete several unnecessary and outdated clauses relating mainly to advertising. Current paragraph (a), for example, dealing with "bait advertising," is proposed for deletion because it simply repeats the language of the optometric practice act. Paragraphs (b) and (c), which relate respectively to price advertising and free examinations and consultation, are regarded as no longer warranted in light of recent case law and federal rules developments in the area. Similarly, the references in paragraphs (d) and (e) to "high-sounding technical terms" and "claims of superior service or ability" are now viewed as obsolete.

Newly proposed Opt 3A alters the language of current Opt 1(f) by updating and clarifying the use of professional titles. Underlying these changes were certain incorrect references in the present rule. For example, Opt 1(f) seemingly permits an optometrist to follow his name with the initials "D.O." This apparent reference to doctors of osteopathy clearly is not relevant within rules of the Board.

Proposed Opt 3B relates to the present Opt 1(g). It would delete the phrase "use a hyphenated term" and in lieu thereof insert the word "advertise." It is the position of the Board that this change in wording is needed to remove obsolete language and clarify the rule's language and intent.

Opt 3C would merely renumber the present Opt 1(h).

Finally, proposed Opt 3D corresponds to the present Opt 1(i). It would change this section in that it would broaden otherwise obsolete language by referencing the transfer of all practices, not only those of deceased licensees.

Opt 4 Records, Minimum Specifications.

This rule is needed to correct an area of unnecessary duplication now existing between those rules currently numbered Opt 2 and Opt 3. It would entirely repeal Opt 2. Current Opt 2 is duplicated under Opt 3 in that both rules require the keeping of records on ocular pathology.

New Opt 4A would be identical to the present Opt 3.

Opt 4B, however, introduces new rules' language which is believed to be justified for purposes of clarifying and giving express notice of the length of time for which optometric patient records should be maintained. This rule would not limit the maintenance of records beyond seven years. The time reference chosen is a discretionary figure believed to be consistent with similar rules of other states and with records maintenance customs and usage in the profession. The Board also feels that this provision is needed for certain investigative purposes as well as to insure the patient that his record remains on file for a given period of time if needed.

Opt 5 Required Continuing Education.

Proposed rule Opt 5 would amend (and renumber) current Opt 4. The principal changes it proposes are needed to resolve widespread confusion in the profession respecting existing continuing education dates.

Opt 5A is identical to the first paragraph of current Opt 4 which outlines the number of continuing education hours required annually for license renewal. Consistent with statutory and rule language which will remain in effect until this section's promulgation, it also provides for license suspension for non-compliance.

Opt 5B replaces currently numbered Opt 4(a) relative to the study compliance year. This section moves the study compliance year from February 1 through January 31 to January 1 through December 31. It is on this

issue that the greatest confusion has occurred for a large number of licensees. The present rule cuts off the month of January for many attending courses for credit for the subsequent license renewal year. By moving the date back the Board feels that it will permit the licensee to use those courses between January 1 and March 31 to meet the educational requirement for the current or subsequent license renewal year, but not for both years. The license renewal year begins April 1, thus permitting the licensee additional time for make up if needed.

Opt 5C entitled "Approved programs", replaces currently numbered Opt 4(b). The wording of this section remains relatively the same with the following exceptions: it mandates that the program sponsor identify those courses which are not eligible for credit. This will assist the licensee in his selection of courses and identification of those for which he may not claim credit. It should also be noted that cross-paragraph references have been changed to conform with earlier paragraphs of the proposed rule. An additional amendment changes "board secretary" to "executive secretary" to comply with Minn. Stat. § 214.04 subd. 3 (1976). Another part was also added to this section of the rule and is numbered "7." Part 7 will allow the Board to limit credit hours in certain courses where a program may be overly long for the subject matter presented.

Opt 5D replaces currently number Opt 4(c). The wording of this section remains the same with the addition of item 6. The Board has on occasion noted that a program or course being presented has been essentially a sales promotion of a product or service and therefore not likely to contribute to the improvement of the licensee's professional competence. The adoption of this item will give the Board the authority to screen out such courses or programs and, if necessary, deny them approval.

Opt 5E replaces currently numbered Opt 4(d). The Board, in its judgment, feels the need to remove superfluous wordage from this provision to make it more concise and to the point.

Opt 5F replaces currently numbered Opt 4(e). The one change in this provision is the insertion of the word "executive" before "secretary", again for purposes of conforming with Minn. Stat. § 214.04 subd. 3.

Opt 5G merely constitutes a renumbering of Opt 4(f). No change in wording was made in this provision.

Opt 5H renumbers the current Opt 4(g). No change in wording is made in this provision.

Opt 5I replaces currently numbered Opt 4(h). The wording in this provision also remains unchanged.

Opt 6 Incorporating under the Professional Corporation Act.

This rule is substantially identical to the present Opt 5. Its only changes involve the correction of the form of a statutory citation, i.e., Minn. Stat. § 319A.21, and reference to the Board's secretary which is now obsolete under § 214.04 subd. 3. These changes are deemed necessary for housekeeping accuracy.

Opt 7 Display and Disclosure of Name.

This rule replaces the currently numbered Opt 6. It expands and corrects a flaw in the current rule by requiring the signature of the examining licensee on spectacle prescriptions furnished to patients. The flaw in the current rule is that it merely "indicates" who the examiner may have been. This can be done by various means and does not fulfill the intent of the rule by requiring the signature of the licensee. It also will require that the licensee shall not sign a prescription for which he has not first made a personal examination of that patient's eyes. The Board feels that the current rule is not clear and that in certain instances the intent of the rule is being evaded. Patients with complaints should have evidence of who the responsible licensee is and this rule is intended to establish that fact.

Opt 8 Fees

Opt 8 would be a new rule. It is needed to comply with Minn. Stat. § 214.06 subd. 1 (1976) and 1976 amendments to the optometry practice act which delete all existing listings of fee amounts and procedures from the

practice act and require that they hereafter be set by Board rule, with the fees to be in amounts sufficient to cover Board expenditures. The sole fee change this rule presents relates to an increase in the annual license renewal fee. This change is required to meet the Board's anticipated increase in expenditures for fiscal year 1978 and subsequent years. All other fee amounts and procedures referenced in the proposed rule are identical to existing statutory fees and procedures which, although they have been physically deleted from the latest codification of the optometric practice act, are, under Minn. Laws 1976, ch. 222 § 210, to remain in effect until the promulgation of the instant rule.

Opt 8A. General

This section deals with the necessity of submitting fees by check or money order made payable to the Board. Further, it indicates that such fees or any portion of a fee are nonrefundable. Minn. Stat. § 148.57 refers to nonrefundability of examination fees and it is the position of the Board that such legislative intent extends to all fees received by this Board.

Opt 8B. License examination.

Items 1 thru 3 of this section refer to Minn. Stat. § 148.57 subd. 1. To facilitate the processing, assure sufficient examination space, equipment and testing personnel, and to provide the applicant with a reasonable opportunity to remedy any deficiencies in his application it recommends that the application form and fee be received sixty days before examination. This provision is in conformity with most other health related boards in this and other states.

Opt 8C. License certificate issuance.

This provision relates to Minn. Stat. § 148.57 and refers to the fee to be paid upon the issuance of a license certificate. This fee which is the same as the still effective statutory fee for certificate issuance, corresponds to engrossing and handling costs.

Opt 8D. Individual annual license renewal.

This provision establishes the license renewal year, the amount of the fee ($65.00 as opposed to $50.00 for the current year), methods of approval

and a limitation on increase in future years. A figure not to exceed 115% of the renewal fee for the immediately preceding license renewal year places a maximum on any proposed increase in fees. Minn. Stat. § 214.06 permits the Board, with the approval of the commissioner of finance, to assess a sufficient amount so that the total fees collected will as closely as possible equal anticipated expenditures. The precentage figure is a discretionary number which would act as a deterrent to Board expenditures beyond normal inflationary trends. This part also indicates that the licensee advise the Board of his address or addresses of the place or places where he conducts his practice and the need to inform the Board of any change in address during the 12 month period. Inasmuch as continuing education requirements are a condition precedent to annual license renewal it requires proof of satisfactory compliance. Further, it spells out the penalties for default, the consequences of practicing without a renewed or current license, and a method of request to cancel a license.

Opt 8E. Reciprocity.

This provision relates to Minn. Stat. § 148.57 subd. 2. As in the instance of applicants for licensure by examination, the recommended 60 day provision relating to processing is also contained in this provision.

Opt 8F. Professional Corporations.

Provisions relating to filing fees and corporate reports are in accordance with Minn. Stat. § 319A.21 (1976) and are delineated here to outline and cover all fees collected by the Board.

As demonstrated in the Fee Analysis statement, which is attached as Exhibit A and made a part hereof, the Board's projected expenditures for fiscal year 1978 will be $34,908. Without the proposed renewal fee increase, the Board's income during the same period would approximate only $28,810. Thus the amount of increase, dictated by legislative directive, is necessitated by the Board's present financial condition and projected expenditure of revenues for fiscal 1978. Moreover, because renewal fees must be paid by every licensed optometrist and generate the largest source of Board revenue, limiting a fee increase at this time only to license renewals results in the most equitable distribution of the increase.

On the basis of the foregoing, including the attached Exhibit A, the Board finds the proposed rules and each of their parts to be reasonable and justified.

STATE OF MINNESOTA

BOARD OF OPTOMETRY

Dated: July 26, 1977

Leo A. Meyer, O.D.

LEO A. MEYER, O.D.
Executive Secretary

BOARD OF OPTOMETRY

EXHIBIT A

Fee Analysis Statement
FY 78 Estimates

EXPENDITURES

Executive Secretary, Part time	$ 9,665
Board Per Diem	4,690
Rents & Leases	700
Repairs	50
Printing & Binding	800
Legal, Hearing & Invest. Services	13,545
Data Processing	400
Purchased Services	275
Communications	1,270
Travel-In State	1,500
Travel-Out State	850
Board Membership	103
Supplies & Materials	1,060
Total	$34,908

REVENUE

Optometrist Renewals	525 at $65	34,125
Examination Fees	30 at $50	1,500
Registration Fees	30 at $12	360
Corporation Renewals	20 at $25	500
New Corporation	2 at $100	200
Total		36,685

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF OPTOMETRY

In the Matter of the Proposed Adoption of Rules by the State of Minnesota Board of Optometry Relating to the Establishment of General Provisions, Definitions, and Fees, and to the Amendment or Repeal of Certain Existing Rules

DEPARTMENT OF FINANCE APPROVAL

Minn. Stat. § 148.59 (1976) empowers the State of Minnesota Board of Optometry (hereinafter "Board") to set by rule an annual license renewal fee. Further, Minn. Stat. § 214.06 subd. 1 (1976) provides that ". . . all health related licensing boards . . . may by rule, with the approval of the commissioner of finance, adjust any fee which the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures."

The sole fee adjustment proposed herein would increase the annual license renewal from fifty dollars ($50.00) to sixty-five dollars ($65.00). Additionally, the Board proposes that subsequent annual renewal fees shall, with the prior approval of the commissioner of finance as to any and all adjustments in subsequent annual renewal fees, be determined by the Board in amounts not to exceed 115% of the immediately preceding licensure year's renewal fee.

Upon review of the attached supporting information justifying the need for, reasonableness and amount of the new renewal fee, as well as the procedure and 115% ceiling for any adjustment in subsequent year renewal fees, and pursuant to the authority vested in the Minnesota Department of Finance by Minn. Stat. §§ 16A.128 and 214.06 subd. 1 (1976), the above-referenced new annual renewal fee and fixed percentage for subsequent year adjustments are hereby approved.

Dated: 6/22, 1977

GERALD W. CHRISTENSON
Commissioner

By _____
THOMAS M. MALOY
Director Budget, Planning and Control

OPT 8 Fees.

D. Individual annual license renewal.

1. On or before March 31 of each year, the board shall receive a license renewal fee from every licensed optometrist who desires to continue to be entitled to practice in this state. The amount of said fee to be received by the board not later than March 31, 1978, for licensure between April 1, 1978, and March 31, 1979, shall be $65.00. Thereafter, subject to the approval of the State Commissioner of Finance under Minn. Stat. §§ 16A.128 and 214.06, subd. 1, the amount of said fee shall be as determined by the board at open meetings for which not less than 30 days advance notice is published in the state register and at which meetings any affected persons shall be given an opportunity to present pertinent oral or written statements. No renewal fee determined by the board pursuant to this subsection for licensure subsequent to March 31, 1979, shall exceed 115% of the renewal fee of the immediately preceding licensure year nor, in conjunction with all other authorized board fees, result in the collection of amounts not approximately equal to anticipated board expenditures. Such anticipated expenditures may include only reasonable or required costs associated with a. the board's necessary purchase of or payment for those services and staff required by Minn. Stat. § 214.04, b. authorized board member compensation, and c. the economical administration of the act.

Board's Ex. N